

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



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

May 17, 2012

MR GARY A FREIBURGER
GENERAL MANAGER
PHILLIPS 66 COMPANY
PO BOX 866
SWEENEY TX 77480-0866

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment
Significant Revision
Permit Number: O1626
Phillips 66 Company
Sweeny Refinery
Old Ocean, Brazoria County
Regulated Entity Number: RN101619179
Customer Reference Number: CN604065912
Account Number: BL-0042-G

Dear Mr. Freiburger:

The Texas Commission on Environmental Quality (TCEQ) executive director's proposed final action is to submit a proposed federal operating permit (FOP) to the U.S. Environmental Protection Agency (EPA) for review. Prior to taking this action, all timely public comments have been considered. In addition, TCEQ received a letter from EPA dated January 10, 2010 which is being treated as additional comments. All comments are addressed in the enclosed Executive Director's Response to Public Comment (RTC). The executive director's RTC also includes resulting modifications to the FOP, if applicable.

Changes unrelated to comments have been made to the permit since commencement of the public notice period. A detailed explanation of all changes is contained in the enclosed statement of basis.

As of May 22, 2012 the proposed permit is subject to an EPA review for 45 days, ending on July 6, 2012.

Mr. Gary A. Freiburger
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May 17, 2012

Thank you for your cooperation in this matter. If you have questions concerning the processing of this permit application, please contact Mr. Alfredo Mendoza, P.E. at (512) 239-1335.

Sincerely,

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

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

JEC/AM/am

cc: Mr. Vinod Jaini, Environmental Manager, Phillips 66 Company, Sweeny
Mr. Chris Coon, Production Manager, Phillips 66 Company, Sweeny
Director, Environmental Health, Brazoria County Health Department, Angleton
Air Section Manager, Region 12 - Houston
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas
(Electronic copy)

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

Project Number: 13278

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

May 17, 2012

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

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment
Significant Revision
Permit Number: O1626
Phillips 66 Company
Sweeny Refinery
Old Ocean, Brazoria County
Regulated Entity Number: RN101619179
Customer Reference Number: CN604065912
Account Number: BL-0042-G

Dear Ms. Widawsky:

The Texas Commission on Environmental Quality (TCEQ) executive director's proposed final action is to submit a proposed federal operating permit (FOP) to the U.S. Environmental Protection Agency (EPA) for review. Prior to taking this action, all timely public comments have been considered. In addition, TCEQ received a letter from EPA dated January 10, 2010 which is being treated as additional comments. All comments are addressed in the enclosed Executive Director's Response to Public Comment (RTC). The executive director's RTC also includes resulting modifications to the FOP, if applicable. The proposed permit and statement of basis are available through the TCEQ Web site and can be accessed at <https://webmail.tceq.texas.gov/gw/webpub>.

Changes unrelated to comments or have been made to the permit since commencement of the public notice period. A detailed explanation of all changes is contained in the enclosed statement of basis.

As of May 22, 2012 the proposed permit is subject to an EPA review for 45 days, ending on July 6, 2012.

Ms. Lisa Widawsky
Page 2
May 17, 2012

Thank you for your cooperation in this matter. If you have questions concerning the processing of this permit application, please contact Mr. Alfredo Mendoza, P.E. at (512) 239-1335.

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

JEC/AM/am

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Director, Environmental Health, Brazoria County Health Department, Angleton
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Enclosures: Executive Director's Response to Public Comment

Project Number: 13278

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 17, 2012

MR CARL E EDLUND PE
DIRECTOR
MULTIMEDIA PLANNING AND PERMITTING DIVISION
US ENVIRONMENTAL PROTECTION AGENCY REGION 6
1445 ROSS AVE STE 1200
DALLAS TX 75202-5766

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment
Significant Revision
Permit Number: O1626
Phillips 66 Company
Sweeny Refinery
Old Ocean, Brazoria County
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Mr. Carl E. Edlund
Page 2
May 17, 2012

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

Project Number: 13278

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

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (RTC or Response) on the application for a Federal Operating Permit (FOP) Permit No. O1626 filed by ConocoPhillips Company (Applicant).

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

BACKGROUND

Procedural Background

The Texas Operating Permit Program requires that owners and operators of sites subject to 30 TAC Chapter 122 obtain a FOP that contains all applicable requirements in order to facilitate compliance and improve enforcement. The FOP does not authorize construction or modifications to facilities, nor does the FOP authorize emission increases. In order to construct or modify a facility, the facility must have the appropriate new source review authorization. If the site is subject to 30 TAC Chapter 122, the owner or operator must submit a timely FOP application for the site, and ultimately must obtain the FOP in order to operate. ConocoPhillips Company applied to the TCEQ for a FOP significant revision for the Sweeny Refinery, located in Old Ocean, Brazoria County on February 3, 2009, and notice was published on November 19, 2009 in *The Facts*. The public comment period ended on December 19, 2009. Comments were received from the Environmental Integrity Project (EIP) on December 21, 2009. In addition, EPA submitted comments in a letter dated January 8, 2010.

Description of Site

ConocoPhillips Company has applied to the TCEQ for an FOP Significant Revision that would authorize the applicant to operate the Sweeny Refinery. The facility is located at Highway 35 at FM 524 in Old Ocean, Brazoria County, Texas 77463.

The ConocoPhillips Sweeny Refinery consists of process units ordinarily used in the refining of crude oil for the purpose of producing fuels, and other petroleum products. Major processes involved in this purpose include distillation and fractionation, water separation, cracking large chain molecule fractions, or combining smaller molecule fractions to maximize gasoline production, the production of related feedstocks and additives for fuels, and cleaning and purification, such as acid gas and sulfur removal and recovery. This refinery plant makes use of "refinery gas" (by-products or waste streams) to fuel a number of combustion sources across the plant. The plant also contains a number of environmental systems, such as scrubbers, flares, fuel gas recovery, and closed vent systems and control devices. Process heaters, boilers, and cooling towers provide thermal utility service to the many processes throughout the plant.

Effective May 1, 2012, ConocoPhillips split into two separate companies. As of this date, the Sweeny Refinery is now under the ownership of Phillips 66 Company.

All comments were submitted by EIP on behalf of public comments submitted by Sierra Club, Galveston Houston Association for Smog Prevention (GHASP), and itself. Given the recent ownership change to Phillips 66 Company, all comments and responses will refer to the ConocoPhillips Company.

COMMENT 1: The draft revised permit does not identify the emission limitations associated with several permits that it incorporates by reference.

Commenter states that the draft revised permit incorporates the following permits by reference: PSDTX103M3, 21265, 18142, 22086, 30513, 5689A, 7467A, 70113, 1486A, 21265, 2849A, 49140, 5920A, 7754A, and 53563. Commenter states that the permits are only available to members of the public willing and able to view them in the TCEQ file room which poses a significant barrier for those who wish to discover and/or comment on whether the permit assures compliance.

Commenter states the draft revised permit incorporates a voided NSR permit, permit number 2849A. According to TCEQ's central registry for NSR permits associated with the ConocoPhillips' Sweeny Refinery, there are 44 NSR permits that are active, but only 17 were listed in the New Source Review Authorization References Table in the draft revised permit. Commenter reviewed Title V permit O-2151 and that permit did not contain the remaining active permits. The permits not listed are: BLO042G, 4803900010, PSDTX103M, PSDTX103M2, 10779, 12344, 12993, 1313A, 1314A, 13744, 13929, 13978, 1514A, 18601, 24162, 24717, 25004, 26533, 33153, 35367, 35506, 35780, 42367, 43038, 54666, 5679G, and 74130. Commenter requests why these permit were omitted from the Title V permit.

Commenter states that permit 21265 was listed twice and requests to know whether this was an error or intentional duplication. The reason for the duplication was not explained in the revised draft permit or the statement of basis.

RESPONSE 1: Title V permit O2151 is not associated with the ConocoPhillips Sweeny Refinery. This permit is for the Chevron Phillips Chemical Company, L.P., Sweeny Complex, Olefins, and NGL Assets and is assigned to RN100825249.

The explanation for the omissions of the cited permits are listed as follows:

- Permit 2849A has been voided and removed from the proposed permit.
- BLO042G is the TCEQ Account Number for this site and is not a permit
- 4803900010 is the AFS (Air Facility Subsystem) and is not a permit
- PSDTX103M and PSDTX103M2 are previous versions of the current PSD permit. The most current version is PSDTX103M4.
- 10779, 12344 were not found in the TCEQ permits database and therefore appear in Central Registry by error.
- 25007 is a permit for the San Bernard Terminal and is associated with RN100221092. It is not associated with the Sweeny Refinery.
- 12993, 13744, 13929, 13978, 24717, 26533, 33153, 35367, 35506, 35780, 42367, 43038, 54666, 74310 are PBR registration numbers. TCEQ lists PBRs individually under the NSR Authorization table in the permit. For clarification,

the registration numbers are being added to the NSR Authorization Table in the permit attachments.

- NSR permits 1313A, 1314A, 1514A, 18601, 24162, 5679G have been voided and show canceled in Central Registry.
- The duplication of NSR permit 21265 was an error and has been corrected in the proposed permit.

ConocoPhillips updated their application to provide the current New Source Review (NSR) Authorizations held at the site and the NSR Authorizations and the New Source Authorizations by Emission Unit tables in the permit attachments.

COMMENT 2: Commenter states the draft permit incorporates numerous permit by rule authorizations, the text of which do not appear in the draft revised permit or its statement of basis. Commenter states that TCEQ's current use of incorporation by reference for emission limits in minor NSR permits and PBRs does not satisfy the Part 70 requirements that the draft revised permit include emission limitations and standards necessary to assure compliance with all applicable requirements. Commenter claims that PBRs cannot be used to authorize emissions from major sources, cannot be used to amend individual permits, must be source specific, and must not be incorporated into the proposed revised draft permit. Commenter claims that PBRs incorporated into the Title V permit will jeopardize air quality and thwart public participation.

Commenter states that the draft permit incorporates different versions of PBR Number 86 (dated 09/12/1989, 07/20/1992, and 09/13/1992). The agency should explain the differences between different versions of the same PBR as well as the rationale for incorporating outdated PBR versions in the draft permit in the Statement of Basis.

Commenter states that one of the PBRs incorporated into the draft revised permit, 53552, is no longer active.

RESPONSE 2: Texas' general Permits by Rule (PBR) rules are approved as part of the SIP. In addition, Chapter 106, Subchapter A is a defined applicable requirement under Chapter 122 and the EPA-approved Texas operating permit program. Subchapter A includes applicability, requirements for permitting by rule, registration of emissions, recordkeeping and references to standard exemptions and exemptions from permitting. Additionally, PBR authorizations can apply to distinct, insignificant sources of emissions (i.e. engine, production process, etc.) at a Title V site. As such PBRs do not violate the SIP, EPA policy or prior SIP decisions; nor is incorporation of PBRs into ConocoPhillips's operating permit impermissible. All current and historical PBRs and standard exemptions (predecessors to PBRs) are available on the TCEQ website for review. Title 30 TAC Chapter 106 provides types of authorizations for certain types of facilities or changes within facilities which the Commission has determined will not make a significant contribution of air contaminants to the atmosphere. A PBR is a permit which is adopted under Chapter 106, and is only available to sources which belong to categories for which the Commission has adopted a PBR in that chapter. A PBR cannot be used to amend an individual NSR permit. TCEQ rule 30 TAC § 116.116(d), which is SIP-approved, sets forth that all changes authorized under Chapter 106 to a permitted facility shall be incorporated into that facility's permit when the permit is amended or renewed. Therefore, the ED disagrees with the assertion that PBR incorporation into FOPs is impermissible.

The NSR Authorization References table in the draft Title V permit incorporates the requirements of NSR Permits, including PBRs by reference. All “emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance” are specified in the PBR incorporated by reference or cited in the draft Title V permit. When the emission limitation or standard is not specified in the referenced PBR, then the emissions authorized under permit by rule from the facility are specified in §106.4(a)(1). Additional requirements for PBRs are found in the Special Terms and Conditions under New Source Review Authorization Requirements. In the Chevron Phillips Chemical Company draft Title V permit, these requirements are found in Special Terms and Conditions 17 and 18, relating to PBRs. The ED does not agree that the emission limitations and standards for PBRs should be listed on the face of the Title V permit, as the EPA has supported the practice of incorporation by reference for the purpose of streamlining the content of the Part 70 permit. See *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995 and *White Paper 2 for Improved Implementation of the Part 70 Operating Permits Program*.

The EPA has also supported the practice of not listing insignificant emission units for which “generic” requirements apply. See *White Paper 2 for Improved Implementation of the Part 70 Operating Permits Program*. The NSR Authorization References table identifies preconstruction authorizations at the site that are required to be listed in the draft permit. The NSR Authorizations are applicable requirements and incorporated by reference.

Regarding specific problems the commenter describes with PBRs (i.e. public participation, interference with the NAAQS), these issues are beyond the scope of this FOP action.

ConocoPhillips updated the New Source Review Authorizations and the proposed permit was updated to reflect the current PBRs held at the site.

COMMENT 3: Commenter states that TCEQ’s ability to take enforcement action is limited to Title V deviations by Senate Bill 12 passed by the legislature in 2007. Commenter states that this violates the NSR and Title V requirements that TCEQ have adequate enforcement authority, including the authority to recover civil penalties for each violation.

Commenter states that the compliance certification should, at a minimum, certify compliance with the monitoring method for every limit. The compliance certification provisions in the Title V permit must meet the requirements set out at 30 TAC § 122.146 and 40 CFR § 70.5(c)(9).

Commenter states that the draft permit language should rely on statutory and regulatory language so that is clear that in order to certify compliance, the permit holder cannot make a single sweeping statement of compliance for all the permit terms and conditions. Rather, the compliance certification should identify the method of compliance for each and every limit.

RESPONSE 3: The ED does not agree that Special Condition 22 of the draft permit needs to be revised. Special Condition 22 of the draft permit is in compliance with the specific requirements of the EPA-approved Federal Operating Permit program, as found in 30 TAC Chapter 122. Specifically, § 122.146(5), requires the annual compliance certification to include or reference the specified elements, including:

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

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

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

However, in order to help clarify any confusion, the term has been revised to read as follows:

“The permit holder shall certify compliance in accordance with 30 TAC § 122.146. The permit holder shall comply with 30 TAC § 122.146 using at a minimum, but not limited to, the continuous or intermittent compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other credible evidence or information. The certification period may not exceed 12 months and the certification must be submitted within 30 days after the end of the period being certified.”

COMMENT 4: Commenter states that the draft permit includes well over 500 individual permit shields. Commenter states there is little explanation of the justification for the shields and that the Statement of Basis fails to adequately explain the numerous shields purported authorized in the permit.

Commenter states that numerous shields are granted on construction or modification date was on or before a certain date therefore purport to “grandfather” emissions units. Commenter states that EPA has objected to negative applicability determinations in a permit issued by Colorado. See EPA region 8, *Objection Issues and Comments Regarding the Proposed Title V Operating Permit for TriGen-Colorado Energy Corporation*, at 8 (Sept. 13, 2000) . EPA also made a concern regarding permit shields in a letter issued to the Oregon Department of Environmental Quality

Commenter states that neither the proposed permit nor the Statement of Basis provides an adequate justification or documentation of investigation of whether the units qualify for a negative applicability determination. Language must be added stating that the permit shield cannot excuse past violations.

RESPONSE 4: The ED disagrees that the permit shield does not meet the requirements of 40 CFR § 70.6(f). Special Condition 25 was drafted in compliance with the requirements of the EPA approved federal operating permit program for the State of

Texas, 30 TAC Chapter 122. Section 122.142(f), Permit Content Requirements, clearly allows the ED discretion to grant a permit shield for specific emission units at the request of an applicant. Additionally, § 122.148, Permit Shield, provides the requirements for the exercise of discretion by the ED, including that specific information be submitted by the applicant, in addition to other requirements. The ED determined that the application information submitted by ConocoPhillips Company and certified by a responsible official was sufficient to grant the permit shield.

Furthermore, the permit shield as listed in FOP O1626 provides a “concise summary” of the negative applicability determination for each regulation that may potentially apply to emission units listed in the Permit Shield table as required by 40 CFR § 70.6(f)(1)(ii). This concise summary contains both the determination and the relevant facts upon which the determination was based, as supported by a certification by the responsible official as to the truth, accuracy and completeness of the facts for which the responsible official is liable both civilly and criminally. The SOB notes that a permit shield was requested and granted, and contains the complete table of permit shields from the permit. The ED has thusly exercised his discretion, as allowed under the EPA-approved operating permit program, and the permit shield is not an unsupportable or unenforceable “blanket statement”. The ED is aware of no provision in 40 CFR Part 70 stating that a permit shield cannot be granted based on certified representations regarding construction, modification, or reconstruction date information.

EPA’s reliance on the TriGen-Colorado Energy Corporation objection to support an objection to the permit shield is misplaced. However, the permit shield was revised to provide a more accurate basis of determination for negative applicability.

COMMENT 5: Commenter states that there was a pending flexible permit, number 80806, listed for the ConocoPhillips Sweeny Refinery in the TCEQ Central Registry for Regulated Entity No. 101619179. Commenter states that flexible permit issued pursuant to 30 TAC Chapter 116, Subchapter G have not been approved as part of the applicable implementation plan for the State of Texas (Texas SIP) and therefore the terms and conditions of permit 80806 will not be federally enforceable. The draft permit and Statement of Basis are devoid of information to determine whether the terms and conditions of the pending flexible permit would be in compliance with the applicable requirements of the Texas SIP.

RESPONSE 5: The pending application for NSR permit 80806 was converted from an authorization issued under 30 TAC Chapter 116 Subchapter G to an authorization issued under 30 TAC Subchapter B on June 10, 2010. It was issued August 8, 2010. Therefore, the NSR permit was issued in accordance with the SIP-approved requirements of 30 TAC Chapter 116, Subchapter B and is federally enforceable.

COMMENT 6: Commenter questions whether TCEQ conducted a review of the monitoring provisions for the draft revised permit to ensure that it complies with the D.C. Circuit Court of Appeals ruling, *Sierra Club, et. al., v. EPA*, 536 F.3d 573 (D.C. Cir. 2008), and recent orders from the EPA Administrator. Commenter questions if TCEQ conducted a review of the monitoring provisions of the multiple permits that are incorporated by reference into the draft revised permit.

Commenter states that the draft revised permit does not state the monitoring requirements for flares subject to the Consent Decree entered into by ConocoPhillips for this facility. The draft revised permit states that the requirements for certain flares will be incorporated into a Compliance Plan for Flaring Devices, to be submitted to EPA by

ConocoPhillips by December 31, 2007 as stated in Special Term and Condition 1 in the draft permit. The draft permit fails to state whether the Compliance Plan for Flaring Devices has been submitted to EPA, and, if it has, which monitoring devices it requires to be implemented for the affected flares. Without the information, the permit fails to provide monitoring information sufficient to assure compliance for the flares. The revised permit must state whether the Compliance Plan for Flares required to be submitted to EPA by December 31, 2007 has actually been submitted and, if it has, what requirements it would impose upon the affected flares.

RESPONSE 6: Consistent with 40 CFR Part 70, the ConocoPhillips permits includes: (1) monitoring sufficient to yield reliable data from the relevant time period that is representative of compliance with the permit; and (2) monitoring sufficient to assure compliance with the terms and conditions of the permit. The ED has determined that the monitoring required by this permit demonstrates compliance for the applicable state and federal requirements. For those requirements that do not include monitoring, or where the monitoring is not sufficient to assure compliance, the federal operating permit includes such monitoring for the emission units affected. No additional periodic monitoring or compliance assurance monitoring (CAM) was identified for emission units after a review of applicable requirements determined that additional monitoring was not needed to assure compliance. Each applicable requirement is reviewed to determine whether monitoring, recordkeeping, reporting, and testing (MRRT) are sufficient to assure compliance with that standard or requirement. Applicable requirements undergo this review when the requirement changes to ensure consistent application of MRRT sufficient to assure compliance for all permits that contain the applicable requirement. In the case where additional monitoring has been determined necessary, this monitoring is included in the Additional Monitoring Summary attachment of the permit and the rationale for such monitoring is included in the Statement of Basis document.

As required in the General Terms and Conditions, ConocoPhillips maintains a copy of the permit along with records containing the information and data (gathered through monitoring) sufficient to demonstrate compliance with the permit, including production records and operating hours. The Maximum Allowable Emission Rate Limits were calculated using the maximum firing rate, the heating value of the fuel (the value is looked up from a table) an emission factor taken from AP-42, Chapter 1, or provided by the vendor. The monitored fuel flow rate, with the heating value of the fuel and the factor that was used to calculate the maximum allowable emission rate, is used to calculate the actual emission rate to demonstrate compliance, unless a continuous emissions monitoring system (CEMS) is utilized.

Texas Health and Safety Code (THSC) § 382.016 authorizes the TCEQ to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants from a source. Similarly, 30 TAC § 116.111(a)(2)(B) states that, “the proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the Executive Director. This may include the installation of sampling ports on exhaust stacks ...” It is clear that the state rules do not require CEMS for every type of air pollutant compound emitted.

ConocoPhillips’ permit, consistent with 40 CFR Part 70, includes sufficient monitoring in the terms and conditions, and no emission unit specific additional monitoring are required. This permit demonstrates compliance to the applicable state and federal requirements.

COMMENT 7: Commenter states the Special Condition relating to stationary vents fails to assure compliance because it lists several provisions applicable to certain stationary vents but does not identify the specific emissions units to which these provisions apply. Under the Special Terms and Conditions provisions of the draft Title V permit, the condition on page 7 relating to stationary vents requires that “stationary vents with a flow rate of less than 100,000 actual cubic feet per minute and constructed after January 31, 1972,” must comply with identified provisions of 30 TAC Chapter 111 of the Texas SIP. However, there is no identification of the specific stationary vents that are subject to those requirements.

Commenter states that the Special Condition fails to meet the requirement of 40 CFR § 70.6(a)(1), in that the condition lacks the specificity to ensure compliance with the applicable requirements associated with unidentified emissions units. The Statement of Basis document for the draft Title V permit does not provide the legal and factual basis for the Special Condition relating to stationary vents as required by 40 CFR § 70.7(a)(5). Commenter requests that TCEQ revise the Special Condition relating to stationary vents of the draft Title V permit to list the specific stationary vents that are subject to the specified requirements of 30 TAC Chapter 111 and provide an explanation in the Statement of Basis for the legal and factual basis for this Special Condition.

RESPONSE 7: The EPA has previously supported the practice of not listing emission units in the permit that only have site-wide or “generic” requirements. See White Paper for Streamlined Development of Part 70 Permit Applications, July 10, 1995. The ED documented in the draft FOP that the Chapter 111 visible emission requirements for stationary vents were site-wide requirements - applying uniformly to the units or activities at the site. Because the applicant indicated in its application that only the Chapter 111 site-wide requirements apply to these stationary vents and other sources, the applicant is not required to list these smaller units individually in the unit summary, and therefore, these emission units did not appear in the applicable requirements summary table in the draft FOP.

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

However, the ED does agree that the FOP could be revised to more clearly group stationary vents according to which opacity limit applies. The site has vents that are subject to the 30% opacity requirement of 30 TAC § 111.111(a)(1)(A) and are identified by emission point identification number (EPN) in the Applicable Requirement Summary. Vents with a flow rate greater than or equal to 100,000 acfm are subject to 15% opacity and are identified in the Applicable Requirements Summary. All other vents at the site are subject to 20% opacity, as noted in the revised Special Condition 3.A., which is a site-

wide term and condition, as allowed in the *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995.

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

COMMENT 8: Commenter states that the draft revised permit and Statement of Basis provide no evidence that TCEQ ever conducted an appropriate case-by-case MACT determination of emission limits for HAPs for applicable industrial boilers and process heaters. The Title V permit should include emission limits and monitoring requirements for HAPs for each of the industrial boilers and process heaters at the facility. Section 112 of the Clean Air Act (CAA) requires owners/operators of major sources with industrial boilers and process heaters to submit permit applications complying with the National Emission Standards for Hazardous Pollutants (NESHAPs) which reflect the maximum degree of HAP emissions reductions achievable (commonly referred to as the “MACT standards”).

ConocoPhillips is a major source of HAPs as stated in the Statement of Basis. The draft revised permit lists many emissions units that are either industrial boilers or process heaters subject to the NESHAPs that may be subject to a case-by-case MACT analysis.

Commenter states that the Title V permit must contain a schedule of compliance to incorporate the case-by-case MACT analysis and emission limits for HAPs from heaters and boilers as required by section 112(j) of the Clean Air Act.

RESPONSE 8: The TCEQ has received no guidance from the EPA regarding how EPA interprets the requirements of FCAA, §§ 112(g) and (j) to apply when MACT standards are vacated. Since EPA has not addressed the consequences of these court decisions in either rulemaking or guidance, these decisions have resulted in confusion about how, and when, states must implement FCAA, §§ 112(g) and (j). If EPA has failed to promulgate a MACT, then states are obligated to provide case-by-case MACT for major sources of hazardous air pollutants under FCAA, §§ 112(g) and (j).

Until EPA issues guidance, or there is further court action to clarify these federal requirements, the Air Permits Division (APD) encourages all regulated entities to review their potential applicability under FCAA, §§ 112(g) or (j), and assess their options under FCAA, §§ 112(g) and (j), in accordance with EPA regulations under 40 CFR Part 63.

EPA promulgated final rules for 40 CFR Part 63, Subpart DDDDD (boiler MACT) on March 21, 2011 (76 FR 15608 and 76 FR 15704). Subsequently, EPA issued a stay to delay the effective date of the boiler MACT on May 18, 2011 (76 FR 28662). The U.S. District Court vacated EPA’s delay notice on January 9, 2012.

Special Term and Condition 1.L. was added to address the boiler MACT applicability. ConocoPhillips will submit a revision application to codify the specific 40 CFR Part 63, DDDDD monitoring, recordkeeping, and reporting requirements upon the compliance date of the regulation.

COMMENT 9: Commenter states that the draft revised permit or PSDTX103M3, incorporated by reference, does not include any applicable standards or limitations for PM_{2.5}. The Statement of Basis does not explain the omission of PM_{2.5} limitations. Commenter claims that state permitting agencies and applicants may no longer proceed

on the assumption that PM₁₀ is always a reasonable surrogate for PM_{2.5}. EPA Region 6 has reaffirmed this policy in objection letters to two proposed Texas Title V permits.

Commenter states that TCEQ should require the applicant to revise the draft revised permit to address PM_{2.5} emissions. The additional information should either address PM_{2.5} directly or show how compliance with the PSD requirements for PM₁₀ will serve as an adequate surrogate for meeting the PSD requirements for PM_{2.5}.

RESPONSE 9: NSR permit 5920A/PSDTX103M4 was renewed and amended on December 29, 2010. A PSD review and modeling analysis was performed for PM_{2.5} impacts. The PSD permit contains PM_{2.5} emission limits in the MAERT table and is now incorporated in Appendix B of the proposed permit.

COMMENT 10: Commenter states that terms from a 2005 ConocoPhillips Consent Decree, filed with the U.S. District Court for the Northern District of Illinois, as well as two stipulated non-material modifications to the 2005 Consent Decree that are binding upon the Sweeny Refinery facility are applicable requirements that must be included in a ConocoPhillips' revised Title V permit.

Commenter states that the draft permit must be revised to (1) include reference to all applicable conditions of the consent decree and specifically include any emissions limitations and (2) include a compliance schedule to meet the requirements pursuant to 40 CFR §§ 70.6(c)(3) and 70.5(c)(8)(iii)(C).

RESPONSE 10: The ED respectfully disagrees with the commenter's interpretation of the Federal Clean Air Act (FCAA), Title V, and the implementing regulation, 40 CFR Part 70 regarding this issue. Neither Title V of the FCAA or the implementing regulation, 40 CFR Part 70, include as part of the definition of "applicable requirement" consent decrees or other enforcement mechanisms such as Agreed Orders. As a result, the EPA-approved operating permits program in Texas does not specify that consent decrees or other enforcement mechanisms are "applicable requirements." Instead, as required in 40 CFR § 70.6(c), a schedule of compliance consistent with the requirements of 40 CFR § 70.5(c)(8) is required to be included in the permit when sources are not in compliance. For each applicable requirement, the schedule must "resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject." Since consent decrees are not "applicable requirements" under 30 TAC Chapter 122 or 40 CFR Part 70, there is no requirement to include consent decree obligations in the Federal Operating Permit. Additionally, where a company did not admit to noncompliance in a consent decree, there is no determination that noncompliance existed upon which to require a "schedule of compliance" under either 30 TAC Chapter 122 or 40 CFR §§ 70.5(c)(8) or 70.6(c).

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

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

COMMENT 1: Objection to the incorporation by reference of PSD Permit. The *New Source Review Authorization References* table of the draft Title V permit incorporates PSD-TX-103M3, amended on September 14, 2006, by reference. EPA has discussed the issue of incorporation by reference in *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program* (March 5, 1996)(*White Paper 2*). As EPA explained in *White Paper 2*, incorporation by reference may be useful in many instances, though it is important to exercise care to balance the use of incorporation by reference with the obligation to issue permits that are clear and meaningful to all affected parties, including those who must comply with or enforce their conditions. *Id.* at 34-38. See also *In the Matter of Tesoro Refining and Marketing*, Petition No. IX-2004-6 at 8 (March 15, 2005)(*Tesoro Order*). As EPA noted in the *Tesoro Order*, EPA's expectations for what requirements may be referenced and for the necessary level of detail are guided by Sections 504(a) and (c) of the CAA and corresponding provisions at 40 CFR § 70.6(a)(1) and (3). *Id.* Generally, EPA expects that Title V permits will explicitly state all emission limitations and operational requirements for all applicable emission units at a facility. *Id.* We note that the TCEQ's use of incorporation by reference for emissions limitations from minor NSR permits and Permits by Rule is currently acceptable. See 66 Fed. Reg. 63318, 63324 (Dec. 6, 2001); see also, *Public Citizen v. EPA*, 343 F.3d 449, at 460-61 (5th Cir. 2003)(upholding EPA's approval of TCEQ's use of incorporation by reference for Texas's limited use of incorporation by reference of emissions limitations from minor NSR permits and Permits by Rule).¹ In approving Texas' limited use of incorporation by reference of emissions limitations from minor NSR permits and Permits by Rule, EPA balanced the streamlining benefits of incorporation by reference against the value of a more detailed Title V permit and found Texas' approach for minor NSR permits and Permits by Rule acceptable. See *Public Citizen*, 343 F.3d , at 460-61. EPA's decision approving this use of IBR in Texas' program was limited to, and specific to, minor NSR permits and Permits by Rule in Texas. EPA noted the unique challenge Texas faced integrating requirements from these permits into Title V permits. See 66 Fed. Reg. at 63,326; 60 Fed. Reg. at 30,039; 59 Fed. Reg. 44572, 44574. EPA did not approve (and does not approve of) TCEQ's use of incorporation by reference of emissions limitations for other requirements. See *In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02 at 5 and *In the Matter of CITGO Refining and Chemicals Co.*, Petition No. VI-2007-01 at 11. Pursuant to 40 CFR §70.8(c)(1), EPA objects to the issuance of the Title V permit because it fails to include emission limitations and standards as necessary to assure compliance with all applicability requirements. See 40 CFR § 70.6(a)(1). In response to this objection, TCEQ must include (as conditions of the Title V permit) all the emission limitations and standards of PSD-TX-103M3 necessary to ensure compliance with all applicable requirements. Alternatively, TCEQ could include a specific condition for each emissions unit to reference the exact provisions of PSDTX103M3 that contain the emission limitations and standards reflecting the applicable requirements for that unit and then physically attach a copy of PSDTX103M3 to the Title V permit. Thus, the Title V permit would contain all the emission limitations (including the MAERT) and standards of the PSD permits with a special condition for

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

each emissions unit directing the reader to the specific location in the attached PSD permit containing the applicable requirements for that unit.

RESPONSE 1: In response to EPA's objection, the ED has revised FOP No. O1626 to include, in Appendix B of the permit, a "crosswalk" table for NSR permits at the site. This table was developed by ConocoPhillips Company. 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.

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

As a result of Texas' initial exclusion of minor NSR as an applicable requirement of the Texas Operating Permit program, and EPA's final interim approval of a program that provided for a phase-in of minor NSR requirements using incorporation by reference, EPA was sued by various environmental groups. See *Public Citizen, Inc. v. U.S. E.P.A.*, 343 F.3d 449 (5th Cir. 2003). The petitioner's brief raised several issues, including the use of incorporation by reference of minor NSR, because the exclusion of minor NSR as an applicable requirement was a program deficiency identified by EPA. The petitioner's

brief acknowledges that Texas' Operating Permit program incorporates all preconstruction authorizations by reference, through the use of a table entitled "Preconstruction Authorization References." The Petitioner's brief includes an example of this table, which clearly contains sections for Prevention of Significant Deterioration (PSD), nonattainment (NA), 30 TAC Chapter 116 Permits, Special Permits and Other Authorizations, and Permits by Rule under 30 TAC Chapter 106. See Brief of Petitioners, p. 30. The brief goes on to discuss the sample permit, Permit No. O-00108, which documents "six different minor NSR authorizations and one PSD permit" requiring one to look at each of the underlying permits in addition to the Title V permit. The Department of Justice (DOJ), in its reply brief for EPA, responded to this allegation of improper use of IBR in the context of the specific allegation whether "EPA reasonably determined that Texas corrected the interim deficiency related to minor new source review", answering unequivocally "yes". "Nothing in the statute or regulations prohibits incorporation of applicable requirements by reference. The Title V and Part 70 provisions addressing the content of Title V permits specify what Title V permits 'shall include,' but do not speak to how the enumerated items must be included." See, Brief of Respondents, pp. 25-26. The Court did not distinguish between minor and major NSR when concluding that IBR is permissible under both the CAA and Part 70.

Thus, it is the ED's position that incorporation by reference of both major and minor NSR permits is acceptable and was fully approved by EPA. However, given EPA's differing opinion, as reflected in the Premcor and CITGO orders, this objection, and the June 10, 2010 letter from EPA Region VI regarding this issue, the ED has revised FOP No. O1626 to include, in Appendix B of the permit, a "crosswalk" table of NSR Permit, which was initially suggested by EPA as adequate to resolve this objection. Inclusion of the major NSR permits and the "crosswalk" table 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.

COMMENT 2: Under the *General Terms and Conditions* provision of the draft Title V permit, reference is made to 30 TAC § 122.144 of the Texas FOP program which requires records be kept for 5 years; however, Special Condition 5(F) of NSR permit No. 5920A and PSDTX103M3 (revised April 30, 2008) only requires records to be kept for two years. This condition is inconsistent with the 5 year recordkeeping requirements of 40 CFR § 70.6(a)(3)(ii)(B) and cannot be carried forward into the Title V permit. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit since the recordkeeping requirements of NSR Permit No. 5920A and PSDTX103M3 are not in compliance with the requirements of 40 CFR § 70.6(a)(3)(ii)(B). In response to this objection, TCEQ must revise the Title V permit to include a condition that states that records of monitoring data and supporting information must be maintained for a minimum of five years from the date of monitoring, notwithstanding the requirements of any other permit conditions or applicable requirements.

RESPONSE 2: The TCEQ requires five-year recordkeeping for all FOPs. Pursuant to 30 TAC §122.144(1), all records of required monitoring data and other permit support information must be kept for a period of five years from the date of the monitoring report, sample, or application unless a longer data retention period is specified in an applicable requirement. This is consistent with the recordkeeping requirements of 40 CFR § 70.6(a)(3)(ii)(B). The requirements of 30 TAC § 122.144(1) have been and will continue to be incorporated for all FOPs through the general terms and conditions of the FOP, which specifically require "The permit holder shall comply with all terms and conditions contained in 30 TAC § 122.143 (General Terms and Conditions), 30 TAC §

122.144 (Recordkeeping Terms and Conditions), and 30 TAC § 122.146 (Compliance Certification Terms and Conditions).” These requirements were (and still are) also reiterated on the cover page of the FOP.

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

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

RESPONSE 3: The EPA has previously supported the practice of not listing emission units in the permit that only have site-wide or “generic” requirements. See White Paper for Streamlined Development of Part 70 Permit Applications, July 10, 1995. The ED documented in the draft FOP that the Chapter 111 visible emission requirements for stationary vents were site-wide requirements - applying uniformly to the units or activities at the site. Because the applicant indicated in its application that only the Chapter 111 site-wide requirements apply to these stationary vents and other sources, the applicant is not required to list these smaller units individually in the unit summary, and therefore, these emission units did not appear in the applicable requirements summary table in the draft FOP.

With regard to stationary vents, there are three basic opacity requirements in 30 TAC § 111.111 that may apply, depending upon specific applicability criteria. Stationary vents constructed on or before January 31, 1972 must meet the requirements of 30 TAC § 111.111(a)(1)(A), which states that opacity shall not exceed 30% averaged over a six-minute period. Stationary vents constructed after January 31, 1972 must meet the requirements of 30 TAC § 111.111(a)(1)(B), which states that opacity shall not exceed 20% averaged over a six-minute period. Lastly, stationary vents where a total flow rate is

greater than or equal to 100,000 actual cubic feet per minute (acfm) may not exceed 15% opacity averaged over a six minute period, unless that source has an installed optical instrument capable of measuring opacity that meets specified requirements, specified in 30 TAC § 111.111(a)(1)(C). Subsection 111.111(b) merely states that any of the emission units subject to section 111.111 (for this permit area, this would include all stationary vents and gas flares) shall not include contributions from uncombined water in determining compliance with this section.

However, the ED does agree that the FOP could be revised to more clearly group stationary vents according to which opacity limit applies. The site has vents that are subject to the 30% opacity requirement of 30 TAC § 111.111(a)(1)(A) and are identified by emission point identification number (EPN) in the Applicable Summary table. All other vents at the site are subject to 20% opacity, as noted in the revised Special Condition 3, which is a site-wide term and condition, as allowed in the White Paper for Streamlined Development of Part 70 Permit Applications, July 10, 1995.

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

COMMENT 4: TCEQ prepared a Statement of Basis (SOB) for the draft Title V permit which states that this is a significant revision. The SOB does not list any other FOPs at the refinery. The SOB gives a list of permit revisions. The list gives emission unit numbers, but fails to provide information on the permit the unit is authorized under. The SOB needs to be clear when an incorporated permit is removed or altered in a way that affects the Title V permit. The *Permit Area Process Description* of the SOB states “Selected Refinery Units - See application for full description.” Is the application available to the public as part of the public docket for comment? Since the Sweeny Refinery has no other FOP, the SOB should explain why any units are being excluded from the Title V permit, and how those other units are operated. Pursuant to 40 CFR § 70.7(a)(5), the statement of basis must set forth the legal and factual basis for the draft permit conditions (including reference to the applicable statutory or regulatory provisions). As indicated in previously issued EPA orders in response to petitions to review Title V permits, the SOB serves to highlight elements that EPA and the public would find important to review (*See, e.g., In the Matter of Bristol-Myers Squibb Co, Inc.*, Petition No. II-2002-09, February 18, 2005). Therefore, pursuant to 40 CFR § 70.8(c)(1), EPA must object to the issuance of this Title V permit because the SOB fails to meet the requirements of 40 CFR § 70.7(a)(5). In order to respond to this objection, the SOB must be revised to include a discussion of the process units that are in the Title V permit, the changes being made to FOP No. O1626 since its last revision or amendment, and the rationale for all monitoring for all the applicable requirements in the PSD permit, minor NSR permits, standard permit, and PBR authorizations. The SOB should also address the changes that have been made to the incorporated permits as stated in Additional Concern Number 3 below.

RESPONSE 4: The ED respectfully disagrees that EPA has the authority to object to a proposed draft permit based on the content of a statement of basis, which is not legally a part of the proposed draft permit. In accordance with 30 TAC § 122.350, EPA Review, the EPA may only object to a proposed *permit* that is not in compliance with the applicable requirements or the requirements of Chapter 122. This requirement reiterates the requirements of Federal Clean Air Act, § 505(b) and 40 CFR § 70.8(c), which limits EPA’s authority to object to the *proposed permit* by their specific language. Thus, this objection is not a valid objection under either Texas’ EPA-approved Title V program, 40 C.F.R. Part 70 or the Federal Clean Air Act.

The ED's intent was not to exclude any emission units from the process description when a summary of the major processes was included in the Statement of Basis. For brevity, the Statement of Basis was updated to provide a concise summary of the processes at the Sweeny Refinery.

The Statement of Basis includes all changes made to the Title V permit as part of the significant permit revision application under the summary of revision section. Furthermore, a statement has been added to the Statement of Basis that a monitoring sufficiency determination has been made for the Sweeny Refinery site. There is no requirement under the CAA or 40 CFR Part 70 that the SOB include a discussion of monitoring rationale for all applicable requirements, or that the SOB include a discussion of the kind of revision procedure required by any permit change.

COMMENT 5: On January 27, 2005, a Consent Decree was lodged in federal court resolving alleged violations of the federal Clean Air Act at several of ConocoPhillips refineries, including the Sweeny Refinery. See *United States v. ConocoPhillips Company*, Civ. H-05-0258. The Consent Decree requires ConocoPhillips to effect changes to its operations in accordance with an agreed upon schedule and to incorporate those changes into federally enforceable permits, including Title V permits. Since the changes extend into the future, the CAA-related requirements of the Consent Decree must be included in the Title V permit and reflected in the Title V permit's Compliance Schedule. See *In the Matter of CITGO Refining and Chemicals Co.*, Petition No. VI-2007-01 at 12-14. 40 CFR § 70.6(c)(3) requires Title V permits to contain "[a] schedule of compliance consistent with § 70.5(c)(8)." In turn, 40 CFR § 70.5(c)(8) requires, among other things, that compliance schedules "shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject." 40 CFR § 70.5(c)(8)(iii)(C). The Compliance Schedule in the draft Title V permit is deficient because it fails to reference any of the requirements of the Consent Decree for actions and dates that extend into the future. Pursuant to 40 CFR § 70.8(c)(1), EPA must object to the issuance of this permit because the compliance schedule in the Title V permit fails to meet the requirements of 40 CFR § 70.6(c)(3) and 40 CFR § 70.5(c)(8). In response to this objection, TCEQ must revise the Title V permit to include a compliance schedule that meets the requirements of the 40 CFR § 70.6(c)(3) and 40 CFR § 70.5(c)(8). In addition, TCEQ must review the incorporated minor NSR permits to ensure that the CAA-related requirements of the Consent Decree have been appropriately incorporated therein.

RESPONSE 5: The ED respectfully disagrees with the EPA's interpretation of the FCAA, Title V, and the implementing regulation, 40 CFR Part 70 regarding this issue. Neither Title V of the FCAA or the implementing regulation, 40 CFR Part 70, include as part of the definition of "applicable requirement" consent decrees or other enforcement mechanisms such as Agreed Orders. As a result, the EPA approved operating permits program in Texas does not specify that consent decrees or other enforcement mechanisms are "applicable requirements." Instead, as required in 40 CFR § 70.6(c), a schedule of compliance consistent with the requirements of 40 CFR § 70.5(c)(8) is required to be included in the permit when sources are not in compliance. For each applicable requirement, the schedule must "resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject." Since consent decrees are not "applicable requirements" under 30 TAC Chapter 122 or 40 CFR Part 70, there is no requirement to include consent decree obligations in the Federal Operating Permit. Additionally, where a company did not admit to noncompliance in a consent decree, there is no determination that

noncompliance existed upon which to require a “schedule of compliance” under either 30 TAC Chapter 122 or 40 CFR §§ 70.5(c)(8) or 70.6(c).

The specific consent decree that applies to CITGO, in case no. H-04-3883, U.S. District Court for the Southern District of Texas contains specific provisions regarding the incorporation of consent decree requirements into federally enforceable permits. Section V.N.131 and 132 of the consent decree, pages 108-109 of the consent decree specifically notes that CITGO agreed to incorporate the emission limits and standards required by the Consent Decree (both those effective as of the date of entry of the decree and those effective established by the consent decree after entry of the decree) into federally enforceable air permits other than Title V permits, and then to file any applications necessary to incorporate the requirements of those permits into the Title V permits of the covered refineries (emphasis added). Section V.N.133, Mechanism for Title V Incorporation, specifically requires that the incorporation of the consent decree requirements shall be in accordance with state Title V rules, including applicable administrative amendment provisions of such rules (emphasis added). The consent decree also specifically notes on page 3 of the decree that CITGO denies that it has violated and/or continues to violate the alleged statutory, regulatory, SIP provisions and other state and local rules, regulations and permits incorporating and implementing the noted federal requirements at issue in the consent decree. Therefore, by its own terms the consent decree does not establish that CITGO was or is out of compliance with respect to the noted requirements.

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

ConocoPhillips provided a list of consent decree requirements which is included in the permit attachments.

COMMENT 6: Special Condition 22 of the draft Title V permit states that the permit holder shall certify compliance with all terms and conditions. The compliance certification requirements for Title V permits are stated in 40 CFR § 70.6(c)(5). Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because Special Condition 22 of the draft renewal does not meet the regulatory requirements. In response to this objection, TCEQ must amend Special Condition 22 to include all the requirements for compliance certifications, as set forth in 40 CFR § 70.6(c)(5), including the identification of the methods or other means for determining the compliance status with each term and condition of the permit.

RESPONSE 6: The ED does not agree that Special Condition 22 of the draft permit needs to be revised. Special Condition 22 of the draft permit is in compliance with the specific requirements of the EPA approved Federal Operating Permit program, as found in 30 TAC Chapter 122. Specifically, § 122.146(5), requires the annual compliance certification to include or reference the specified elements, including: the identification of each term or condition of the permit for which the permit holder is certifying compliance, the method used for determining the compliance status of each emission unit, and whether such method provides continuous or intermittent data; for emission units addressed in the permit for which no deviations have occurred over the

certification period, a statement that the emission units were in continuous compliance over the certification period; for any emission unit addressed in the permit for which one or more deviations occurred over the certification period, specific information indicating the potentially intermittent compliance status of the emission unit; and the identification of all other terms and conditions of the permit for which compliance was not achieved. All permit holders are required to comply with the requirements of 30 TAC § 122.146, as well as all other rules and requirements of the commission.

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

However, in order to help clarify any confusion, the term has been revised to read as follows:

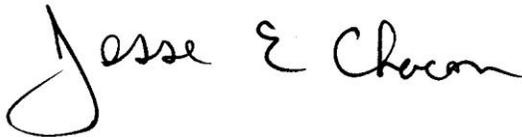
The permit holder shall certify compliance in accordance with 30 TAC § 122.146. The permit holder shall comply with 30 TAC § 122.146 using at a minimum, but not limited to, the continuous or intermittent compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other credible evidence or information. The certification period may not exceed 12 months and the certification must be submitted within 30 days after the end of the period being certified.

COMMENT 7: The draft Title V permit includes a "Permit Shield" attachment that covers many "grandfather" facilities, and TCEQ's statement of basis (SOB) includes statements that a specific facility was constructed before a certain date. EPA has previously objected to negative applicability determinations based on blanket statements on "grandfathered" units claiming that no modifications have occurred that triggered PSD, NSR or a modification subject to NSPS applicability (*See, e.g.*, letter from Kerrigan G. Clogh, Assistant Regional Administrator, EPA, Region 8 to the Colorado Department of Public Health and Environment, Re: EPA Review of Proposed Title V Operating Permit for TriGen-Colorado Energy Corporation, dated September 13, 2000 ("TriGen Objection"). Similar blanket statements such as those contained in the draft Title V permit and the accompanying SOB do not meet the permit shield requirements of 40 CFR § 70.6(f). Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because the permit shield provisions of the draft Title V permit are not supported by an adequate determination that meets the requirements of 40 CFR § 70.6(f), as further explained in the TriGen Objection referenced above. In response to this objection, TCEQ must provide an adequate demonstration consistent with the requirements described above or delete the permit shield requirements in the Title V permit.

RESPONSE 7: The ED disagrees that the permit shield does not meet the requirements of 40 CFR § 70.6(f). Special Condition 25 was drafted in compliance with the requirements of the EPA approved federal operating permit program for the State of Texas, 30 TAC Chapter 122. Section 122.142(f), Permit Content Requirements, clearly allows the ED discretion to grant a permit shield for specific emission units at the request of an applicant. Additionally, § 122.148, Permit Shield, provides the requirements for the exercise of discretion by the ED, including that specific information be submitted by the applicant, in addition to other requirements. The ED determined that the application information submitted by ConocoPhillips Company and certified by a responsible official was sufficient to grant the permit shield.

Furthermore, the permit shield as listed in FOP O1626 provides a “concise summary” of the negative applicability determination for each regulation that may potentially apply to emission units listed in the Permit Shield table as required by 40 CFR § 70.6(f)(1)(ii). This concise summary contains both the determination and the relevant facts upon which the determination was based, as supported by a certification by the responsible official as to the truth, accuracy and completeness of the facts for which the responsible official is liable both civilly and criminally. The SOB notes that a permit shield was requested and granted, and contains the complete table of permit shields from the permit. The ED has thus exercised his discretion, as allowed under the EPA approved operating permit program for the State of Texas, and the permit shield thus is not an unsupported or unenforceable “blanket statement”. The ED is aware of no provision in 40 CFR Part 70 stating that a permit shield cannot be granted based on certified representations regarding construction, modification, or reconstruction date information.

Respectfully submitted,

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

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