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Mark R. Vickery, P.G., *Executive Director*



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

October 21, 2010

MRS 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  
Reopening  
Permit Number: O1498  
The Premcor Refining Group Inc.  
Port Arthur Refinery  
Port Arthur, Jefferson County  
Regulated Entity Number: RN102584026  
Customer Reference Number: CN601420748  
Account Number: JE-0042-B

Dear Mrs. Jackson:

On May 28, 2009, the U.S. Environmental Protection Agency (EPA) signed an order partially granting and partially denying a petition for objection for the effective federal operating permit for the above referenced site. 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 February 9, 2010, I sent a draft of the Executive Director's Responses to the Order, statement of basis (SOB), and a revised draft permit to Mr. Jeffrey Robinson to further discussion and understanding of these issues. As of August 30, 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 your order and offers the enclosed responses to facilitate resolution of the order. 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 reopened permit and supporting SOB. The reopened permit and SOB are attached for your review.

Consistent with Title 30 TAC §122.360, please provide an indication of your acceptance or assessment of the responses and resolutions to the granted portions of the petition as soon as possible. An additional public notice will be required for the new draft proposed permit as part of the Title V reopening process, as directed by 30 TAC §122.231. The public notice package

Mrs. Lisa P. Jackson  
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will be mailed within a few weeks from the date of this letter, which will require The Premcor Refining Group Inc. to publish notice in accordance with 30 TAC§ 122.320. Thank you for your cooperation in this matter. Please contact Mr. Dan Sims at (512) 239-2118 if you have any questions concerning this matter.

Sincerely,



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

SH/DS/dw

cc: Mr. Morris Carter, P.E., Director Environmental and Public Affairs, Valero Services, Inc.,  
Port Arthur  
Mr. Parker Wilson, Managing Counsel, Valero Services, Inc., San Antonio  
Mr. John M. Minter, Staff Attorney, TCEQ  
Ms. Terry G. Salem, Staff Attorney, TCEQ  
Air Section Manager, Region 10 - Beaumont  
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6 - Dallas

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

Project Number: 14184

## EXECUTIVE DIRECTOR'S RESPONSE TO EPA ORDER

The Texas Commission on Environmental Quality (TCEQ) Executive Director provides this Response to EPA Order as a result of a public petition on The Premcor Refining Group Inc., Federal Operating Permit (FOP) No. O1498. As required by Title 30 Texas Administrative Code § 122.360 (30 TAC § 122.360) the executive director shall have 90 days from the receipt of an EPA objection to resolve any objection and, if necessary, terminate or revise the permit. The comments included in the public petition and EPA objections are summarized in this response.

### 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. The Premcor Refining Group, Inc. applied to the TCEQ for a FOP for the Port Arthur Refinery, a petroleum refining operation, located in Port Arthur, Jefferson County on May 23, 2000, and notice was published on January 2, 2005, February 11, 2005 and August 6, 2006 in both the *Port Arthur News* and *La Voz*. In addition to the public notices, a public meeting was held on July 21, 2005 to discuss and answer any questions the public had regarding the permit. The public comment period ended on September 5, 2006, and the permit was issued on January 8, 2007. A public petition was submitted by the Environmental Integrity Project to EPA on February 16, 2007, and EPA issued an order partially granting and partially denying the petition for objection to permit on May 29, 2009. In accordance with state and federal rules, the petition does not limit the effectiveness of the issued FOP.

#### Description of Site

The Premcor Refining Group, Inc. owns and operates the Port Arthur Refinery, which is located at 1801 South Gulfway Drive, Port Arthur, Jefferson County, Texas. The facility is designed to process crude oil into a variety of refined products such as gasoline and jet fuel from raw crude. The following objections were submitted to TCEQ by EPA regarding the Title V Operating Permit for the Port Arthur Refinery. The following responses follow the references used in EPA's Order. We have included the EPA Order outline reference numbers in brackets.

#### **A. Incorporation By Reference:**

**OBJECTION 1 [IV.A.1]:** The Petition was granted relating to inclusion of emission limitations and incorporation by reference of unobtainable and/or outdated underlying NSR Permits. EPA directs TCEQ to reopen the permit and ensure that all emissions limitations, with the exception of those emissions limitations from minor NSR permits and Permits by Rule, are included on the face of the title V permit, and that all of the underlying permits and other documents incorporated by reference are readily available and currently applicable, and that references are

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clear and unambiguous.

**TCEQ RESPONSE:** In response to EPA's objection, the ED has revised FOP Number O1498 to include, in a new Appendix B of the permit, copies of NSR Permit Nos. 6825A, PSDTX49, N65, and 80812, and their corresponding terms and conditions, and emission limitations, as well as authorization letters for Standard Permit 45737 and Permit Exemption 12553. 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.

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 (5<sup>th</sup> 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 Number 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 present Order, the CITGO order (Petition Number VI—2007-01), other EPA objections for different companies, and the June 10, 2010, letter from EPA Region VI regarding this issue, the ED has revised FOP Number O1498 to include, in a new Appendix B of the permit, copies of NSR Permit Nos. 6825A, PSDTX49, N65, and 80812, and their corresponding terms and conditions, and emission limitations, which was initially suggested by EPA as adequate to resolve this objection, as well as authorization letters for Standard Permit 45737 and Permit Exemption 12553. 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 2 [IV.A.2]:** Petitioners claimed new source review (NSR) permit no. 2303 was listed in the operating permit but no NSR permit no. 2303A was found in the Beaumont Regional office's files. EPA noted this as an example of confusion that might occur when there are several versions of an underlying permit, and directed TCEQ to ensure that the version of the

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underlying permits incorporated in the title V permit must be readily available in the public records.

**TCEQ RESPONSE:** The ED agrees that NSR Permit No. 2303 was erroneously included in the list of NSR authorizations in place of Permit No. 2303A. NSR Permit No. 2303 had been redesignated as NSR Permit No. 2303A when ownership of the refinery changed from Chevron U.S.A, Inc. to Clark Refining & Marketing, Inc., in 1995. The ED regrets any confusion caused by this typographical error, and notes that commission staff are always available to answer questions from the public or EPA, as directed in the public notice for each draft permit. The public requestor should have been directed to the permit engineer assigned to this permit review for further assistance.

The EPA directed the TCEQ to make the proper permit available when it re-notices the Title V permit for public comment. All current NSR permits will be made available during the additional public notice of FOP No. O1498. Since FOP No. O1498 was issued and EPA acted on the citizen petition, NSR Permit No. 2303A was voided as the sources previously covered under Permit No. 2303A were reauthorized under Permit No. 6825A as part of permit amendment to Permit No. 6825A approved by the commission on March 30, 2009.

FOP No. O1498 will be revised to include NSR Permits 6825A, PSDTX49, and N65, 80812, and the authorization letters for Standard Permit 45737 and Permit Exemption 12553 as attachments in Appendix B. References to applicable Permits-by-Rule and Standard Exemptions will be included in the appropriate attachment, as discussed in Objection 1, and will be available in the public records.

**OBJECTION 3 [IV.A.3]:** The Petition was granted relating to the use of incorporation by reference of emission limitations with the exception of emission limitations from minor NSR permits and permits by rule. EPA directed TCEQ to reopen the permit and ensure emission limitations are included on the face of the title V permit.

**TCEQ RESPONSE:** As discussed in the response to Objection 1, the permit will be revised to include Permits 6825A, PSDTX49, and N65, Permit 80812 and the authorization letters for Standard Permit 45737 and Permit Exemption 12553 as attachments under Appendix B. References to applicable Permits-by-Rule and Standard Exemptions will be included in the appropriate attachment, as discussed in Objection 1. This includes all associated emission limitations (more detail will be included in the Statement of Basis for the revised permit). The ED incorporates his response to Objection 1 as his response to this objection, as if fully stated herein.

## B. INADEQUATE MONITORING, RECORDKEEPING AND REPORTING

The following responses are in regards to NSR **Permit 6825A**:

**OBJECTION 4 [IV.B.1.a.(i)]:** The Petition was granted on the basis that the TCEQ did not explain how the monitoring requirements in the permit are sufficient to assure compliance with the permit terms and conditions. The petitioners claimed the permit should require flare monitoring of visible emissions to assure no interruption in steam assistance, and that monitoring should require continuous video monitoring with a time and date stamp, and Method 9 should be employed to test opacity. [Special Condition No. 5C].

**TCEQ RESPONSE:** The ED does not agree that additional flare monitoring of visible emissions is necessary to assure compliance. In support of this conclusion, the ED will provide the following explanation regarding the purpose and operation of flares in general, with specific information regarding the flare in operation at this site in the Statement of Basis for FOP No. O1498.

Flares are safety mechanisms, which must be sized and designed to manage the facility's worst case operating scenario (which presents the most challenging scenario for operation) without visible emissions that exceed the specified opacity requirements. Steam-assisted flares (like the ones at this site) in particular have an even lower probability of visible emissions when operated correctly. The Premcor flare is steam-assisted and is sized to manage worst-case operating scenarios. The flare has already demonstrated that it can operate with no visible emissions during the performance demonstrations as required under 40 C.F.R. § 60.18.

There is no currently-available, EPA-approved mechanism for testing or monitoring emissions from an operating flare. Instead, once a flare has satisfied the performance demonstration requirements under 40 CFR § 60.18, federal law requires that the presence of a pilot flame be continuously monitored to document that a flame is present at all times. *See* 40 CFR § 60.18(f)(2). NSR Permit No. 6825A, which is included in the FOP Permit No. O1498 under Appendix B, requires continuous monitoring of the presence of a pilot flame. *See* FOP Permit No. O1498 Special Term and Condition 18; NSR Permit No 6825A, Special Condition 6. Therefore, the federal operating permit already requires continuous monitoring necessary to assure compliance.

However, in addition to the continuous monitoring of the pilot flame, FOP No. O1498 also requires that visible emissions from the flare vents be observed and recorded on a quarterly basis. This frequency is consistent with the legal standards that have been acceptable to EPA and TCEQ for decades. *See* 40 CFR § 60.18(f)(1); 30 TAC § 111.111(a)(1)(B); FOP No. O1498 Special Term and Condition 3.a.(iv).1. Additionally, these units are subject to the requirements of 40 CFR Part 60, Subpart A, General control device and work practice requirements and Part 63, Subpart A, Control device and work practice requirements for flares, which require Test Method 22 to be used to determine the compliance with visible emissions provisions. Method 22 requires continuous monitoring for the duration of an observation period of sufficient length to

meet the requirements for determining compliance with the emissions standard in the applicable subpart.

TCEQ is not aware of any facts that would compel additional monitoring beyond that which has been consistently required under federal law and in Texas permits over the past several decades, especially in the absence of any EPA- or TCEQ-approved methods for monitoring flare emissions. The flares are designed to be utilized to manage emissions from upsets of process equipment. Further, emissions from upsets must be recorded and reported, and are subject to corrective action and enforcement pursuant to TCEQ rules set forth under 30 TAC Chapter 101. The performance demonstrations, continuous pilot flame monitoring, and quarterly visible emissions monitoring is sufficient to yield reliable data to assure compliance with the terms and conditions of the permit regarding visible emissions from flares during normal operations.

**OBJECTION 5 [IV.B.1.a.(ii)]:** The Petition was granted on the basis that TCEQ did not explain how the monitoring requirements in the permit are sufficient to assure compliance with the permit terms and conditions. Petitioners claimed that the permit should define "maintenance and upset" emissions, and for the facility to monitor, record, and report maintenance and upset emissions directed to flares and to report all excess emissions of sulfur dioxide [Special Condition Nos. 5D & E]

**TCEQ RESPONSE:** As an initial matter, the ED notes that definitions for unplanned maintenance, startup, or shutdown activities, and upset events can be found in 30 TAC Chapter 101, and are incorporated into the Title V Permit in Special Condition 2.A, and were incorporated into the version of the permit that is the subject of the EPA Order. Furthermore, the reporting requirement for emergency releases of sulfur dioxide is also incorporated into FOP No. O1498 through the emission event reporting requirements of 30 TAC Chapter 101 in Special Condition No. 2.F, and were also incorporated into the version of the permit that is the subject of the EPA Order. The ED does not agree that any additional monitoring is necessary to assure compliance for maintenance and upset emissions, or excess emissions of sulfur dioxide beyond what is required by FOP No. O1498. In support of this conclusion, the ED will provide the following explanation in the Statement of Basis for FOP No. O1498.

In order to assure that the public and EPA are reviewing the appropriate conditions, the ED notes that the special conditions in NSR Permit No. 6825A that were the basis of this objection have changed since this permit was issued on January 8, 2007.

As of October 29, 2009, Special Condition No. 5, has been renumbered as Special Condition No. 6, and reads as follows:

6. Flares shall be designed and operated in accordance with the following requirements:
  - A. Each flare system shall be designed such that the combined assist natural gas and waste stream to each flare meets the 40 CFR § 60.18 specifications of minimum

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heating value and maximum tip velocity under normal, upset, and maintenance flow conditions.

The heating value and velocity requirements shall be satisfied during operations authorized by this permit. Flare testing per 40 CFR § 60.18(f) may be requested by the TCEQ Beaumont Regional Office to demonstrate compliance with these requirements.

- B. Each flare shall be operated with a flame present at all times that waste gas is routed to it and have a constant pilot flame. The pilot flame shall be continuously monitored by a thermocouple or an infrared monitor. The time, date, and duration of any loss of pilot flame shall be recorded. Each monitoring device shall be accurate to, and shall be calibrated at a frequency in accordance with, the manufacturer's specifications.
- C. Each flare shall be operated with no visible emissions except for periods not to exceed a total of five minutes during any two consecutive hours. This shall be ensured by the use of steam assist to each flare. (3/09)
- D. Under the following circumstances, Flare 26 is exempt from the requirement in Special Condition No. 6A to be designed to maintain a maximum tip velocity during worst-case upset conditions: global power failure and low rate depress, global cooling water failure and low rate depress, max single emergency to HP Header, Maximum single emergency to LP header, and less severe upset conditions that result in lower flare gas flow rates.

It should be noted that Paragraph D regarding MSS emissions was removed, since the permit now provides authorization of only routine emissions. Maintenance, startup, and shutdown (MSS) emissions are now authorized under NSR Permit 80812, which was issued on February 2, 2010. At all times in the history of this permit since the initial comment, flare monitoring requirements have been present. The ED also notes that the revised draft permit for FOP No. O1498 will be subject to an additional public notice as part of the Title V reopening process, as directed by 30 TAC § 122.231.

**OBJECTION 6 [IV.B.1.a.(iii)]:** The Petition was granted on the basis that TCEQ did not explain why testing of the flare and incinerator was not required and how the monitoring requirements in the permit are sufficient to assure compliance with its terms and conditions; and did not provide a response as to why the ED could make exceptions for these requirements. Petitioners claimed the operating permit must require testing of flare and incinerator efficiency and protested language allowing the Executive Director to make exceptions to the condition, which in their opinion, make the condition largely unenforceable [NSR Permit No. 6825A, Special Condition No. 6].

**TCEQ RESPONSE:** The ED regrets the oversight of not responding to this comment. The ED does not agree that any additional monitoring or testing is necessary to assure compliance for the

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flare or the incinerator. The ED has changed the current permit provision to remove the ability of the Executive Director to make exceptions to the applicable testing requirements. A discussion of the relevant permit provisions, an explanation of why flare testing is not necessary, and why the permit terms are sufficient to assure compliance is provided below.

The flare special condition in NSR permit No. 6825A was last modified on February 5, 2008. The flare and incinerator destruction efficiency requirements are now Special Condition No. 7, and reads as follows:

7. Flares, the TGIs, and the Marine Vapor Combustor shall achieve the following control efficiencies:
  - A. Flares shall operate with no less than 98 percent efficiency in disposing of the carbon compounds captured by the collection system.
  - B. Tail Gas Incinerators shall operate with no less than 99.9 percent efficiency (on an hourly average) in disposing of the carbon and acid gas compounds captured by the collection system or hydrogen sulfide (H<sub>2</sub>S) in the exhaust shall not exceed 50 parts per million by volume dry (nmvd) (corrected to 3 percent O<sub>2</sub>) on an hourly average.
  - C. The marine vapor combustor shall operate with no less than 98 percent efficiency in disposing of the carbon compounds captured by the collection system. (02/08)

In addition, the flare monitoring requirements are found in Special Condition No. 6:

6. Flares shall be designed and operated in accordance with the following requirements:
  - A. Each flare system shall be designed such that the combined assist natural gas and waste stream to each flare meets the 40 CFR § 60.18 specifications of minimum heating value and maximum tip velocity under normal, upset, and maintenance flow conditions.

The heating value and velocity requirements shall be satisfied during operations authorized by this permit. Flare testing per 40 CFR § 60.18(f) may be requested by the Texas Commission on Environmental Quality (TCEQ) Beaumont Regional Office to demonstrate compliance with these requirements.

- B. Each flare shall be operated with a flame present at all times that waste gas is routed to it and have a constant pilot flame. The pilot flame shall be continuously monitored by a thermocouple or an infrared monitor. The time, date, and duration of any loss of pilot flame shall be recorded. Each monitoring device shall be accurate to, and shall be calibrated at a frequency in accordance with, the manufacturer's specifications.

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- C. Each flare shall be operated with no visible emissions except for periods not to exceed a total of five minutes during any two consecutive hours. This shall be ensured by the use of steam assist to each flare. **(03/09)**

There is no currently-available, EPA-approved mechanism for testing or monitoring emissions from an operating flare. Instead, once a flare has satisfied the performance demonstration requirements under 40 CFR § 60.18, federal law requires that the presence of a pilot flame be continuously monitored to document that a flame is present at all times. *See* 40 CFR § 60.18(f)(2). The permit requires continuous monitoring of the presence of a pilot flame. *See*, Title V Permit Special Term and Condition 18; Permit No. 6825A, Special Condition 6. Therefore, the permit already requires continuous monitoring as set forth under federal law.

In particular, there are no federal or state requirements or guidance that set forth standards for monitoring flare destruction and removal efficiency (DRE). The DRE standards set forth in the Permit are those that are expected to be achieved based on design specifications developed by flare manufacturers when the flare is operating during normal operating conditions. Several studies have been conducted that have concluded that flares typically meet these standards when properly designed and operated. *See* "Overview of Flaring Efficiency Studies," Cain, Seibold, & Young, 2002; "Evaluation of the Efficiency of Industrial Flares: H<sub>2</sub>S Gas Mixtures and Pilot assisted Flares," EPA-600/2-86-080, 1986.

TCEQ is aware that some data may exist to suggest that a number of factors (including not only steam assistance but also wind impacts and flame stability, among others) can influence flare DRE. To address this issue and evaluate flare practices comprehensively, TCEQ appointed a technical Task Force to review flaring emissions in late 2008. Since that time, several public meetings have been held with stakeholders, and the Executive Director has issued a draft Report that recommends additional studies and a review of existing regulatory requirements. Once the Task Force completes its review and develops new guidance or rules, flare monitoring requirements in all permits will be changed accordingly.

TCEQ is not aware of any other facts that would compel additional monitoring beyond that which has been consistently required under federal law and in Texas permits over the past several decades, especially in the absence of any EPA- or TCEQ-approved methods for monitoring flare emissions. The flares are designed to be utilized to manage emissions from upsets of process equipment. Further, emissions from upsets must be recorded and reported, and are subject to corrective action and enforcement pursuant to TCEQ rules set forth under 30 TAC Chapter 101. The performance demonstrations, continuous pilot flame monitoring, and quarterly visible emissions monitoring is sufficient to yield reliable data to assure compliance with the terms and conditions of the permit regarding DRE from flares during normal operations.

The following explanation of the function and operation of a Tail Gas Incinerator (TGI) is included in order to explain how the applicable monitoring requirements are sufficient to assure compliance. A TGI associated with a Sulfur Plant is a control device which is used to combust gas streams which have sulfur bearing compounds, primarily hydrogen sulfide (H<sub>2</sub>S). A

properly designed TGI is capable of achieving 99.9 percent or better conversion of the sulfur bearing compounds routed to it into sulfur dioxide.

In order to achieve 99.9 percent or better conversion of the sulfur bearing compounds in the gas stream routed to it, the firebox temperature of a TGI is operated well above the auto ignition temperature of H<sub>2</sub>S. The auto ignition temperature of a compound is the temperature at which it will spontaneously ignite without an external ignition source. In addition, the firebox of a TGI is designed to allow the gases in the firebox to remain in the firebox for a short time in order to allow the gas being combusted to properly combust before the gas is vented through the exhaust stack. In a properly operated TGI there should be no visible emissions from the exhaust of the TGI. Visible emissions from a TGI would be due to incomplete combustion of the sulfur bearing compounds routed to it. Incomplete combustion of the organic compounds in a TGI are primarily due to insufficient oxygen being provided to the TGI for the sulfur bearing compounds to be converted completely to sulfur dioxide (SO<sub>2</sub>) and/or firebox temperature too low for adequate combustion. The exhaust stack of each TGI at Premcor is equipped with a continuous emissions monitor (CEMS) for SO<sub>2</sub>, a CEMS for H<sub>2</sub>S, and a CEMS for oxygen (O<sub>2</sub>). In addition, the permit holder is required to continuously monitor the firebox exit temperature of each TGI. If incomplete combustion of the gas stream routed to a TGI occurs, this would be detected by the CEMS and the unit operator would be alerted to the situation.

The TCEQ believes that opacity monitoring of each TGI is achieved through the use of the SO<sub>2</sub>, H<sub>2</sub>S, and O<sub>2</sub> CEMS, as well as firebox temperature monitoring. Additionally, quarterly visible emissions monitoring is included as a requirement in FOP No. O1498 under Special Conditions 3.A.(iv).1. and 3.B.(iv).1.

To address monitoring of marine vapor combustor efficiency, the following text will be added to FOP No. 1498 as Special Term and Condition No. 21:

21. For marine vapor combustors, the permit holder shall comply with the following requirements:
  - A. The vapor combustor shall achieve 98% control efficiency of the waste gas directed to it. This shall be ensured by maintaining the temperature in or immediately downstream of, the combustion chamber above preconstruction estimate prior to the initial stack test. Following the completion of that stack test, the six minute average temperature shall be maintained above the minimum one hour average temperature maintained during the last satisfactory stack test
  - B. The temperature measurement device shall reduce the temperature readings to an averaging period of six minutes or less and record it at that frequency. The temperature monitor shall be installed, calibrated at least annually, and maintained according to the manufacturer's specifications. The device shall have an accuracy of the greater of  $\pm 2$  percent of the temperature being measured expressed in degrees Celsius or  $\pm 2.5^{\circ}\text{C}$ .

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- C. Quality assured (or valid) data must be generated when the VCU is operating except during the performance of a daily zero and span check. Loss of valid data due to periods of monitor break down, out-of-control operation (producing inaccurate data), repair, maintenance, or calibration may be exempted provided it does not exceed 5 percent of the time (in minutes) that the VCU operated over the previous rolling 12 month period. The measurements missed shall be estimated using engineering judgment and the methods used recorded.
- D. The vapor combustor shall be operated with no visible emissions and have a constant pilot flame during all times waste gas could be directed to it. The pilot flame shall be continuously monitored by a thermocouple or an infrared monitor. The time, date, and duration of any loss of pilot flame shall be recorded. Each monitoring device shall be accurate to, and shall be calibrated at a frequency in accordance with, the manufacturer's specifications.

**OBJECTION 7 [IV.B.1.a.(iv)]:** The Petition was granted on the basis that the permit did not provide that records should be kept for 5 years. Petitioners claimed the Title V permit should explicitly state that any requirement to keep records for a period of less than 5 years in any underlying permit is replaced by the 5-year requirement of 40 C.F.R. § 70.6(a)(3)(ii)(B) [Special Condition Nos. 7A, 12B(2), 12F, 12H, 14, 18E, 23, 31B, 32, & 39D].

**TCEQ RESPONSE:** As stated in 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 TCEQ has always required 5 year recordkeeping for all FOPs. The requirements of 30 TAC § 122.144(1) were (and still are) 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 § 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, Permits by Rule (PBR) and 30 TAC Chapter 116, New Source Review (NSR) are applicable requirements and enforceable under the federal operating permit (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 will be 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 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."

**OBJECTION 8 [IV.B.1.a.(v)]:** The Petition was granted on the basis that the TCEQ did not address the recordkeeping concerns raised by the Petitioners. Petitioners claimed the permit should require recordkeeping of all investigation and remedial measures, reporting of valves routed to a flare and valves equipped with an upstream rupture disk, and that disks be replaced within 5 days unless delayed until the next process shutdown [Special Condition Nos. 7B (replaced with 5A-5C) & 8A].

**TCEQ RESPONSE:** With regard to the recordkeeping requirement for Special Condition No. 7B, as part of the amendment to the NSR permit which was approved on December 9, 2002, Special Condition No. 7 was deleted from Permit No 6825A. This language was removed because reporting of investigations of remedial measures relates to upsets, which are outside the scope of permitting routine emissions. Reporting of these types of emissions is required under 30 TAC Chapter 101, which was incorporated into FOP No. O1498 as an applicable requirement through the emission event reporting requirements of 30 TAC Chapter 101 in Special Condition No. 2.F.

NSR Permit No. 6825A currently does not authorize the routing of relief valves to flares. Requirements for valves equipped with an upstream rupture disc are included in Special Condition No. 46. Paragraphs F and I of Special Condition No. 46 read as follows:

- F. Accessible valves shall be monitored by leak-checking for fugitive emissions at least quarterly using an approved gas analyzer. Sealless/leakless valves (including, but not limited to, welded bonnet bellows and diaphragm valves) and relief valves equipped with a rupture disc upstream or venting to a control device are not required to be monitored. For valves equipped with rupture discs, a pressure-sensing device shall be installed between the relief valve and rupture disc to monitor disc integrity. All leaking discs shall be replaced at the earliest opportunity but no later than the next process shutdown.

An approved gas analyzer shall conform to requirements listed in 40 CFR § 60.485(a)-(b).

Replacements for leaking components shall be re-monitored within 15 days of being placed back into VOC service.

- I. Every reasonable effort shall be made to repair a leaking component, as specified in this paragraph, within 15 days after the leak is found. If the repair of a component

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would require a unit shutdown, the repair may be delayed until the next scheduled shutdown. All leaking components which cannot be repaired until a scheduled shutdown shall be identified for such repair by tagging. At the discretion of the TCEQ Executive Director or designated representative, early unit shutdown or other appropriate action may be required based on the number and severity of tagged leaks awaiting shutdown.

To clarify leak detection and repair requirements for FOP No. O1498, the following text will be added under New Source Review Authorization Requirements as Special Term and Condition No. 22 in FOP No. O1498:

22. For leak detection and repair relating to fugitive emission units in VOC Service, the permit holder shall comply with the requirements of Title 40 CFR § 60.482-9 (relating to Standards: Delay of Repair) as incorporated under 40 CFR Part 63, Subpart CC. A leaking component shall be repaired as soon as practicable, but no later than 15 days after the leak is detected, except as specified in 40 CFR § 60.482-9. This requirement supersedes any less stringent requirement that may be specified in a condition of a permit identified in the New Source Review Authorization attachment.

**OBJECTION 9 [VI.B.1.a.(viii)]:** The Petition was granted on the basis that the TCEQ did not explain why testing of the flare was not required and how the monitoring requirements in the permit were sufficient to assure compliance with its terms and conditions. Petitioners claimed the permit should require periodic testing to verify flare efficiency [Special Condition No. 12(B)1].

**TCEQ RESPONSE:** The ED does not agree that any additional monitoring or testing is necessary to assure compliance for the flare. See Response to Objection 6.

**OBJECTION 10 [VI.B.1.a.(x)]:** The Petition was granted on the basis that the TCEQ did not provide a response to the Petitioners comment regarding whether, in addition to inspecting for liquid leaks, the permit should require the facility to document all liquid leaks, the date they were discovered, and the date they were repaired [Special Condition No. 12D].

**TCEQ RESPONSE:** The ED regrets the oversight of not responding to this comment. The ED does not agree that additional reporting is necessary to assure compliance. Leaks are subject to the leak detection and repair rules (LDAR) found in Special Conditions 44 through 48 related to Fugitive Emissions Monitoring, which set forth work practice standards to address leaks. Leaks would also be subject to applicable emission event reporting requirements in 30 Texas Administrative Code Chapter 101, which are included in FOP No. O1498 in Special Term and Condition 2.F. The applicable emission event reporting requirements would require Premcor to document relevant and specific information regarding leaks, since those emissions are not authorized by NSR Permit No. 6825A.

The ED notes that on July 19, 2001, Special Condition No. 12 of NSR Permit 6825A was renumbered as Special Condition No. 11. Special Condition No. 11 pertains to loading marine vessels with the compounds listed in Paragraph A of Special Condition No. 11. Paragraph D of Special Condition No. 11 requires the permit holder to stop transferring liquids into a marine vessel if a leak develops in the transfer pumps and loading lines to the marine vessel if the leak cannot be stopped immediately (for example, by tightening a bolt or packing gland).

**OBJECTION 11 [VI.B.1.a.(xi)]:** The Petition was granted on the basis that the TCEQ did not explain how monitoring requirements are sufficient to assure compliance with the terms and conditions of the permit. The petitioners claimed that opacity must be determined by Method 9, and that a frequency of required Method 9 tests should be specified [Special Condition No. 13].

**TCEQ RESPONSE:** The ED does not agree that additional monitoring for opacity is necessary to assure compliance. A discussion of the evolution of the relevant permit provisions, and an explanation of why the permit terms are sufficient to assure compliance is provided below. In 1999, the Special Condition No. 13 specified opacity limits from the Fluid Catalytic Cracking Unit (FCCU) (Carbon Monoxide [CO] 9 Boiler) of 30 percent prior to December 31, 2004 or installation of a replacement Electrostatic Precipitator (ESP) and 20 percent after December 31, 2004 or installation of the replacement ESP. Although Special Condition No. 13 references a CO Boiler, the condition really applied to the ESP which was used to control particulate matter (PM) emissions which originate in the Regenerator Section of the Fluidized Catalytic Cracking Unit (FCCU) and are then passed through the CO Boiler and then to the control device, which in 1999 was an ESP. By the time the Title V permit was issued on January 8, 2007, the ESP had been replaced by Wet Gas Scrubber (WGS).

The WGS installed by Premcor consists of a vertical tower with multiple spray rings at different levels which sprays a solution of water and sodium hydroxide horizontally both inward and outward from the ring thus creating multiple curtains of liquid which the air laden with PM from the Regenerator and CO Boiler must pass upward through. As the PM in the gas passes through the curtains of liquids, the PM is absorbed by the liquid and falls with the liquid down the sides of the tower to the bottom of the tower thus removing the PM from the gas stream. The larger the PM particles, the easier it is to be "scrubbed" in the tower by liquid. The gas stream which gets past the spray curtains then has to pass through one of nine Agglo Filtering Modules which removes the smaller PM particles by forcing the air through small holes which forces the PM into contact with the liquid which became entrained in the waste gas stream and forces the liquid molecules to form larger molecules which are big enough to fall to the bottom of the tower. In order to ensure the WGS is operating properly, it is important to ensure that enough liquid is being injected into the tower in order to maintain the curtains of liquid and it is important to monitor the pressure across the filter modules to ensure that the filters do not become plugged. In order to ensure that there is enough liquid being circulated into the WGS, the company monitors both the flowrate of gas into the tower and the volume of scrubbing liquid circulation rate to calculate what is known as the air-to-liquid ratio (ATL). This monitoring of critical operating parameters is appropriate to assure compliance.

The Executive Director's 2006 Response to Comment stated "that in order to comply with the opacity limits of Special Condition No. 12, Premcor has installed a scrubber that is continuously monitored (four times per hour) to prevent opacity emission events; therefore, Method 9 tests are no longer required." To clarify this response, instead of monitoring the exhaust of the WGS for opacity, if the critical WGS operating parameters such as ATL and pressure differences are maintained within 70 percent of the rates determined during the 2005 stack test, then there is reasonable assurance that opacity from the WGS exhaust shall not exceed 20 percent.

In addition to the continuous monitoring of the WGS operating parameters mentioned above, which is required in Special Condition 13 of NSR Permit 6825A, quarterly opacity monitoring from the WGS exhaust vent is also required in the FOP.

The two different monitoring methods, (1) continuous monitoring of the critical parameters of the WGS to ensure proper operation of the WGS; plus (2) quarterly opacity monitoring of the WGS per the Title V permit, is sufficient to assure compliance with the "no visible emissions" limitation of the permit.

**OBJECTION 12 [VI.B.1.a.(xii)]:** The Petition was granted on the basis that records must be maintained for a period of at least 5 years, in accordance with 40 C.F.R. § 70.6(a)(3)(ii)(B). The petitioners had claimed that Special Condition 14 allowed records to be maintained for two years.

**TCEQ RESPONSE:** As noted previously in response to an earlier objection, as stated in 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 TCEQ has always required 5 year recordkeeping for all FOPs. The requirements of 30 TAC § 122.144(1) were (and still are) 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 § 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, Permits by Rule (PBR) and 30 TAC Chapter 116, New Source Review (NSR) are applicable requirements and enforceable under the federal operating permit (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 will be added to the General Terms and Conditions of the FOP:

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"In accordance with 30 TAC § 122.144(1), records of required monitoring data and support information required by 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."

**OBJECTION 13 [VI.B.1.a.(xiii)]:** The Petition was granted on the basis that the TCEQ should provide a basis for why the permit should not define an emergency condition, and why Premcor should not be required to maintain records for each time that vent streams are sent to the flare and documentation as to what emergency condition justifies not routing emissions to the sulfur recovery unit (SRU). Additionally, TCEQ provided no response to Petitioner's claim regarding an exemption to this requirement. Petitioners claimed the permit should require a definition of "emergency conditions", recordkeeping of emergency conditions during which vent streams are routed to the flare including documentation of justification for not routing the emissions to the SRU, and protested the ED's ability to create off-permit exemptions to this requirement [Special Condition No. 17].

**TCEQ RESPONSE:** The ED does not agree that a definition is needed for "emergency condition", nor is it necessary to require additional records for vent streams sent to the flare vs. the SRU. A discussion of the evolution of the relevant permit provisions, and an explanation of why the permit terms are sufficient to assure compliance is provided below. The April 29, 1999, and July 9, 1999, versions of Special Condition No. 17 read as follows:

17. All waste gas streams from the SCOT amine regeneration units containing hydrogen sulfide (H<sub>2</sub>S) and/or VOC shall be routed to the SRUs under normal operating conditions. Only under emergency conditions shall the vent streams be sent to the flare. Any other exception to this condition requires prior review and approval by the TNRCC Executive Director, and such exceptions may be subject to strict monitoring requirements.

On December 7, 2001, Special Condition No. 17 was renumbered as Special Condition No. 15. On July 7, 2003, Special Condition No. 15 was renumbered as Special Condition No. 16. On June 23, 2004, Special Condition No. 16 was modified as follows to remove the reference to routing the waste gas streams from the Shell Claus Off-Gas Treating Unit (SCOT) Unit to the flare only during an emergency:

16. All waste gas streams from the Shell Claus Off-Gas Treating Unit (SCOT) amine regeneration units containing H<sub>2</sub>S and/or VOC shall be routed to the SRUs. **(6/04)**

No additional records are necessary to document each time vent streams are sent to the flare, nor is additional documentation of the emergency condition that justifies not routing those emissions to the SRU, since the permit requires that any "emergency" which would result in the permit holder routing waste gas streams to their flares is required to be recorded and reported in accordance with emission event reporting requirements in Title 30 Texas Administrative Code

Chapter 101, which is incorporated into the Title V permit under Special Term and Condition 2.F.

No definition of "emergency condition" is necessary because all references to emergency conditions have been removed from the permit. Emissions due to emergency conditions are not authorized by any NSR permit, so a definition is not necessary.

In response to the EPA order that TCEQ must provide a response explaining whether it believes it may grant an exemption (and if so provide a citation to proper authority) and make any necessary changes to the title V permit, as discussed above in Item (1), the special condition language about "emergencies" was removed from the NSR permit in June of 2004, which was before any of the public comment periods of the Title V permit and before issuance of the Title V permit. Therefore, no changes to FOP No. O1498 are necessary.

**OBJECTION 14 [VI.B.1.a.(xv)]:** The Petition was granted on the basis that the TCEQ did not explain how the monitoring requirements are sufficient to assure compliance. Petitioners claimed the operating permit should require recordkeeping of visible emissions monitoring for tail gas incinerator stacks and to require a specific method and frequency for such monitoring [Special Condition No. 21].

**TCEQ RESPONSE:** The ED does not agree that additional recordkeeping of visible emissions monitoring for tail gas incinerator stacks is necessary to assure compliance. The following explanation of the function and operation of a Tail Gas Incinerator (TGI) is included in order to explain how the applicable monitoring requirements are sufficient. A TGI associated with a Sulfur Plant is a control device which is used to combust gas streams which have sulfur bearing compounds, primarily hydrogen sulfide ( $H_2S$ ). A properly designed TGI is capable of achieving 99.9 percent or better conversion of the sulfur bearing compounds routed to it to sulfur dioxide.

In order to achieve 99.9 percent or better conversion of the sulfur bearing compounds in the gas stream routed to it, the firebox temperature of a TGI is operated well above the auto ignition temperature of  $H_2S$ . The auto ignition temperature of a compound is the temperature at which it will spontaneously ignite without an external ignition source. In addition, the firebox of a TGI is designed to allow the gases in the firebox to remain in the firebox for a short time in order to allow the gas being combusted to properly combust before the gas is vented through the exhaust stack. In a properly operated TGI there should be no visible emissions from the exhaust of the TGI. Visible emissions from a TGI would be due to incomplete combustion of the sulfur bearing compounds routed to it. Incomplete combustion of the organic compounds in a TGI are primarily due to insufficient oxygen being provided to the TGI for the sulfur bearing compounds to be converted completely to sulfur dioxide ( $SO_2$ ) and/or firebox temperature too low for adequate combustion. The exhaust stack of each TGI at Premcor is equipped with a continuous emissions monitor (CEMS) for  $SO_2$ , a CEMS for  $H_2S$ , and a CEMS for oxygen ( $O_2$ ). In addition, the permit holder is required to continuously monitor the firebox exit temperature of

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each TGI. If incomplete combustion of the gas stream routed to a TGI occurs, this would be detected by the CEMS and the unit operator would be alerted to the situation, in order to remedy it.

Thus, appropriate and sufficient opacity monitoring of each TGI is achieved through the use of the SO<sub>2</sub>, H<sub>2</sub>S, and O<sub>2</sub> CEMS, as well as firebox temperature monitoring. Additionally, quarterly visible emissions monitoring is included as a requirement in FOP No. O1498 under Special Conditions 3.A.(iv).1. and 3(B.(iv).1.

**OBJECTION 15 [VI.B.1.a.(xviii)]:** The Petition was granted on the basis that the TCEQ did not explain how the monitoring and recordkeeping requirements are sufficient to assure compliance with the terms of the permit. Petitioners claimed that the permit must specify monitoring sufficient to assure compliance for visible emissions at heaters and boilers, and require recordkeeping of all results of all such monitoring [Special Condition No. 27A].

**TCEQ RESPONSE:** The ED does not agree that additional monitoring is necessary to assure compliance with visible emission requirements for heaters and boilers. The boilers and heaters at the site are fired using gaseous fuel and are not authorized to use any liquid fuels or solid fuels. The presence of particulate matter from combustion sources fired using gaseous fuels is due to incomplete combustion of the fuel, which would result in visible emissions. The presence of particulate matter from sources fired with gaseous fuels is less of a concern, compared to boilers and heaters which are fueled with liquid or solid fuels, because it is much easier to ensure complete combustion using a gaseous fuel than it is with a liquid or solid fuel. EPA has agreed that "for gaseous-fueled combustion equipment (except flares), the recommended periodic monitoring for generally applicable opacity standards is 'none' when the unit is firing on gaseous fuel." See *In the Matter of ConocoPhillips Company*, Petition No. IX-2004-09 (March 15, 2005), page 13.

Because the boilers and heaters are authorized to use only gaseous fuel, which is unlikely to produce particulate during normal operation, quarterly monitoring of the exhaust of each boiler and heater is sufficient to ensure that during normal operations there are no visible emissions from the boilers and heaters authorized by NSR Permit No. 6825A. If any visible emissions are observed from the exhaust of a boiler or heater during normal operations, then the heater or boiler is not operating properly and those events are subject to requirements for recording, reporting and corrective actions in accordance with 30 TAC Chapter 101, which is included as an applicable requirement in FOP No. O1498 in Special Term and Condition 2.F.

**OBJECTION 16 [VI.B.1.a.(xix)]:** The Petition is granted on the basis that the TCEQ did not provide a response to Petitioner's comment. Petitioners claimed the operating permit must require recordkeeping and reporting of all events of visible emissions and repairs [Special Condition No. 27B].

**TCEQ RESPONSE:** The ED regrets the oversight of not responding to this comment. The ED does not agree that additional recordkeeping or reporting for all visible emissions and repairs

events is necessary to assure compliance. As discussed above, if the heater or boiler is not operating properly, those events are subject to applicable recordkeeping and reporting in accordance with Title 30 Texas Administrative Code Chapter 101, which is included in the Title V permit in Special Term and Condition 2.F.

**OBJECTION 17 [VI.B.1.a.(xx)]:** The Petition was granted on the basis that records should be maintained for 5 years, even after Low-NO<sub>x</sub> burners are installed [Special Condition No. 28].

**TCEQ RESPONSE:** As noted in a previous response, 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, Permits by Rule, 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 permit by rule or NSR permit. To further clarify the five-year recordkeeping retention schedule for the FOP, the following text will be 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 NSR Authorization attachment."

**OBJECTION 18 [VI.B.1.a.(xxi)]:** The Petition was granted on the basis that the TCEQ did not address recordkeeping concerns noted by the Petitioners. Petitioners claimed the permit should require recordkeeping of gas and hydraulic tests on new or reworked connections and sensory inspections of flanges [Special Condition No. 30E].

**TCEQ RESPONSE:** The ED does not agree that additional recordkeeping for gas and hydraulic tests on new or reworked connections or sensory flange inspections are necessary to assure compliance with the permit, since recordkeeping is already required by the permit. The

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Petitioners stated that the permit should require gas and hydraulic tests on new or reworked connections required by Paragraph E of Special Condition No. 30 to be recorded and that sensory inspections of flanges required by Paragraph E of Special Condition No. 30 should also be recorded. Specifically, it appears that the Petitioner is referring to the last two sentences of Paragraph E which are:

No later than the next scheduled quarterly monitoring after initial installation or replacement, all new or reworked connections shall be gas-tested or hydraulically-tested at no less than normal operating pressure and adjustments made, as necessary, to obtain leak-free performance. Flanges shall be inspected by audible, visual, and/or olfactory (AVO) means at least weekly by operating personnel walk-through.

Since Special Condition No. 30 addresses piping fugitives from pumps, connectors, valves, and compressors, Special Condition No. 30 has a single paragraph which contains the recordkeeping requirements for the entire special condition. The ED respectfully notes that paragraph J of Special Condition No. 30 is the single recordkeeping condition for all of Special Condition No. 30. Paragraph J reads as follows:

- J. The results of the required fugitive instrument monitoring and maintenance program shall be recorded. Records shall indicate appropriate dates, test methods, instrument readings, repair results, justification for delay of repairs, and corrective actions taken for all components. Records of physical inspections are not required unless a leak is detected.

Paragraph E does not require records of each sensory, i.e., AVO, inspection of flanges/connectors since recordkeeping is covered under Paragraph J.

**OBJECTION 19 [VI.B.1.a.(xxii)]:** The Petition was granted on the basis that the TCEQ did not address recordkeeping concerns noted by Petitioners. Petitioners claimed that recordkeeping of the results of monitoring disc integrity should be required to assure compliance since it is a parametric test for emissions [Special Condition No. 30F].

**TCEQ RESPONSE:** The ED does not agree that additional recordkeeping is necessary to assure compliance with the permit since recordkeeping is already required by the permit. As discussed in response to an earlier objection, the ED respectfully notes that since Special Condition No. 46 (which was previously numbered as Special Condition No. 30) addresses piping fugitives from pumps, connectors, valves, and compressors, it includes a single paragraph which contains the recordkeeping requirements for the entire special condition. Paragraph F of Special Condition No. 46 addresses monitoring requirements for disc integrity. Paragraph F reads as follows:

- F. Accessible valves shall be monitored by leak-checking for fugitive emissions at least quarterly using an approved gas analyzer. Sealless/leakless valves (including, but not limited to, welded bonnet bellows and diaphragm valves) and relief valves equipped

with a rupture disc upstream or venting to a control device are not required to be monitored. For valves equipped with rupture discs, a pressure-sensing device shall be installed between the relief valve and rupture disc to monitor disc integrity. All leaking discs shall be replaced at the earliest opportunity but no later than the next process shutdown.

Paragraph J of Special Condition No. 46 is the single recordkeeping condition for all of Special Condition No. 46, which applies to all the various fugitive components that are included in the special condition. Paragraph J reads as follows:

- J. The results of the required fugitive instrument monitoring and maintenance program shall be recorded. Records shall indicate appropriate dates, test methods, instrument readings, repair results, justification for delay of repairs, and corrective actions taken for all components. Records of physical inspections are not required unless a leak is detected.

Any required recordkeeping that is associated with fugitive monitoring to assure compliance is included in Paragraph J. This includes monitoring of disc integrity through the use of a pressure-sensing device, which is addressed in Paragraph F. The pressure-sensing device serves only to indicate that corrective action may be required for the corresponding rupture disc, and the resulting data is not required to be recorded.

**OBJECTION 20 [VI.B.1.a.(xxv)]:** The Petition was granted on the basis that the TCEQ did not provide a response to Petitioner's comment. Petitioners claimed that TCEQ should include specific monitor testing and calibration requirements in the Title V permit [Special Condition No. 32].

**TCEQ RESPONSE:** The ED regrets the oversight of not responding to this comment. FOP No. O1498 will require that calibration and maintenance of monitoring devices and instrumentation is done in accordance with manufacturer's specifications, and that specific QA/QC procedures are maintained with the site's operation and maintenance (O&M) plan. These requirements will be added to FOP No. O1498 under Additional Monitoring Requirements as Special Term and Condition No. 16.D. for Compliance Assurance Monitoring (CAM) and Special Term and Condition No. 17 for Periodic Monitoring.

Paragraph D of Special Term and Condition No. 16 will read as follows:

- D. The permit holder shall operate the monitoring, identified in the attached "CAM Summary," in accordance with the provisions of 40 CFR § 64.7. The permit holder shall calibrate and maintain monitoring devices and instrumentation in accordance with manufacturer's specifications or other written procedures as identified in the "CAM Summary." These specific QA/QC procedures shall be maintained with the site's operation and maintenance (O&M) plan.

Special Term and Condition No. 17 will read as follows:

17. The permit holder shall comply with the periodic monitoring requirements as specified in the attached "Additional Monitoring Requirements" upon issuance of the permit. The permit holder shall calibrate and maintain monitoring devices and instrumentation in accordance with manufacturer's specifications or other written procedures as identified in the "Periodic Monitoring Summary." These specific QA/QC procedures shall be maintained with the site's operation and maintenance (O&M) plan. Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the owner or operator shall conduct all monitoring in continuous operation (or shall collect data at all required intervals) at all times that the pollutant-specific emissions unit is operating. The permit holder may elect to collect monitoring data on a more frequent basis and average the data, consistent with the averaging time specified in the Periodic Monitoring Summary, for purposes of determining whether a deviation has occurred. However, the additional data points must be collected on a regular basis. In no event shall data be collected and used in particular instances to avoid reporting deviations.

**OBJECTION 21 [VI.B.1.a.(xxviii)]:** The Petition is granted on the basis that TCEQ's response did not reflect that Condition 35B(5) appears to allow the TCEQ to make deviations from stack sampling procedures and to waive testing for any pollutant without EPA approval.

**TCEQ RESPONSE:** The permit condition at issue does not provide authority for the TCEQ to make deviations from stack sampling procedures or waive testing for any pollutant without EPA approval. In order to assure that the public and EPA are reviewing the appropriate conditions, the ED notes that the special conditions in NSR Permit No. 6825A that were the basis of this objection have changed since this permit was issued on January 8, 2007. A discussion of the evolution of the relevant permit provisions is provided below. Based on a comparison of the previous versions of NSR Permit No. 6825A and the special condition numbers cited by the Petitioners, it appears that the version of NSR Permit No. 6825A which the Petitioners used was either dated April 29, 1999 or July 9, 1999.

Assuming the Petitioners commented on the April 29, 1999, or July 9, 1999, versions of Permit No. 6825A, Special Condition No. 37B read as follows:

- A. The appropriate TNRCC Regional Office in the region where the source is located shall be contacted as soon as testing is scheduled, but not less than 45 days prior to sampling to schedule a pretest meeting.

The notice shall include:

- (1) Date for pretest meeting.
- (2) Date sampling will occur.

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- (3) Name of firm conducting sampling.
- (4) Type of sampling equipment to be used.
- (5) Method or procedure to be used in sampling.

The purpose of the pretest meeting is to review the necessary sampling and testing procedures, to provide the proper data forms for recording pertinent data, and to review the format procedures for submitting the test reports.

A written proposed description of any deviation from sampling procedures specified in permit conditions or TNRCC or EPA sampling procedures shall be made available to the TNRCC prior to the pretest meeting. The TNRCC Regional Director or the Manager of the TNRCC Enforcement Division, Air Section, Engineering Services Team shall approve or disapprove of any deviation from specified sampling procedures.

Requests to waive testing for any pollutant specified in C of this condition shall be submitted to the TNRCC Austin Office of Permitting, New Source Review Permits Division. Test waivers and alternate/equivalent procedure proposals for NSPS testing which must have the EPA approval shall be submitted to the TNRCC Enforcement Division, Air Section, Engineering Services Team.

Special Condition No. 37A currently reads as follows:

- A. The TCEQ Beaumont Regional Office shall be contacted as soon as testing is scheduled, but not less than 45 days prior to sampling to schedule a pretest meeting.  
**(7/08)**

The notice shall include:

- (1) Date for pretest meeting.
- (2) Date sampling will occur.
- (3) Name of firm conducting sampling.
- (4) Type of sampling equipment to be used.
- (5) Method or procedure to be used in sampling.

The purpose of the pretest meeting is to review the necessary sampling and testing procedures, to provide the proper data forms for recording pertinent data, and to review the format procedures for submitting the test reports.

A written proposed description of any deviation from sampling procedures specified in permit conditions or the TCEQ or the EPA sampling procedures shall be made available to the TCEQ prior to the pretest meeting. The TCEQ Beaumont Regional Director or the TCEQ Compliance Support Services shall approve or disapprove of any deviation from specified sampling procedures.

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Requests to waive testing for any pollutant specified in B of this condition shall be submitted to the TCEQ Air Permits Division. Test waivers and alternate or equivalent procedure proposals for NSPS testing which must have the EPA approval shall be submitted to the TCEQ Compliance Support Division.

Paragraph A of Special Condition No. 37 discusses the requirements for scheduling a pre-test meeting with the TCEQ Beaumont Regional Office. Items (1) through (5) list the items to include in the notice to the TCEQ Regional Office.

Below Item (5) of the list of items to include in the pre-test meeting notice are three unnumbered paragraphs.

The second sentence of the second unnumbered paragraph after the list of items to include in the pre-test meeting notice to the TCEQ Beaumont Regional Office states "The TCEQ Beaumont Regional Director or the TCEQ Compliance Support Services shall approve or disapprove of any deviation from specified sampling procedures." This sentence seems to be the subject of the EPA's comment "that Condition 35B(5) appears to allow TCEQ to make deviation and waiver determinations without EPA approval and that TCEQ will need to either provide a citation to proper authority for granting the deviation or exemption, or remove or modify the reference to the deviation or exemption, as appropriate."

However, the last sentence of the third unnumbered paragraph states "Test waivers and alternate or equivalent procedure proposals for NSPS testing which must have the EPA approval shall be submitted to the TCEQ Compliance Support Division." The reason this sentence is in Special Condition No. 37 is because the EPA has directed that all intermediate and major deviation requests to NSPS testing procedures shall be submitted to the EPA by the TCEQ and not by the company. The TCEQ was delegated the authority to waive testing when appropriate in the attached December 28, 1982 delegation letter.

Also note that the TCEQ has changed the wording of this sentence to state "Test waivers and alternate/equivalent procedure proposals for Title 40 Code of Federal Regulation Part 60 (40 CFR Part 60) testing which must have EPA approval shall be submitted to the TCEQ Beaumont Regional Director." The change from TCEQ Compliance Support Services to TCEQ Beaumont Regional Office was to minimize the number of TCEQ organizations the company would have to deal with prior to stack sampling.

The sentence which the EPA referenced, i.e., "The TCEQ Regional Director or the TCEQ Compliance Support Services in Austin shall approve or disapprove of any deviation from specified sampling procedures" must be implemented in a manner that is in agreement with the established protocol between the EPA and TCEQ regarding approval of NSPS testing deviations that are not minor; specifically, that the testing deviation shall be submitted to the TCEQ Regional Office which will then forward the request to the EPA, the EPA will notify the TCEQ

whether the EPA approves or disapproves the deviation and then the TCEQ will notify the company that the deviation is approved or disapproved.

**OBJECTION 22 [IV.B.1.a.(xxix)]:** The Petition was granted on the basis that TCEQ's response did not address the recordkeeping concern raised by Petitioners. Petitioners claimed Premcor should be required to maintain records of daily sensor validation for the predictive emissions monitoring system (PEMS) [Special Condition No. 40G].

**TCEQ RESPONSE:** The ED does not agree that additional recordkeeping is necessary to assure compliance, because Premcor has determined not to install a PEMS. The April 29, 1999, and July 9, 1999, versions of Special Condition No. 40G read as follows:

- G. The owner or operator shall perform daily sensor validation. The owner or operator shall develop and implement plans that will ensure proper functioning of the monitoring systems, ensure proper accuracy and calibration of all operational parameters that affect emissions and serve as input to the predictive monitoring system, and ensure continuous operation within the certified operating range.

Special Condition No. 40, dealt with requirements for Predictive Emissions Monitoring Systems (PEMS). Under the terms of this permit, the permit holder was required to install either a CEMS or a PEMS on certain exhaust stacks.

As part of the NSR permit amendment approved July 24, 2008, the Special Condition No. 40 of the April 29, 1999, or July 9, 1999, version of the permit which the Petitioners commented on was removed from the permit because the company has never elected to use a PEMS and does not have plans to do so in the future. Since no PEMS has been installed, there are no requirements for daily sensor validation or recordkeeping relating to the PEMS.

The following claim is in regard to **NSR Permit 2303A**:

**OBJECTION 23 [VI.B.1.b]:** The Petition was granted on the basis that TCEQ incorporated NSR Permit 2303 by reference, and the comments provided by Petitioner are for NSR Permit 2303A. EPA noted that the Petitioners claims do not correspond to provisions of NSR Permit 2303, indicating that TCEQ had incorporated the incorrect version of the permit.

**TCEQ RESPONSE:** As noted in a previous response, NSR Permit No. 2303 was erroneously included in the list of NSR authorizations in place of Permit No. 2303A. NSR Permit No. 2303 had been redesignated as Permit No. 2303A when ownership of the refinery changed from Chevron U.S.A, Inc. to Clark Refining & Marketing, Inc. in 1995. NSR Permit No. 2303A was voided as the sources and requirements of Permit No. 2303A were administratively incorporated into Permit No. 6825A as part of the permit amendment approved March 30, 2009. The ED regrets the confusion caused by this error.

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The EPA directed the TCEQ to make the proper permit available when it re-notices the Title V permit for public comment. As noted in response to an earlier objection, all current NSR permits will be made available during the additional public notice provided for the reopening of FOP No. O1498.

The following claims were made regarding NSR Permit 5491A:

**OBJECTION 24 [VI.B.1.c.(i)]:** The Petition was granted on the basis that the Title V permit should be clear that records must be kept for a period of at least 5 years in accordance with 40 CFR§70.6(a)(3)(ii)(B).

**TCEQ RESPONSE:** The ED notes that NSR Permit No. 5491A has been voided since the issuance of FOP No. O1498 that was the subject of this petition. The sources and requirements of NSR Permit No. 5491A were incorporated into NSR Permit No. 6825A as part of the permit amendment approved by the commission on March 30, 2009.

However, to provide a complete response, the ED notes that 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, Permits by Rule, 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 permit by rule or NSR permit. To further clarify the five-year recordkeeping retention schedule for the FOP, the following text will be 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 NSR Authorization attachment."

**OBJECTION 25 [VI.B.1.c.(ii)]:** The Petition was granted on the basis that TCEQ did not

**OBJECTION 25 [VI.B.1.c.(ii)]:** The Petition was granted on the basis that TCEQ did not provide a response to the Petitioners comment. Petitioners claimed the permit should require periodic monitoring, recordkeeping, and reporting of emissions of any air contaminants from the tanks [Special Condition No. 1].

**TCEQ RESPONSE:** The ED regrets the oversight of not responding to this comment. The ED does not agree that additional monitoring, recordkeeping, and reporting for emissions from tanks is necessary to assure compliance, because the existing permit terms are sufficient. Periodic monitoring, recordkeeping, or reporting of air contaminants from tanks is achieved by calculating the emissions from each tank on a monthly basis.

All active storage tanks that were authorized under NSR Permit No. 5491A were incorporated into NSR Permit No. 6825A on March 30, 2009. Monthly emissions calculations are required under NSR Permit No. 6825A Special Condition No. 52 (with paragraph C being specific to atmospheric VOC storage tanks), which reads as follows:

52. Recordkeeping programs for those facilities authorized by the flexible permit shall be established and maintained such that the ability to demonstrate compliance with all authorized emission caps and individual emission rates (short-term and annual) is ensured. Records of all compliance testing, CEMS results, and process parameters necessary to demonstrate compliance with the emission rate caps shall be maintained.

Compliance with annual (TPY) emissions shall be based on calendar basis through the year 2004 and on a 12-month rolling average thereafter. Emissions calculations for verifying compliance with the emission caps shall be performed at least once every month to demonstrate compliance with the annual rolling average requirement. The holder of this permit shall maintain all records necessary to demonstrate compliance with the short-term (lb/hr) and annual TPY emissions cap and provide such demonstration of compliance to the TCEQ Beaumont Regional Office upon request.

The emissions from each emission point shall be determined as follows:

- A. Piping Fugitives - Piping fugitive emissions shall be calculated in accordance with the TCEQ publication titled "Technical Guidance Package for Chemical Sources - Equipment Leak Fugitives," dated October 2000.
- B. Cooling Towers - Measured strippable VOC concentration as specified in Special Condition No. 14 and the cooling tower circulation rate.
- C. Atmospheric VOC Storage Tanks - Emissions from storage tanks shall be calculated in accordance with the TCEQ publication titled "Technical Guidance Package for Chemical Sources - Storage Tanks," dated February 2001.
- D. Heaters and Boilers

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- (1) If a CEMS is installed, as specified in Special Condition No. 42.
  - (2) If stack tested per Special Condition No. 40, using the most recent stack test result and recorded firing rate for the period.
  - (3) If no CEMS or stack sampling is required, use the emission factors represented in flexible permit renewal application, PI-1R dated December 14, 2006, and the recorded firing rate for the period.
- E. VOC Loading - Emissions from VOC loading operations shall be calculated in accordance with the TCEQ publication titled "Technical Guidance Package for Chemical Sources - Loading Operations," dated October 2000.
- F. Sulfur Loading - H<sub>2</sub>S emissions from loading liquid sulfur into tank trucks shall be determined by multiplying the weight of sulfur loaded by the concentration of the most recent monthly stain tube sample.
- G. TGIs
- (1) If a CEMS is installed, as specified in Special Condition No. 42.
  - (2) If stack tested per Special Condition No. 40, using the most recent stack test result and recorded operating rate for the period.
  - (3) For those contaminants not monitored with a CEMS, or stack sampled, using the emission factor in the flexible permit renewal application, PI-1R dated December 14, 2006, and the average value of the appropriate operating parameter for the period.
  - (4) The CO emissions from the SRU TGIs shall be determined using the lowest incinerator temperature stack test results or using results from the most recent stack testing performed at multiple incinerator temperatures. The permit holder may then use this data to determine CO emissions as a function of temperature.
- H. Coke - The coke production and transfer rates recorded per Special Condition No. 31, the PM<sub>10</sub> emission factor of 0.00167 pounds per ton of coke handled, and the control efficiencies for each coke emission point represented in the permit amendment application, PI-1 dated January 31, 2008.
- I. Flares - In accordance with the TCEQ Technical Guidance Document, Flares and Vapor Oxidizers, dated October 2000. (3/09)

Additionally, storage tanks subject to 30 TAC Chapter 115 requirements for storage of VOCs are required to maintain sufficient working pressure to prevent any vapor or gas loss to the atmosphere at all times, or be equipped with the appropriate control device.

Storage Tanks are also subject to the following requirements, as included in Special Condition 8 as of October 29, 2009:

8. Atmospheric storage tanks are subject to the following requirements. The control requirements specified in Paragraphs A-D of this condition shall not apply (1) where the VOC has an aggregate partial pressure of less than 0.50 pound per square inch, absolute (psia) at the maximum feed temperature or 95°F, whichever is greater, or (2) to storage tanks smaller than 25,000 gallons.
  - A. An internal floating deck or roof or equivalent control shall be installed in all tanks. The floating roof shall be equipped with one of the following closure devices between the wall of the storage vessel and the edge of the internal floating roof: (1) a liquid-mounted seal, (2) two continuous seals mounted one above the other, or (3) a mechanical shoe seal. Installation of equivalent control requires prior review and approval by the Texas Commission on Environmental Quality (TCEQ) Executive Director.
  - B. An open-top tank containing a floating roof (external floating roof tank) which uses double seal or secondary seal technology shall be an approved control alternative to an internal floating roof tank provided the primary seal consists of either a mechanical shoe seal or a liquid-mounted seal and the secondary seal is rim-mounted.

A weathershield is not approvable as a secondary seal.
  - C. For any tank equipped with a floating roof, the permit holder shall perform the visual inspections and seal gap measurements as specified in 40 CFR § 60.113b, Testing and Procedures (as amended at 54 FR 32973, Aug. 11, 1989), to verify fitting and seal integrity. Records shall be maintained of the dates seals were inspected and seal gap measurements made, results of inspections and measurements made (including raw data), and actions taken to correct any deficiencies noted.
  - D. The floating roof design shall incorporate sufficient flotation to conform to the requirements of American Petroleum Institute (API) Code 650 dated November 1, 1998, except that an internal floating cover need not be designed to meet rainfall support requirements and the materials of construction may be steel or other materials.
  - E. Uninsulated tank exterior surfaces exposed to the sun shall be white, aluminum, or equivalent light color, except where a dark color is necessary to help the tank absorb

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or retain heat in order to maintain the material in the tank in a liquid state. Storage tanks must be equipped with permanent submerged fill pipes. (7/08)

**OBJECTION 26 [VI.B.1.c.(iii)]:** The Petition was granted on the basis that the TCEQ did not explain how the monitoring requirements were sufficient to assure compliance. The Petitioner's claim was that annual visual inspection of the secondary seals on Tanks 110 and 111 [Special Condition No. 2] was not frequent enough to ensure compliance, and inspections should be required quarterly.

**TCEQ RESPONSE:** Monitoring for tanks was required by Special Condition No. 4C of the November 16, 2005, version of Permit No. 5491A which was in effect when FOP No. O1498 was issued, which specified that the secondary seals for tanks with floating roofs be monitored in accordance with Title 40 Code of Federal Regulations (40 CFR) § 60.113b Testing and Procedures (as amended at 54 FR 32973, August 11, 1989). As of March 30, 2009, these sources are authorized by NSR Permit 6825A. Paragraph C of Special Condition No. 8 of NSR Permit 6825A reads as follows:

- C. For any tank equipped with a floating roof, the permit holder shall perform the visual inspections and seal gap measurements as specified in 40 CFR § 60.113b. Testing and Procedures (as amended at 54 FR 32973, Aug. 11, 1989), to verify fitting and seal integrity. Records shall be maintained of the dates seals were inspected and seal gap measurements made, results of inspections and measurements made (including raw data), and actions taken to correct any deficiencies noted.

Permits must contain monitoring sufficient to assure compliance with applicable legal requirements. The specific legal requirement relevant here is the requirement to conduct and document an annual inspection, as required by 40 CFR §§ 60.113b and 63.120(b)(1)(iii). The annual visible secondary seal inspection monitoring requirements for floating roofs specified by the EPA in 40 CFR § 60.113b and § 63.120(b)(1)(iii) are sufficient to assure compliance with the terms and conditions of the permit.

The following claims are in regards to **NSR Permit 8369A**: This permit authorized operation of Amine Treating Unit 7846, which is no longer operational. The permit expired on September 18, 2008 and is no longer active. NSR Permit No. 8369A is no longer incorporated into the FOP.

**OBJECTION 27 [VI.B.1.d.(i)]:** The Petition was granted on the basis that TCEQ did not provide a response to Petitioner's comment that the permit should require monitoring, recordkeeping, and recording of leak-checking for sealless or leakless valves in case of defect or malfunction, recordkeeping of measurements from the pressure-sensing device, and reporting and replacement of all leaking discs within 5 days or, if they cannot be repaired while the equipment is in operation, at the next process shutdown [Special Condition No. 1F].

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**TCEQ RESPONSE:** NSR Permit No. 8369A has expired and is no longer incorporated into FOP No. O1498.

**OBJECTION 28 [VI.B.1.d.(ii)]:** The Petition was granted on the basis that TCEQ did not provide a response to Petitioner's comment that the permit should require monitoring of seal systems designed and operated to prevent emissions or those equipped with automatic failure detection and alarm systems in case of defect or malfunction [Special Condition No. 1G].

**TCEQ RESPONSE:** NSR Permit No. 8369A has expired and is no longer incorporated into FOP No. O1498.

**OBJECTION 29 [VI.B.1.d.(iii)]:** The Petition was granted on the basis that the permit condition does not specify the criteria, consistent with the SIP, to determine when "every reasonable effort" is applied.

**TCEQ RESPONSE:** NSR Permit No. 8369A has expired and is no longer incorporated into FOP No. O1498. **OBJECTION 30 [VI.B.1.d.(iv)]:** The Petition was granted on the basis that TCEQ did not provide a response to the Petitioner's comment that the permit must require recordkeeping of all monitoring and inspection including physical inspections that do not detect leaks [Special Condition No. 1I].

**TCEQ RESPONSE:** NSR Permit No. 8369A has expired and is no longer incorporated into FOP No. O1498.

**OBJECTION 31 [VI.B.1.d.(v)]:** The Petition was granted on the basis that TCEQ did not provide a response to Petitioner's comment that the permit must require periodic testing to verify flare, incinerator, or recovery system efficiency, and to protest the allowance of the Executive Director's to make exceptions to this condition [Special Condition No. 2].

**TCEQ RESPONSE:** NSR Permit No. 8369A has expired and is no longer incorporated into FOP No. O1498.

The following claims are in regard to **NSR Permit 56546**

**OBJECTION 32 [VI.B.1.e.(i)]:** The Petition was granted on the basis that TCEQ did not provide a response to whether the requirement for "representative documentation" is sufficient to assure compliance with the permit and that records are required to be kept for 5 years as mandated by § 70.6(a)(3)(ii)(B). Petitioners claimed that that specific monitoring that is sufficient to assure compliance is required, instead of permit language requiring "representative documentation which demonstrates that operations covered by this permit are achieving compliance", and additionally the permit must require compliance documentation to be maintained for 5 years as mandated by § 70.6(a)(3)(ii)(B) [Special Condition No. 4].

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**TCEQ RESPONSE:** The ED regrets the oversight of not responding to this comment. The ED notes that the storage tanks and requirements authorized by NSR Permit No. 56546 were incorporated into NSR Permit No. 6825A. NSR Permit No. 56546 was voided on May 30, 2009 and is no longer active. There is no reference to "representative documentation" included in NSR Permit No. 6825A, so no further discussion or review is necessary for this issue.

However, in the interest of providing a complete response, as noted previously in this response, 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, Permits by Rule, 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 permit by rule or NSR permit. To further clarify the five-year recordkeeping retention schedule for the FOP, the following text will be 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 NSR Authorization attachment."

**OBJECTION 33 [VI.B.1.e.(ii)]:** The Petition was granted on the basis that the TCEQ did not provide a rationale to support its decision regarding valve monitoring. Petitioners claimed the permit should require monitoring and recordkeeping of seal-less or leak-less valves and specified relief valves in case of defect or malfunction [Special Condition No. 5F].

**TCEQ RESPONSE:** Permits must contain monitoring sufficient to assure compliance with applicable legal requirements. 40 CFR § 63.641 defines a leakless valve as "a valve that has no external actuating mechanism." There must be some type of actuating mechanism present in order to facilitate monitoring. Since monitoring can not be conducted on leakless valves, there is no point in requiring it. This is supported by the following excerpt from EPA's Federal Register:

"...a definition of leakless valves is being added to clarify which types of valves are excluded from the monitoring requirements of the rule." *Environmental Protection Agency 40 CFR Parts 60 and 63 [AD-FRL-5463-1] RIN 2060-AD9Y National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries; Corrections June 12, 1996.*

Although the term "seal-less valve" is not defined, it is intended to describe a valve that is constructed without seals. Seals are the points at which potential leaks would occur, and there are no seals present to facilitate monitoring. Since monitoring can not be conducted on seal-less valves, and there is no seal where a potential leak could occur, there is no point in requiring it.

Emissions from relief valves are outside the scope of this Permit. 40 CFR § 63.641 defines a relief valve as "a valve used only to release an unplanned, nonroutine discharge. A relief valve discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage." These types of emissions are subject to the reporting and corrective action requirements of 30 TAC Chapter 101, which is included in FOP No. O1498 in Special Term and Condition 2.F. Pursuant to leak detection and repair rules found in Special Conditions 44 through 48 of NSR Permit No. 6825A related to Fugitive Emissions Monitoring, relief valves equipped with rupture discs upstream are required to be equipped with a pressure-sensing device between the relief valve and rupture disc to monitor disc integrity, and all leaking discs are required to be replaced at the earliest opportunity but no later than the next process shutdown. The ED has no evidence that additional monitoring or recordkeeping is necessary to assure compliance.

**OBJECTION 34 [VI.B.1.e.(iii)]:** The petition was granted on the basis that TCEQ did not provide the basis for the required substitution of submerged and sealless pumps and demonstrate why the substitution would assure compliance. Petitioner's claimed that shaft sealing systems should be monitored and the date recorded in the event of a defect or malfunction; and submerged or sealless pumps should also be monitored if used in the alternative [Special Condition No. 5G].

**TCEQ RESPONSE:** Permits must contain monitoring sufficient to assure compliance with applicable legal requirements. Pump and compressor seals equipped with a shaft sealing system that prevents or detects emissions of VOC are exempt from monitoring under 40 CFR § 60.482-2(d). Seal systems designed and operated to prevent emissions or seals equipped with automatic seal failure detection and alarm system need not be monitored, which is specified in Paragraph G of Special Condition 46 in NSR Permit 6825A. The failure detection and alarm system serves to monitor the seal system. Submerged pumps are pumps that are immersed below liquid level. Monitoring of potential leaks is not required as it is impractical due to the location of these pumps. Sealless pumps may be used to satisfy the requirements of the condition and are not expected to leak by design, since seals are the points at which potential leaks would occur, as discussed in a previous response. Because there are no seals present, there is no point from which a leak may occur, and there is no need to require monitoring to assure compliance. The ED has no evidence that additional monitoring or recordkeeping is necessary to assure compliance.

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**OBJECTION 35 [VI.B.1.e.(iv)]:** The Petition was granted on the basis that the TCEQ did not specify the criteria, consistent with the SIP, to determine when the "every reasonable effort" term is applied [Special Condition No. 5H].

**TCEQ RESPONSE:** The storage tanks authorized by NSR Permit No. 56546 were incorporated into NSR Permit No. 6825A. NSR Permit No. 56546 was voided on May 30, 2009 and is no longer active or incorporated into FOP No. O1498.

NSR Permit No. 6825A currently includes the phrase "Every reasonable effort" with regards to leak detection and repair. To clarify leak detection and repair requirements for the FOP, the following text will be added under New Source Review Authorization Requirements as Special Term and Condition No. 22 in FOP No. O1498:

22. For leak detection and repair relating to fugitive emission units in VOC Service, the permit holder shall comply with the requirements of Title 40 CFR § 60.482-9 (relating to Standards: Delay of Repair) as incorporated under 40 CFR Part 63, Subpart CC. A leaking component shall be repaired as soon as practicable, but no later than 15 days after the leak is detected, except as specified in 40 CFR § 60.482-9. This requirement supersedes any less stringent requirement that may be specified in a condition of a permit identified in the New Source Review Authorization attachment.

**OBJECTION 36 [VI.B.1.e.(v)]:** The Petition was granted on the basis that the Title V permit must be clear that records must be kept for a period of at least 5 years in accordance with 40 CFR § 70.6(a)(3)(ii)(B). The Petitioner claimed that the any requirement in underlying NSR permits to keep records for less than 5 years must be replaced [Special Condition No. 7G].

**TCEQ RESPONSE:** The storage tanks authorized by NSR Permit No. 56546 were incorporated into NSR Permit No. 6825A. NSR Permit No. 56546 was voided on May 30, 2009 and is no longer active or incorporated into FOP No. O1498.

However, in the interest of providing a complete response, as noted previously, 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, Permits by Rule, 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 permit by rule or NSR permit. To further clarify the five-year recordkeeping retention schedule for the FOP, the following text will be 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 NSR Authorization attachment.”

The following claim is in regards to **NSR Permit 802A**:

**OBJECTION 37 [VI.B.1.f.(i)]:** The Petition was granted on the basis that TCEQ did not provide a rationale to demonstrate that the monitoring requirements in the permit are sufficient to assure compliance. The petitioner claimed that the permit should require periodic opacity monitoring sufficient to assure compliance [Special Condition 3].

**TCEQ RESPONSE:** The ED does not agree that additional opacity monitoring is necessary to assure compliance. The turbine previously authorized by NSR Permit No. 802A is now authorized by NSR Permit No. 6825A and NSR Permit No. 802A has been voided as of August 17, 2009. Premcor submitted a void request for NSR Permit No. 802A on August 12, 2009. The turbine was previously authorized as an emission point under NSR Permit No. 802A. The exhaust from the turbine is routed to waste heat boilers, which are authorized as emission points under NSR Permit No. 6825A. No visible emissions are expected during routine operations since the turbine and the boilers are fired using gaseous fuels. EPA has agreed that “for gaseous-fueled combustion equipment (except flares), the recommended periodic monitoring for generally applicable opacity standards is ‘none’ when the unit is firing on gaseous fuel.” See *In the Matter of ConocoPhillips Company*, Petition No. IX-2004-09 (March 15, 2005), Page 13.

The boilers, as well as the associated exhaust from the turbine, are subject to requirements for opacity monitoring of visible emissions that are included in FOP No. O1498 at Special Conditions 3.A.(iv).1. and the Applicable Requirements Summary. If any visible emissions are observed from the exhaust of a boiler during normal operations, then the boiler is not operating properly and those events are subject to requirements for recording, reporting and corrective actions in accordance with 30 TAC Chapter 101, which is included as an applicable requirement in FOP No. O1498 in Special Term and Condition 2.F.

EXECUTIVE DIRECTOR'S RESPONSE TO EPA ORDER

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The following claims are in regards to **NSR Permit 7600A**

**OBJECTION 38 [VI.B.1.g.(i)]:** The Petition was granted on the basis that the TCEQ must provide a citation to proper authority allowing TCEQ to grant an exemption or deviation from the specified tank control. The Petitioner claimed that any off-permit authorizations of deviations or exemptions from the permit requirements would constitute an illegal modification of the PSD permit without required public participation. [Special Condition No. 3B].

**TCEQ RESPONSE:** The ED respectfully notes that NSR Permit 7600A does not provide the ED authority to allow deviations from specified tank control without appropriate NSR authorization, required by both the Texas Clean Air Act and the Federal Clean Air Act. NSR Permit Condition 3B clearly states that "installation of equivalent *control*" must be approved by the ED prior to installation. This approval would require appropriate NSR authorization.

**OBJECTION 39 [VI.B.1.g.(ii)]:** The Petition was granted on the basis that the Title V permit should be clear that records must be kept for a period of at least 5 years in accordance with 40 CFR § 70.6(a)(3)(ii)(B) [Special Condition No. 3G].

**TCEQ RESPONSE:** As noted in a previous response 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, Permits by Rule, 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 permit by rule or NSR permit. To further clarify the five-year recordkeeping retention schedule for the FOP, the following text will be 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 NSR Authorization attachment.”

The following claim is in regards to **Permit-by-Rule § 106.261** (06/29/2001)

**OBJECTION 40 [VI.B.1.h]:** The Petition was granted on the basis that the TCEQ response did not provide a rationale for the adequacy of the monitoring to assure compliance. The Petitioners claimed that periodic monitoring of new or increased emissions, including fugitives, was necessary to ensure that they comply with emissions limitations [Provision § 106.261(3)-(4)]; in addition to periodic monitoring to assure that visible emissions do not exceed 5 percent opacity [Provision § 106.261(6)].

**TCEQ RESPONSE:** To clarify periodic monitoring for PBRs and standard permits, the following text will be added to FOP No. O1498, Special Terms and Conditions for New Source Review Authorization Requirements:

“The permit holder shall maintain records to demonstrate continuous compliance with any representation in a registration or application, or any emission limitation or standard that is specified in a permit by rule (PBR) or Standard Permit listed in the New Source Review Authorizations attachment. These records may include, but are not limited to, production capacity and throughput, hours of operation, material safety data sheets (MSDS), chemical composition of raw materials, speciation of air contaminant data, engineering calculations, maintenance records, fugitive data, performance tests, capture/control device efficiencies, direct pollutant monitoring (CEMS, COMS, or PEMS), or control device parametric monitoring. These records shall be made readily accessible and available as required by 30 TAC § 122.144.

If applicable, monitoring of control device performance or general work practice standards shall be made in accordance with the TCEQ Periodic Monitoring Guidance document.

Any monitoring or recordkeeping data indicating noncompliance with the PBR or Standard Permit shall be considered and reported as a deviation according to 30 TAC § 122.145 (Reporting Terms and Conditions).”

The following claim is in regards to **Permit-by-Rule § 106.472** (09/04/2000)

**OBJECTION 41 [VI.B.1.i.(i).]:** The Petition is granted on the basis that the TCEQ did not provide a rationale to demonstrate that monitoring requirements in the permit were sufficient to assure compliance. The petitioners claimed that monitoring and recordkeeping were necessary to ensure that no visible emissions result while loading and unloading organic and inorganic liquids.

**TCEQ RESPONSE:** To clarify periodic monitoring for PBRs and standard permits, the following text will be added to FOP No. O1498, Special Terms and Conditions for New Source Review Authorization Requirements:

EXECUTIVE DIRECTOR'S RESPONSE TO EPA ORDER

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"The permit holder shall maintain records to demonstrate continuous compliance with any representation in a registration or application, or any emission limitation or standard that is specified in a permit by rule (PBR), Standard Exemption, or Standard Permit listed in the New Source Review Authorizations attachment. These records may include, but are not limited to, production capacity and throughput, hours of operation, material safety data sheets (MSDS), chemical composition of raw materials, speciation of air contaminant data, engineering calculations, maintenance records, fugitive data, performance tests, capture/control device efficiencies, direct pollutant monitoring (CEMS, COMS, or PEMS), or control device parametric monitoring. These records shall be made readily accessible and available as required by 30 TAC § 122.144.

If applicable, monitoring of control device performance or general work practice standards shall be made in accordance with the TCEQ Periodic Monitoring Guidance document.

Any monitoring or recordkeeping data indicating noncompliance with the PBR or Standard Permit shall be considered and reported as a deviation according to 30 TAC § 122.145 (Reporting Terms and Conditions)."

The following order is in regards to **Standard Exemption 111(01/11/1985)**

**OBJECTION 42 [VL.B.1.j]:** The Petition was granted on the basis that TCEQ did not provide a rationale to demonstrate that the monitoring requirements in the permit are sufficient to assure compliance. The Petitioners claimed that monitoring, recordkeeping, and reporting were necessary to assure that the facility does not exceed 25 tons per year of any air contaminant [Condition 3]; recordkeeping of capacity, production rate and throughput [Condition 4]; and recordkeeping and reporting of sampling at specified intervals to determine that no hazardous compounds listed under 40 CFR Part 261, Appendix VIII are released [Condition 6].

**TCEQ RESPONSE:** To clarify periodic monitoring for PBRs and standard permits, the following text will be added to FOP No. O1498, Special Terms and Conditions for New Source Review Authorization Requirements:

"The permit holder shall maintain records to demonstrate continuous compliance with any representation in a registration or application, or any emission limitation or standard that is specified in a permit by rule (PBR), Standard Exemption or Standard Permit listed in the New Source Review Authorizations attachment. These records may include, but are not limited to, production capacity and throughput, hours of operation, material safety data sheets (MSDS), chemical composition of raw materials, speciation of air contaminant data, engineering calculations, maintenance records, fugitive data, performance tests, capture/control device efficiencies, direct pollutant monitoring (CEMS, COMS, or PEMS), or control device parametric monitoring. These records shall be made readily accessible and available as required by 30 TAC § 122.144.

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If applicable, monitoring of control device performance or general work practice standards shall be made in accordance with the TCEQ Periodic Monitoring Guidance document.

Any monitoring or recordkeeping data indicating noncompliance with the PBR or Standard Permit shall be considered and reported as a deviation according to 30 TAC § 122.145 (Reporting Terms and Conditions).”



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VI  
1201 ELM STREET  
DALLAS, TEXAS 75270

December 28, 1982

CERTIFIED MAIL - RETURN RECEIPT REQUESTED P. 333 725 637

Honorable Bill Clements  
Governor of Texas  
State Capitol Building  
Austin, Texas 78711

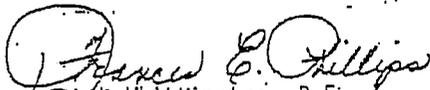
Dear Governor Clements:

This is in response to your letter of December 15, 1982, requesting a revision to the current delegation of responsibility to the State of Texas for implementing the New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and the Prevention of Significant Deterioration (PSD) programs.

The changes you requested primarily to simplify the delegations are approved. The revised delegation agreements are enclosed. Thus, this delegation letter supersedes the November 15, 1978, and February 5, 1981, delegation agreements for NSPS and NESHAP, and amends the PSD delegation agreement as you requested. Therefore, by virtue of authority granted by the Administrator, I hereby delegate to the State of Texas, and the Texas Air Control Board (TACB), authority to implement the provisions of these delegations, subject to the conditions and limitations stated in the enclosures.

Since these delegations are effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State of Texas written notice of objection within ten days of the date of receipt of this letter, the State of Texas and the TACB will be deemed to have accepted all of the terms of these delegations.

Sincerely yours,

  
Dick Whittington, P.E.  
Regional Administrator

Enclosures

cc: Mr. Bill Stewart ✓  
Executive Director  
Texas Air Control Board  
6330 Highway 290 East  
Austin, Texas 78723

2. Upon written approval of the Regional Administrator of the EPA Region 6, the TACB may subdelegate its authority to implement and enforce NSPS and NESHAP to air pollution control authorities in the State when such authorities have demonstrated that they want the authority and have the resources and capabilities to exercise it. If subdelegation approval is granted, appropriate address changes will be made in the Federal Register.

3. Acceptance of this delegation constitutes agreement by the TACB to follow all interpretations, past and future, made by EPA of 40 CFR Parts 60 and 61 including determinations of applicability. The TACB agrees to consult with the EPA, Region 6 on questions of interpretations of the NSPS and of NESHAP. A copy of each interpretation made by the TACB shall be sent to EPA, Region 6.

4. The State of Texas and the TACB are not authorized to grant any exemption, variance, or waiver of compliance with any provision of 40 CFR Part 60, except for the waiver of emission tests authorized in 40 CFR 60.8(b). Furthermore, the State of Texas and the TACB are not authorized to grant any exemption, variance, or waiver from compliance with any provision of 40 CFR Part 61, except for the waiver of emission tests authorized in 40 CFR 61.13 and the waiver of compliance authorized in 40 CFR 61.11. A copy of any waiver of emission tests under 40 CFR 60.8(b) or 40 CFR 61.13, or of any waiver of compliance under 40 CFR 61.11 shall be sent to EPA, Region 6. Should the State of Texas or the TACB grant any other exemption, variance or waiver to any source or category of sources pursuant to any state law, regulations, or practice, the TACB shall immediately notify EPA, Region 6, of the granting of such exemption, variance or waiver and shall notify any source affected by such an exemption, variance or waiver that the State is not authorized to grant any exemption, variance or waiver from compliance with federal requirements. EPA may consider any source receiving such relief to be violating or threatening to violate the applicable federal regulation and may initiate enforcement action against the source pursuant to Section 113 of the Clean Air Act. The granting of any exemption, variance, or waiver by the State of Texas or the TACB shall also constitute grounds for revocation of delegation by EPA, in whole or in part, at the discretion of the Regional Administrator of EPA, Region 6.

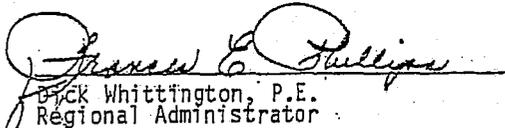
5. If at any time there is a conflict between any state regulation and any provision of 40 CFR Parts 60 or 61, the federal regulation must be applied to the extent that it is more stringent than that of the State. If the State of Texas or the TACB does not have the authority to enforce the more stringent federal regulation, the TACB shall immediately notify EPA, Region 6, pursuant to Condition 1 above. The delegation may be revoked by EPA, Region 6, in whole or in part, in the event any such conflict makes implementation and enforcement of NSPS or NESHAP administratively impractical.

6. For NSPS and NESHAP, the State of Texas and the TACB shall utilize the methods and means of determining compliance specified in 40 CFR Part 60, including requiring performance tests within the time limit of 40 CFR 60.8 and 40 CFR Part 61. All performance tests are to be conducted at normal maximum production. All requests from sources for equivalent or alternate methods shall be forwarded to EPA, Region 6, with or without a recommendation.

Authority is delegated to approve minor modifications to the reference test methods during either a pre-test meeting or the actual sampling period. These minor modifications would have to produce results essentially identical to the reference method results.

Approval of these minor modifications should be based on sound engineering judgment. Under no circumstances are modifications to be used which might result in the non-uniform application of the standards. In the event the State of Texas or TACB is unable or unwilling to utilize the methods specified in 40 CFR Parts 60 and 61, the notification requirements of Condition 1, above, shall apply.

7. If a claim of confidentiality or any other reason should ever legally prevent the State of Texas and the TACB from providing to EPA any and all information required by or pertaining to the implementation or enforcement of NSPS or NESHAP, the TACB shall, upon request, assist EPA, Region 6 in obtaining that information directly from the source. As a minimum, such assistance shall consist of providing to EPA an identification of the nature of the information withheld, adequate to allow EPA to identify to the source the information which is to be sent directly to EPA.

  
Jack Whittington, P.E.  
Regional Administrator  
Region 6  
U.S. Environmental Protection Agency  
Dallas, Texas

12.28.82  
Date

ADDITIONAL PSD DELEGATION OF AUTHORITY

FOR

SOURCE INSPECTION AND COMPLIANCE

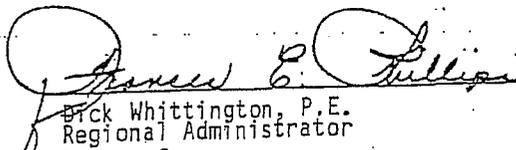
TO THE STATE OF TEXAS

(40 CFR 52.21)

EFFECTIVE DATE: December 28, 1982

ADDENDUM I (Section D)

EPA delegates to the State of Texas the authority to inspect sources located in Texas for compliance under 40 CFR 52.21 and to review all compliance test reports for sources permitted under the PSD regulations, 40 CFR 52.21. If the State of Texas finds an instance of noncompliance which it is unable to resolve within the terms of the PSD permit, it will notify EPA, Region 6, within thirty (30) days and provide all relevant information. EPA will exercise its enforcement authority to resolve the noncompliance.

  
Rick Whittington, P.E.  
Regional Administrator  
Region 6  
United States Environmental Protection Agency

12.28.82  
Date

