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

August 13, 2010

MS LISA P JACKSON
ADMINISTRATOR
US ENVIRONMENTAL PROTECTION AGENCY
HEADQUARTERS
ARIEL RIOS BLDG
1200 PENNSYLVANIA AVE NW
WASHINGTON DC 20460

Re: Executive Director's Response to EPA Order
Renewal
Permit Number: O1420
CITGO Refining and Chemicals Company, L.P.
Corpus Christi Refinery - West Plant
Corpus Christi, Nueces County
Regulated Entity Number: RN100238799
Customer Reference Number: CN600127922
Account Number: NE-0192-F

Dear Ms. Jackson:

On May 28, 2009, the U.S. Environmental Protection Agency (EPA) signed an order (Order) granting portions of a petition filed by Environmental Integrity Project objecting to the issuance of CITGO's Federal Operating Permit (FOP) Permit Number O1420 that was issued on December 16, 2006.

In accordance with Title 30 Texas Administrative Code § 122.360 (30 TAC § 122.360), the Texas Commission on Environmental Quality (TCEQ) must resolve any objection and issue a revised permit that satisfies EPA's objection.

On March 16, 2010, I sent a draft of the Executive Director's Responses to the Order, statement of basis (SOB), and a revised draft permit to EPA, Region 6 to further discussion and understanding of these issues. As of August 13, 2010, TCEQ staff have received no response from EPA. In order to fully respond to the Order, the TCEQ has completed its technical review of the order and offers the enclosed responses to facilitate resolution. The attached responses to the order provide resolutions to the granted portions of the petition and describe the changes that have been made to the draft permit as part of the review of the FOP renewal application. The draft permit and SOB are attached for your review. The new draft proposed permit will be re-noticed as part of the Title V renewal process. The public notice package will be mailed

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within a few weeks from the date of this letter, which will require CITGO to publish notice in accordance with 30 TAC § 122.320.

Thank you for your cooperation in this matter. If you have any other questions, please contact Mr. Alfredo Mendoza, P.E., at (512) 239-1335.

Sincerely,



Steve Hagle, P.E., Director
Air Permits Division
Office of Permitting and Registration
Texas Commission on Environmental Quality

SH/AM/dw

cc: Mr. Kevin Ferrall, Vice President and General Manager, CITGO Refining and Chemicals Company, L.P., Corpus Christi
Mr. Mark Cheesman, Manager of Environmental Affairs, CITGO Refining and Chemicals Company, L.P., Corpus Christi
Mr. Paul Choucair, Environmental Advisor, CITGO Refining and Chemicals Company, L.P., Corpus Christi
Mr. Eddie Lewis, Fulbright and Jaworski, L.L.P., Houston
Mr. John M. Minter, Staff Attorney, TCEQ
Ms. Terry G. Salem, Staff Attorney, TCEQ
Air Section Manager, Region 14 - Corpus Christi
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6, Dallas

Enclosures: Executive Director's Response to EPA Order
Draft Permit
Statement of Basis

Project Number: 14422

EXECUTIVE DIRECTOR'S RESPONSE TO EPA ORDER

The Texas Commission on Environmental Quality (TCEQ or commission) Executive Director (ED) provides this Response to an EPA Order on a Petition regarding a significant revision to the CITGO Refining and Chemicals Company, L.P. (CITGO), Federal Operating Permit (FOP) No. 01420. CITGO has filed an application for renewal of this FOP as required under Title 30 Texas Administrative Code (30 TAC) Chapter 122. The ED has combined its response to the EPA Order with the permit renewal review to assure that all issues are appropriately considered. As required by 30 TAC § 122.360(g), the ED shall not issue the renewed permit until any EPA objections resulting from the granting of the Petition have been resolved; and all the conditions required under 30 TAC § 122.243(a) are satisfied. The objections are summarized in this response.

BACKGROUND

Procedural Background

The federally approved 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 to facilitate compliance and improve enforcement. The FOP does not authorize construction or modifications to facilities, nor does the FOP authorize emission increases. To construct or modify a facility, or increase emissions, the appropriate new source review authorization must be obtained. 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 obtain the FOP in order to operate.

CITGO Refining and Chemicals Company, L.P., applied to the TCEQ for a significant revision to the FOP for a petroleum refining plant located in Corpus Christi, Nueces County on August 16, 2005, and notice was published on November 16, 2005. A notice and comment hearing was held on June 8, 2006. TCEQ sent the proposed draft permit and response to comments to EPA on December 19, 2006. EPA did not object to the proposed draft permit which was issued by TCEQ on February 2, 2007. The 60 day petition period extended until April 3, 2007 during which a timely petition from the Environmental Integrity Project, Refinery Reform Campaign, Citizens of Environmental Justice, and Suzie Canales was received on March 30, 2007.

EPA issued an Order granting in part and denying in part the petition (Petition Number VI-2007-02) for objection to the Title V permit dated May 28, 2009. TCEQ is responding to the order by sending the draft proposed permit and the ED Response to the Order to public notice as part of the Title V renewal process.

Description of Site

The CITGO Refining and Chemicals Company, L.P., site that is the subject of the Petition, Order, and renewal application is the Corpus Christi Refinery - West Plant (the West Plant). The West Plant is located at 7350 Interstate Highway 37 in Corpus Christi, Nueces County, Texas 78409.

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The primary purpose of the West Plant is to further process refinery intermediate products produced at the East Plant into diesel fuel blending components and coke sales products, and into feed streams for gasoline and petrochemical processing units located at the East Plant. Intermediate products are transported to the West Plant via interconnecting pipeline and barge docks used for the unloading of Coker Unit feed.

The following objections were submitted to TCEQ by EPA regarding FOP No. O1420. The following responses follow the references used in EPA's Order. We have included the EPA Order outline reference numbers in brackets.

OBJECTION 1 [Order at V.A.1 and 2]: TCEQ did not articulate a rationale for its conclusion that the monitoring requirements for opacity are sufficient to assure compliance with the emissions limitations for opacity, or are sufficient to yield reliable data from the relevant time period that is representative of compliance with the permit. Petitioners claim the CITGO permit requires only an annual observation of stationary vents to determine compliance with Chapter 111 opacity standards and requires only a quarterly observation for buildings, enclosed facilities and other structures. This is not sufficient monitoring to assure compliance for any unit. The permit does not require that observations occur when violations are most likely such as 'decoking operations.' For example, the permit should require Method 9 readings when CITGO observes visual emissions.

EPA directs TCEQ to address these monitoring issues and issue a new draft permit for public review and comment. With regard to these monitoring issues and other monitoring requirements in the permit, TCEQ must ensure it has done the following: (1) satisfied the monitoring requirements of 40 CFR §§ 70.6(a)(3)(i)(A) and (B) and 70.6(c)(1); (2) provided a rationale for the monitoring requirements placed in the permit, see 40 CFR § 70.7(a)(5); and (3) responded to significant comments.

RESPONSE 1: The Executive Director has provided a new proposed draft permit for public review and comment in conjunction with the permit renewal review.

The ED respectively notes that the Petitioners and EPA were mistaken that the permit required only an annual observation for stationary vents to determine compliance with opacity standards of 30 TAC Chapter 111. The version of the draft permit that went to public notice on November 16, 2005 required stationary vents subject to 30 TAC Chapter 111 to be monitored once per calendar quarter.

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

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individually in the unit summary, and therefore, these emission units did not appear in the applicable requirements summary table in the draft FOP.

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.

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). Vents with a flow rate greater than or equal to 100,000 acfm are subject to 15% opacity and are identified in the Applicable Requirements Summary. All other vents at the site are subject to 20% opacity, as noted in the revised Special Condition 4.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.

Quarterly visible emissions observations are sufficient to assure compliance with the opacity requirements of 30 TAC Chapter 111. The following summary of stationary vents and rationale is provided to justify the sufficiency of quarterly monitoring and has been incorporated in the Statement of Basis document.

Summary of stationary vents at the Corpus Christi Refinery – West Plant

The sources of emissions for CITGO's stationary vents are categorized as follows:

EPN	Source Name	NSR Permit	Applicable Opacity Limit
590-H-1	ULSD Charge Heater	8778A	30 TAC §111.111(a)(1)(B) - 20% Opacity
590-H-2	ULSD Reboiler Heater	8778A	30 TAC §111.111(a)(1)(B) - 20% Opacity
521-H1	Coker Charge Heater	8778A	30 TAC §111.111(a)(1)(B) - 20% Opacity
527-H1	MDH Charge Heater	8778A	30 TAC §111.111(a)(1)(B) - 20% Opacity

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EPN	Source Name	NSR Permit	Applicable Opacity Limit
527-H2	MDH Reboiler Heater	8778A	30 TAC §111.111(a)(1)(B) - 20% Opacity
H-99	Combined Heater Stack ¹	7741A	30 TAC §111.111(a)(1)(C) - 15% Opacity
565-B1	Boiler No. 1	7741A	30 TAC §111.111(a)(1)(B) - 20% Opacity
565-B2	Boiler No. 2	7741A	30 TAC §111.111(a)(1)(B) - 20% Opacity
561-B3	Boiler No. 3	8778A	30 TAC §111.111(a)(1)(B) - 20% Opacity
566-GR1	Diesel Emergency Generator	PBR 106.511	30 TAC §111.111(a)(1)(B) - 20% Opacity
554-ME5	Tail Gas Incinerator	8778A	30 TAC §111.111(a)(1)(B) - 20% Opacity
EP-1	Platformer Regenerator Vent		30 TAC §111.111(a)(1)(B) - 20 % Opacity
521-FCOKE	Coke Storage and Handling Fugitives	8778A	30 TAC §111.111(a)(8)(A) - 30% Opacity
581-CT1	Cooling Tower	7741A	30 TAC §111.111(a)(8)(A) - 30% Opacity

¹ The combined heater stack is the emission point from the following sources: The No. 5 Platformer Charge Heater (546-H1), the No. 5 Platformer No. 1 Interheater (546-H2), the No. 5 Platformer No. 2 Interheater (546-H3), the No. 5 Platformer No. 3 Interheater (546-H4), the Depentanizer Reboiler Heater (546-H5), the Platformate Splitter Reboiler (546-H6), the NHT Can Heater (547-H1), and the NHT Stripper Reboiler Heater (547-H2).

Nine of the fourteen emission points are combustion gas vents associated with heaters, reboilers or boilers. These units combust refinery fuel gas or sweet natural gas to generate steam or to indirectly heat process fluids. A tenth emission point is associated with a diesel-fired emergency generator. Other than this generator, there are no liquid-fired or solid fuel-fired combustion units at the West Plant.

The emergency diesel generator is only used to provide power during emergencies. The generator's primary function is to provide power to operate vital equipment during a power disruption caused by a significant weather event. It is not used during regular operations.

The tail gas incinerator (TGI) exhaust vent (554-ME5) and the Platformer Regenerator Vent (EP-1) can be classified as process vents, meaning the vents have the potential to contain more than just byproducts from the combustion of fuel gas or natural gas. Other process vents at the West Plant either relieve into a fuel gas recovery system or do not have the potential to produce visible emissions.

The purpose of the TGI is to combust tail gas, i.e. tail gas that has passed through the reactor and separator sections of the Tail Gas Treating Unit, before the gas is released to atmosphere. Under

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normal operating conditions, this gas will be composed of nitrogen, water, and carbon dioxide (CO₂) with very low (ppm-range) levels of carbon monoxide (CO), sulfur dioxide (SO₂), and hydrogen sulfide (H₂S). The burners for the TGI are fired with fuel gas; accordingly, the TGI vent is composed of fuel gas combustion byproducts and treated tail gas combustion byproducts.

The other process vent, EP-1, is associated with the continuous catalyst regeneration section of the Platformer unit. Because the catalyst used in the Platformer process deactivates due to coke formation, catalyst is continuously regenerated and then returned to the reactor. The regeneration process involves the removal of coke in a high-temperature oxidation process and reconditioning with hydrochloric acid. Gas associated with this process vent goes through a disengaging hopper, fines removal blower, and a UOP Regeneration Vent Gas Chlorosorb System. By the time this gas stops being used for process purposes and is emitted to atmosphere, the only constituents of concern in the vent gas are small amounts of chlorine and hydrochloric acid. Of note, the catalyst used in the Platformer is not a powder like that used in a Fluidized Catalytic Cracking Unit. Instead, the catalyst is in a larger pellet-type form.

The coke handling and storage operations emit fugitive emissions that are subject to 30 TAC Chapter 111. The Coker Unit is a semi-batch operation that converts heavy vacuum tower bottoms into lighter hydrocarbon fractions, such as gasoline and gas oil, and petroleum coke which is a granular solid hydrocarbon material. After the semi-batch reaction is completed, coke is removed from the coke drums by means of high-pressure water jets that "cut" the packed coke and allow it to drop out of the coke drums.

The West Plant Cooling Tower, 581-CT1, is designed to remove heat from non-process cooling water from heat exchangers, condensed steam, and boiler feed water by contacting the water with ambient air. During this process, it is possible for some water droplets to be entrained in the air as a mist.

Justification for Quarterly Visible Emissions Monitoring

To satisfy periodic monitoring, the permit's Special Terms and Conditions specify monitoring requirements for stationary vents and other specified sources. This monitoring requires the permit holder to perform a quarterly visible emissions observation to demonstrate compliance with the opacity standards set forth in 30 TAC Chapter 111. The broad applicability of 30 TAC Chapter 111 (Visible Emissions) covers any duct, stack, chimney, flue, or other device used to conduct air contaminants into the atmosphere. Visible emissions are defined as particulate or gaseous matter that can be detected by the human eye.

As stated in the EPA order, EPA set forth five factors that permitting authorities may consider in determining appropriate monitoring: (1) the variability of emissions; (2) the likelihood of a violation; (3) whether add-on controls are used to meet the emission limit; (4) monitoring and other data already available; and (5) the type and frequency of the monitoring requirements for similar emissions units at other facilities. The executive director considered these factors in determining the sufficiency of quarterly monitoring.

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In general, the West Plant's site-wide stationary vents are not capable or expected to produce visible emissions during regular operation. These vents may include, but are not limited to, passive ventilation vents, vents from natural gas-fired combustion sources, and vents that emit VOCs. If these sources emit visible emissions it would likely be due to maintenance, startup, shutdown (MSS) activities or due to a reportable emissions event as defined under 30 TAC Chapter 101.

Contributions from uncombined water (which includes steam) are not included in determining compliance with the visible emissions requirements as stated in 30 TAC § 111.111(b).

A once per calendar quarter visible emissions observation is sufficient to demonstrate compliance for vents that do not have a significant potential to emit visible emissions on a regular basis. In the event that visible emissions are noted, either through the quarterly observation or other credible evidence, such as observations from company personnel, the permit holder can either report a deviation or perform a Test Method 9 observation to determine the opacity consistent with the 6-minute averaging time specified in 30 TAC §§ 111.111(a)(1)(B)-(C), (a)(7)(A) and (a)(8)(A).

A provision is included in the Special Terms and Conditions to monitor combustion sources more frequently than quarterly if alternate fuels are burned for periods greater than 24 consecutive hours. This will ensure possible emissions that may arise when switching fuel types are captured.

The following discussion provides the rationale of the variability in emissions and the likelihood that there would be visible emissions exceeding the opacity limits of 30 TAC Chapter 111 for the stationary vents identified in the Summary of Stationary Vents section above.

Heaters, Reboilers, and Boilers

The heaters, reboilers, and boilers fire fuel gas or sweet natural gas. Based on a review of CITGO's input regarding operations at the West Plant, other refineries, and other industrial facilities, the probability of visible emissions from refinery fuels gas-fired combustion sources is very low. Combustion of pipeline quality ("sweet") natural gas is not expected to produce visible emissions. EPA's draft guidance – Title V Monitoring Technical Reference Document (April 2001) indicates that keeping records demonstrating that natural gas was the only fuel fired in a reboiler would be sufficient monitoring for visible emissions and is also reflected in TCEQ's Periodic Monitoring Guidance.

CITGO's fuel gas is produced directly by units throughout the West Plant or is recovered from the flare system via the Flare Gas Recovery Unit. The produced fuel gas undergoes treatment and conditioning before it is used as fuel in the combustion units. This process includes removal of heavier entrained components via liquid knock-out drums and treatment by use of an amine scrubber to remove H₂S. At the end of this process, fuel gas characteristics are similar to that of natural gas, except that the fuel gas typically contains hydrogen, small amounts of heavier

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hydrocarbons and is allowed by regulation to have a higher concentration of H₂S. Due to these characteristics, visible emissions are not expected from these units.

Diesel Emergency Generator

This generator is only used to provide power during emergencies such as a significant weather event. The emergency generator cannot operate for more than 10% of the normal operating hours of the plant as per 30 TAC §106.511. Given the brief period of time during which the equipment will be operated, quarterly observations are sufficient when the generator is in use.

Tail Gas Incinerator

For the same reasons applicable to heaters, reboilers and boilers, it is highly unlikely that visible emissions limits for the West Plant's tail gas incinerator (TGI), 554-ME5, will be exceeded. The TGI burners are fired with purchased natural gas and the treated tail gas feed streams to the TGI are essentially nitrogen, water, and CO₂ with very low (ppm-range) levels of CO, SO₂, and H₂S, all of which are transparent to light. Accordingly, there is a very low probability for visible emissions to be created.

Moreover, other special conditions associated with operation of the TGI will provide sufficient information to identify periods when the SRU and the incinerator may not have been operating properly and it is only these periods during which opacity limits have the potential to be exceeded. Specifically, Special Conditions 30 and 31 of NSR permit 8778A requires CITGO to operate a continuous emissions monitoring system (CEMS) to measure O₂ and SO₂ from the incinerator exhaust stack, record the incinerator firebox exit temperature and data from the CEMS, and maintain O₂ concentrations and the firebox exit temperature within limits established during performance testing.

Due to the low potential for visible emissions from the TGI and the existence of continuous monitoring data that would allow CITGO to determine periods when the TGI was not operating under normal conditions, quarterly visible emissions observations of the TGI stack is sufficient to demonstrate compliance with 30 TAC Chapter 111.

Platformer Catalyst Regenerator Vent

As discussed previously, there are numerous stages in the Platformer catalyst regeneration process and by the time a vent stream is generated, the only constituents of concern in the vent gas are small amounts of chlorine and hydrochloric acid. Accordingly, the vent gas is devoid of particulate matter (PM) – and, there is no PM limit for the vent stream in NSR permit 8778A. Due to the very low potential for visible emissions, quarterly monitoring for visible emissions is sufficient.

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Coke Storage and Handling Fugitives

Coke is water-saturated from the cutting jets when it first emerges from the coke drums and excess water drains from the coke and is collected. This high moisture content minimizes any potential for fugitive PM emissions. While the coke is still wet, it is loaded into a truck for off-site transport. Additional PM emission controls are practiced prior to the trucks leaving the facility as required by Special Conditions 21 through 26 in NSR permit 8778A.

The 30 TAC Chapter 111 opacity limit is applicable to coke handling and storage which is classified as "other sources" in 30 TAC §111.111(a)(8) and not as a vent under 30 TAC §§ 111.111(a)(1) and 101.1(113). The opacity limit in 30 TAC §111.111(a)(8)(A) is 30% over a six-minute period. The level of dust necessary to generate this level of opacity presents an unwanted working environment (as experienced by CITGO personnel) and an unacceptable loss of product.

Emissions from the delayed coking unit associated from the cutting of the coke with high pressure water jets is due to the creation of steam when the water jets hit the high temperature coke. As stated previously, contributions from uncombined water are not factored into the opacity limit of 30 TAC Chapter 111 as referenced in 30 TAC § 111.111(b).

Based on the high opacity limit for this source, the high moisture content of the coke during transport between coke drums and the storage area, and the physical layout of the coke storage area, there is a very low potential for coke fugitives to result in an exceedance of 30 TAC Chapter 111 requirements. Quarterly visible emissions observations are adequate to demonstrate compliance with the opacity limit.

West Plant Cooling Tower

This emissions point falls into the "other sources" category of 30 TAC § 111.111(a)(8) which limits opacity to 30% over six minutes. The only potential for opacity from the cooling tower to exceed 30% is from water entrained in ambient air as a mist. Opacity contributions from uncombined water are not considered when assessing compliance with 30 TAC Chapter 111 as stated in 30 TAC § 111.111(b). Accordingly, there is essentially no potential for cooling tower emissions to violate 30 TAC Chapter 111 requirements. Therefore, quarterly visible emissions monitoring is adequate to demonstrate compliance with the opacity limit in 30 TAC Chapter 111.

Conclusion

Based on the above discussion of the emission sources at the West Plant, the Executive Director has determined that there is a low probability for a violation of the opacity requirements set forth in 30 TAC Chapter 111. Performing a visible emission observation every calendar quarter is sufficient for the sources at the site.

Vents required to be monitored more frequently

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Vents from emission sources that are anticipated to emit visible emissions on a regular basis are required to be monitored more frequently than once every calendar quarter and are not covered under the permit's Special Terms and Conditions.

Stationary vents that have a flowrate of 100,000 acfm are subject to 30 TAC § 111.111(a)(1)(C) and are required to meet a more stringent opacity standard of 15%. The combined vent, H-99, is subject to 30 TAC § 111.111(a)(1)(C) and is required to be monitored once per week as listed in the Periodic Monitoring Summary attachment of the permit.

OBJECTION 2 [Order at VI.B.1]: Consistent with EPA's previous statements on use of incorporation by reference, applicable emissions limits (MAERT) should be explicitly identified in CITGO's Title V permit. 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.

RESPONSE 2: In response to EPA's objection, the ED has revised FOP No. O1420 to include, in a new Appendix B of the permit, a copy of NSR permits 2523C, 7714A/PSDTX337M1, and 8778A/PSDTX408M3 and its corresponding terms and conditions, and emission limitations. With regard to IBR of major NSR, the ED respectfully disagrees with EPA's interpretation of its approval of Texas's operating permit program on this issue. The ED recognizes that respective agency staff are actively involved in continuing, extensive discussions on how to resolve this issue; namely, how much detail of the underlying major NSR authorization should be reiterated in the face of the Title V permit. 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, emphasis added.*

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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, emphasis added.) 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 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, 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, specific permit objections, and the June 10, 2010 letter from EPA Region VI regarding this issue, the ED has revised FOP No. O11420 to include, in a new Appendix B of the permit, a copy of NSR permits 2523C, 7714A/PSDTX337M1, and 8778A/PSDTX408M3 and its

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corresponding terms and conditions, and emission limitations, which was initially suggested by EPA as adequate to resolve this matter. Inclusion of the major NSR permits as an appendix should address EPA's objection and ensure that the Title V permit is clear and meaningful to all affected parties. The ED will continue efforts with EPA on how to resolve IBR of major NSR on a broader, programmatic basis.

OBJECTION 3 [Order at VI.B.2 and 3]: EPA grants Petitioner's claim regarding the incorporation by reference of the terms of the TCEQ Agreed Order (AO) and the EPA Consent Decree (CD), to the extent the terms of those documents are related to compliance with the CAA and implementing regulations (i.e., CAA-related requirements).

EPA notes that, because CDs and AOs reflect the conclusion of a judicial or administrative process resulting from the enforcement of "applicable requirements" under the Act, all CAA-related requirements in such CDs and AOs are appropriately treated as "applicable requirements" and must be included in Title V permits, regardless of whether the applicability issues have been resolved in the CD.

To remedy these defects, EPA ordered TCEQ to: (1) include a reference to the CD and AO in the applicable requirements summary and specifically include any emissions limitations; and (2) revise the compliance schedule to meet the requirements of 40 CFR § 70.6(c)(3) and 40 CFR § 70.5(c)(8)(iii)(C).

RESPONSE 3: The ED respectfully disagrees with the EPA's interpretation of the Federal Clean Air Act (FCAA), Title V, and the implementing regulation, 40 Code of Federal Regulations (CFR) Part 70 regarding this issue. Neither Title V of the FCAA or the implementing regulation, 40 CFR Part 70, include as part of the definition of "applicable requirement" consent decrees or other enforcement mechanisms such as Agreed Orders. As a result, the EPA approved operating permits program in Texas does not specify that consent decrees or other enforcement mechanisms are "applicable requirements." Instead, as required in 40 CFR § 70.6(c), a schedule of compliance consistent with the requirements of 40 CFR § 70.5(c)(8) is required to be included in the permit when sources are not in compliance. For each *applicable requirement*, the schedule must "resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject." Since consent decrees are not "applicable requirements" under 30 TAC Chapter 122 or 40 CFR Part 70, there is no requirement to include consent decree obligations in the Federal Operating Permit. Additionally, where a company did not admit to noncompliance in a consent decree, there is no determination that noncompliance existed upon which to require a "schedule of compliance" under either 30 TAC Chapter 122 or 40 CFR §§ 70.5(c)(8) or 70.6(c).

The specific consent decree that applies to CITGO, in cause no. H-04-3883, U.S. District Court for the Southern District of Texas contains specific provisions regarding the incorporation of consent decree requirements into federally enforceable permits. Section V.N.131 and 132 of the consent decree, pages 108-109 of the consent decree specifically notes that CITGO agreed to incorporate the emission limits and standards required by the Consent Decree (both those

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effective as of the date of entry of the decree and those effective established by the consent decree after entry of the decree) into federally enforceable air permits *other than Title V permits*, and then to file any applications necessary to incorporate the requirements of those permits into the Title V permits of the covered refineries (emphasis added). Section V.N.133, Mechanism for Title V Incorporation, specifically requires that the incorporation of the consent decree requirements *shall be in accordance with state Title V rules*, including applicable administrative amendment provisions of such rules (emphasis added). The consent decree also specifically notes on page 3 of the decree that CITGO denies that it has violated and/or continues to violate the alleged statutory, regulatory, SIP provisions and other state and local rules, regulations and permits incorporating and implementing the noted federal requirements at issue in the consent decree. Therefore, by its own terms the consent decree does not establish that CITGO was or is out of compliance with respect to the noted requirements.

Since 30 TAC Chapter 122 does not include consent decree obligations as an "applicable requirement", those obligations are not required to be included as such in Federal Operating Permits issued under the federally approved Texas program. Instead, the TCEQ has required that companies either incorporate their consent decrees by reference in their federal operating permit, or note outstanding consent decree obligations in either schedules of compliance (where a company admits that they have a noncompliance issue) or in a consent decree schedule similar to a compliance schedule.

However, the ED provides the following information in response to the EPA Objection regarding this issue:

CITGO has complied with the CD as it pertains to the refinery's West Plant's Flare. The CD required the flare to comply with 40 CFR Part 60, Subpart J by December 2006. CITGO installed a Flare Gas Recovery Unit to meet the CD's requirements. There are no other ordering provisions in the CD that apply to the West Plant.

CITGO has also completed the corrective actions listed in the permit's Compliance Schedule for TCEQ Agreed Order No. 2001-1469-AIR-E, effective March 5, 2004.

The compliance schedule in FOP O1420 has been modified to remove the compliance plan for emission unit 573-ME1 as the flare gas recovery unit has been installed.