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

December 12, 2012

MR ARTHUR LOUDON
VICE PRESIDENT AND GENERAL MANAGER
CORPUS CHRISTI REFINERY
CITGO REFINING AND CHEMICALS COMPANY LP
PO BOX 9176
CORPUS CHRISTI TX 78469-0321

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment
Renewal
Permit Number: O1420
CITGO Refining and Chemicals Company, LP
Corpus Christi Refinery West Plant
Corpus Christi, Nueces County
Regulated Entity Number: RN102238799
Customer Reference Number: CN600127922
Account Number: NE-0192-F

Dear Mr. Loudon:

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 October 29, 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 December 18, 2012 the proposed permit is subject to an EPA review for 45 days, ending on February 1, 2013.

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,

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

JEC/am

cc: Mr. Eric Bigelow, Environmental Advisor, CITGO Refining and Chemicals Company, LP, Corpus Christi
Air Section Manager, Region 14 - Corpus Christi
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas (Electronic copy)

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

Project Number: 14422

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

December 12, 2012

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

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment
Renewal
Permit Number: O1420
CITGO Refining and Chemicals Company, LP
Corpus Christi Refinery West Plant
Corpus Christi, Nueces County
Regulated Entity Number: RN102238799
Customer Reference Number: CN600127922
Account Number: NE-0192-F

Dear Environmental Integrity Project:

The Texas Commission on Environmental Quality (TCEQ) executive director's proposed final action is to submit a proposed federal operating permit (FOP) to the U.S. Environmental Protection Agency (EPA) for review. Prior to taking this action, all timely public comments have been considered. In addition, TCEQ received a letter from EPA dated October 29, 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 have been made to the permit since commencement of the public notice period. A detailed explanation of all changes is contained in the statement of basis.

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Sincerely,

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

JEC/AM/am

cc: Mr. Eric Bigelow, Environmental Advisor, CITGO Refining and Chemicals Company, LP, Corpus Christi
Air Section Manager, Region 14 - Corpus Christi
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas (Electronic copy)

Enclosures: Executive Director's Response to Public Comment

Project Number: 14422

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

December 12, 2012

MR BRIAN BURKE
7709 ARMSTRONG DR
CORPUS CHRISTI TX 78413-6213

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment
Renewal
Permit Number: O1420
CITGO Refining and Chemicals Company, LP
Corpus Christi Refinery West Plant
Corpus Christi, Nueces County
Regulated Entity Number: RN102238799
Customer Reference Number: CN600127922
Account Number: NE-0192-F

Dear Mr. Burke:

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 October 29, 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.

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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,

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

JEC/AM/am

cc: Air Section Manager, Region 14 - Corpus Christi
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas
(Electronic copy)

Enclosures: Executive Director's Response to Public Comment

Project Number: 14422

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

December 12, 2012

MR JAMES KLEIN
3501 MONTERREY ST
CORPUS CHRISTI TX 78441-1709

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment
Renewal
Permit Number: O1420
CITGO Refining and Chemicals Company, LP
Corpus Christi Refinery West Plant
Corpus Christi, Nueces County
Regulated Entity Number: RN102238799
Customer Reference Number: CN600127922
Account Number: NE-0192-F

Dear Mr. Klein:

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 October 29, 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 have been made to the permit since commencement of the public notice period. A detailed explanation of all changes is contained in the statement of basis.

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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,

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

JEC/AM/am

cc: Air Section Manager, Region 14 - Corpus Christi
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas
(Electronic copy)

Enclosures: Executive Director's Response to Public Comment

Project Number: 14422

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

December 12, 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
Renewal
Permit Number: O1420
CITGO Refining and Chemicals Company, LP
Corpus Christi Refinery West Plant
Corpus Christi, Nueces County
Regulated Entity Number: RN102238799
Customer Reference Number: CN600127922
Account Number: NE-0192-F

Dear Mr. Edlund:

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 October 29, 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.

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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,

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

JEC/am

cc: Mr. Eric Bigelow, Environmental Advisor, CITGO Refining and Chemicals Company, LP, Corpus Christi
Air Section Manager, Region 14 - Corpus Christi
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas (Electronic copy)

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

Project Number: 14422

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

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. O1420 filed by CITGO Refining and Chemicals Company, LP (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 and hearing requests from Mr. Brian Burke, Mr. James Klein, Mr. Khandeshi Sparsh on behalf of the Environmental Integrity Project, Sierra Club, and Galveston Houston Association for Smog Prevention (GHASP). Mr. Burke later withdrew comments he submitted that were immaterial to this permit application. Lastly, TCEQ also 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 (NSR) 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. CITGO Refining and Chemicals Company, LP applied to the TCEQ for an FOP renewal for the Corpus Christi Refinery West Plant, located in Corpus Christi, Nueces County on November 16, 2009, and notice was published on September 3, 2010 in the *Corpus Christi Caller*. The public comment period ended October 4, 2010. Comments were received from Mr. Brian Burke on September 9 and 13, 2010 and from Mr. James Klein on September 10, 2010. Comments were also received from Mr. Khandeshi Sparsh on October 4, 2010. Finally, the EPA submitted comments in a letter dated October 29, 2010.

Description of Site

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

The following comment was submitted by Brian Burke and James Klein.

COMMENT: I am requesting a public notice and comment hearing for this Federal Operating Permit and application. Corpus Christi is the home to 300,000 people and the 3rd largest petrochemical complex in the United States. Oil refineries like CITGO are major sources of air pollution, more so since TCEQ has historically permitted such polluters without a full count and control of all emission sources. The FOP is essentially a review of three TCEQ permits: 1. 2523A issued 3/5/2008 Port area material handling, 2. 8778A issued3/30/2008 new emission sources added, and 3. 7741A issued 1/11/2008 These permits were issued prior to new rules being promulgated by EPA as noted below. 1. Effective 4/12/10 EPA has issued new rules for lower Nitrogen Dioxide emissions, TCEQ has adopted the rules. 2. Effective 8/23/10 EPA has issues new rules for lower Sulfur Dioxide emissions, TCEQ has adopted the rules. 3. EPA has issued final rules effective 1/2/2001 for lower green house gas emissions, including 1 gas emitted by refineries. TCEQ has contested this action and may refuse to adopt the rules. 4. Effective 9/23/2009, EPA issued new rules disapproving the State Implementation Plan and specifically issuance of Permits for Prevention of Significant Deterioration and Plantwide Applicability Limits (flex permits). TCEQ is adopting revisions to the SIP that will require the permit to account for all emission sources and requirements for Best Available Control Technologies by 12/1/2010. It is not apparent in the application submitted by CITGO that the applicant plans to meet the requirements of the new rules limiting emissions. In addition the application claims that a Non Attainment New Source Review is not applicable. Corpus Christi is close to non attainment for Ozone at .070 PPM and under new EPA guidelines lowering Ozone to .060 to .070 by the end of October the City will soon be declared a non attainment area. Refinery emissions contribute to Ozone. It is imperative for the health of the residents of this shining city by the sea that the CITGO permits adhere to each of the 4 new pollution requirements and a Non Attainment New Source Review. Finally, an independent air monitoring system should be installed by the applicant to guarantee compliance.

RESPONSE: According to Title 30 of the Texas Administrative Code, Section 122.340: "The executive director shall decide whether to hold a hearing. The executive director is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from a site is determined to be unreasonable." The Executive Director (ED) has determined that the comments set forth in the hearing request are related to the underlying NSR permits rather than the renewal application for the Federal Operating Permit. Therefore, the ED has determined not to hold a notice and comment hearing in this case. The ED provides the following responses to the concerns raised in the request.

CITGO was not required to evaluate the impacts of the most recently promulgated 1-hr National Ambient Air Quality Standard (NAAQS) for SO_2 and NO_x during the time of the Title V renewal application as no changes were being proposed to the emission sources at the site. CITGO will be required to demonstrate compliance with the new NAAQS or any other BACT requirements in any subsequent revisions to the underlying NSR permits authorizing emission increases.

On December 30, 2010, EPA issued a Federal Implementation Plan to establish a PSD permitting program in Texas for greenhouse gas (GHG)-emitting sources. (75 Fed.Reg. 82430). EPA is the PSD permitting authority in Texas for major sources of GHG, i.e. those that emit GHG over the tailoring thresholds established by EPA by rule. Under TCEQ rules, GHG are not regulated NSR pollutants.

Texas does not enforce PSD permits issued by EPA for GHG emissions and these PSD permits are not Title V applicable requirements as defined in 30 TAC Chapter 122.

The refinery is located in Nueces county which is currently not a nonattainment area for ozone and therefore CITGO is not required to apply for a nonattainment permit under 30 TAC § 116.150.

The ED does not have the authority to require CITGO to install an independent air monitoring system to guarantee compliance with the terms and conditions of the air permit. The applicable requirements, except for those listed in the Additional Monitoring attachment, in the Title V permit were determined by the ED to have sufficient monitoring to demonstrate compliance with the emissions limits for the emission units at the site. The Additional Monitoring attachment includes compliance assurance monitoring (CAM) for those emission units that meet the applicability criteria of 40 CFR Part 64 and periodic monitoring for those applicable requirements that were determined to have insufficient monitoring. CITGO must certify compliance with the terms and conditions of the Title V permit using the procedures set forth in 30 TAC § 122.146.

The following comment was submitted by EIP on behalf of public comments submitted by Sierra Club, GHASP, and itself.

COMMENT 1: Monitoring Deficiencies

Title V permits must include monitoring requirements that are sufficient to assure compliance with applicable emissions limits and standards. The D.C. Circuit Court of Appeals vacated EPA's rule prohibiting state and local authorities from adding provisions to title V permits if needed to "assure compliance." Sierra Club, et. al., v. EPA, 536 F.3d 673 (D.C. Cir. 2008). The court emphasized that "[e]ach permit ... shall set forth ... monitoring requirements to assure compliance with the permit terms and conditions." Id. at 677 (quoting 42 U.S.C. § 7661c(c)).

Below are several examples of units that have emissions limits but do not have sufficient monitoring requirements. In addition to addressing the lack of adequate monitoring requirements for the units discussed below, TCEQ should conduct a comprehensive review of each emission limit and ensure it has a corresponding monitoring requirement that is adequate to guarantee compliance.

The draft permit does not include sufficient monitoring requirements to ensure flare 573-ME1 is in compliance with applicable VOC limits. The VOC limit requires Flare 573-ME1 to have 90% combustion efficiency. Tex Health & Safety Code Ann. § 115.122(b)(2). The periodic monitoring summary requires CITGO to measure the presence of a pilot flame and the performance requirements of section 115.125(3) require CITGO to operate without visible emissions. Tex. Health & Safety Code Ann. §115.135(3). Several studies have shown that these performance requirements do not guarantee 90% combustion efficiency. Office Of Air Quality Planning And Standards, EPA, Review Of Dial Emission Test Data And A P-42 Emission Estimation Procedures For Bp Petroleum Refinery In Texas City Draft (July 2010). Therefore, TCEQ must require CITGO to implement additional monitoring including but not limited to steam flow/steam ratio monitoring, flare gas composition monitoring, and remote sensing.

The draft permit has omitted Nitrogen Oxide monitoring for 546-H1, 546-H2, 546-H3, 546-H4, 546-H5, 546-H6, 547-H1, 547-H2. The New Source Review Authorizations References by Emissions Unit table provides that NSR authorization 7741A, PSDTX337M1 includes applicable requirements for units 547-H1, 547-H2. The NSR authorization provides an hourly sulfur dioxide and nitrogen oxide limit. See Draft Permit at 150. While the permit includes a continuous monitoring requirement for Sulfur Dioxide, it does not have one for nitrogen dioxide. This is a violation of the title V requirement that the operating permit include adequate monitoring to ensure compliance with emission limits. TCEQ should remedy this by including adding a nitrogen oxide monitoring requirement.

RESPONSE 1: Consistent with 40 CFR Part 70, the CITGO Corpus Christi Refinery West Plant permits include: (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 assurance 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. Additional periodic monitoring was identified for emission units after a review of applicable requirements determined that additional monitoring was required to assure compliance. The Additional Monitoring appears in the Additional Monitoring attachment of the Title V permit. 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, CITGO 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 form 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.

CITGO's permit, consistent with 40 CFR Part 70, includes sufficient monitoring in the terms and conditions and in the Additional Monitoring Summary attachment of the Title V permit for those requirements in the Applicable Requirement Summary that require additional monitoring to satisfy the periodic monitoring requirement of 30 TAC Chapter 122. This permit demonstrates compliance to the applicable state and federal requirements.

The ED does not agree that additional flare monitoring 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.

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 CITGO 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 CFR § 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). Permit O1420 requires the flare 573-ME1 to meet the requirements of 40 CFR § 60.18 in the Applicable Requirements Summary, therefore, the federal operating permit already requires continuous monitoring necessary to assure compliance.

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.

TCEQ cannot require a NOx CEMS in the Title V permit if it is not a requirement for that emission unit based on size and feasibility. For emission units that do not have NO_x CEMS installed, CITGO is keeping records of fuel consumption and emission calculations to demonstrate compliance with the NOx emission limits in the NSR permits.

COMMENT 2: The Incorporation of Emission Limits by Reference is Impermissible

TCEQ's use of incorporation by reference is impermissible. A title V permit must include all applicable federal CAA requirements. A title V permit should serve as a source specific bible for Clean Air Act compliance. *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996). To achieve this goal, the permit should consolidate all the applicable requirements into a single document. See *N.Y. PRIG v. Whitman*, 321 F.3d 316, 320 (2nd

Cir. 2003); 42 U.S.C. § 7661c(a)-(c) (2010); 40 C.F.R. § 70.6(a)(I) (2010). EPA has given clear guidance on how TCEQ can satisfy this requirement: 1) TCEQ can "include (as conditions of the Title V permit) all the emission limitations and standards" of an applicable new source review authorization or, 2) "include a specific condition for each emission unit to reference the exact provision [of the applicable new source review authorization] that contains the emission limitations and standards reflecting the applicable requirements and then physically attach a copy of the [new source review authorization] to the Title V permit." EPA Region 6, *Objection to Title V Permit 01272, Flint Hills Resources L.P., Corpus Christi West Refinery, Nueces County, Texas*, at Sec. 2 (Mar. 26, 2010)[Flint Hill Objection Letter]; EPA Region 6, *Objection to Federal Operating Permit No. 01626, Conoco Phillips Company, Sweeny Refinery, Brazoria, Texas*, at Sec. 1 (Jan. 8 2010) [ConocoPhillips Objection Letter].

We urge TCEQ to include all emission limits and standards of an applicable new source review authorization in the actual title V permit. While EPA has allowed a second option, we believe this creates a confusing title V permit and has caused TCEQ to omit required monitoring provisions. As discussed in the monitoring deficiencies section above, there appear to be no monitoring requirements for nitrogen oxides from 546-H1, 546-H2, 546-H3, 546-H4, 546-H5, 546-H6, 547-H1, 547-H2. Had TCEQ included the requirements for these limits in the applicable requirements summary table, the lack of monitoring requirements would have been apparent immediately and TCEQ could have remedied this problem before issuing the draft permit. Instead, this omission went undetected. Therefore, to avoid preventable omissions, TCEQ should include all emission limits and standards of an applicable new source review authorization in the actual title V permit.

If TCEQ insists on including the applicable new source review requirements by reference, notwithstanding the drawbacks described above, TCEQ must include a specific condition for each emission unit that references the *exact* provision and standards reflecting the applicable requirements. *See* Flint Hills Objection Letter at Sec. 2; ConocoPhillips Objection letter at Sec. 1. The draft CITGO permit No. 01420 does not satisfy this requirement. Instead, TCEQ has incorporated all New Source Review Authorizations by incorporation using a single special condition stating New Source Review Authorization requirements "are incorporated by reference into this permit as applicable requirements." CITGO Draft Permit at special condition 15. This does not satisfy EPA's requirement that TCEQ include a specific condition for each emission unit to reference the exact provision that contains the emission limit. TCEQ has also included a table of each emission unit and the applicable new source review authorization number as an attachment to the permit. CITGO Draft Permit at 121. But this is not sufficient. First the table is not a list of specific conditions. Second, the table does not reference the exact provision of the applicable new source review authorization.

RESPONSE 2: The ED respectfully disagrees with EIP's interpretation of its approval of Texas's operating permit program on this issue. The federally approved operating permit program for Texas has allowed for applicable requirements to be incorporated by reference into the FOP since 1996. See Final Interim Approval, 61 Fed. Reg. 32693, June 25, 1996; Final Full Approval, 66 Fed. Reg. 63318, December 6, 2001; and Final Approval of Resolution of Deficiency, 70 Fed. Reg. 16134, March 30, 2005. Title 30 TAC §122.142 states that the operating permit shall contain the specific regulatory citations in each applicable requirement identifying the emission limitations and standards. Additionally, EPA discussed the use of incorporation by reference in the preamble to the final Part 70 rule, discussing the requirements of § 70.6, Permit Content, stating:

> "Section 70.6(a)(1)(i) requires that the permit reference the authority for each term and condition of the permit. Including in the permit legal citations to provisions of the Act is critical in defining the scope of the permit shield, since the permit shield, if granted, extends to the provisions of the Act included in the permit. Including the legal citations in the permit will also ensure that the permittee, the permitting authority, EPA, and the public all have a common understanding of the applicable requirements included in the permit. This requirement is satisfied by citation to the State regulations or statutes which make up the SIP or implement a delegated program." See 57 Fed. Reg. 32250, 32275 July 21, 1992.

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

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

Thus, it is the ED's position that incorporation by reference of both major and minor NSR permits is acceptable and was fully approved by EPA. However, given EPA's differing opinion, as reflected in the Premcor and CITGO orders, this comment, and the June 10, 2010 letter from EPA Region VI regarding this issue, the ED has revised FOP No. O1420 to include, in Appendix B of the permit, a "Major NSR Summary" table, which was initially suggested by EPA as adequate to resolve this issue. Inclusion of the major NSR permits and the "Major NSR Summary" table as an appendix addresses EPA's comment and ensure that the Title V permit is clear and meaningful to all affected parties. EPA has approved this method to resolve IBR of major NSR permits in a letter dated August 22, 2012.

COMMENT 3: The draft renewal permit impermissibly incorporates permits by rule. The draft renewal permit impermissibly incorporates numerous permit by rule (PBR) authorizations, the text of which do not appear in the draft renewal or its statement of basis.

Although TCEQ currently allows major sources to authorize emissions through PBRs, EPA has stated that it was approving the use of PBRs only for non-major facilities. See EPA's approval of Texas' general PBR provisions into the SIP. 68 Fed. Reg. 64543, 64544 (Nov. 14, 2003).

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

The Clean Air Act requires SIPs to include provisions for regulating the modification and construction of stationary sources as necessary to assure compliance with the NAAQS. 42 U.S.C. §§ 7410(a)(2)(A)-(C). Texas PBRs must, therefore, include provisions to assure such compliance, including provisions making the permits practicably enforceable. EPA, however, has repeatedly notified Texas that its existing PBRs are inconsistent with the approved SIP and EPA policy and do not assure compliance. PBRs cannot be used to authorize emissions from major sources, cannot be used to amend individual permits, must be source specific and must not be incorporated into the proposed renewal draft. If PBRs are incorporated into this Title V permit in the way suggested by the draft permit, air quality will be jeopardized, public participation will be thwarted. Furthermore, this incorporation conflicts with Texas' statutory law, EPA guidance and EPA action on Texas' and other states' SIPs. Specific problems with the incorporation of PBRs into the Title V permit include the following:

• Interference with attainment or maintenance of the NAAQS. In order to assure protection of the NAAQS, Texas' PBR program must include a mechanism for denying PBR authorizations for cause. CAA § 110(a)(2)(c); 40 C.F.R. § 51.160. There must be preauthorization review of applications for coverage under individual PBRs to assure the emissions authorized by PBRs will not contribute to violations of control strategies or

interfere with attainment or maintenance. See 71 Fed. Reg. 14439, 14441 (March 22, 2006) ("EPA proposes a conditional approval because this rule, as adopted by the Missouri Air Conservation Commission on June 26, 2003, does not expressly include a mechanism for pre-construction review of [PBR] applications ...") Texas rules include no provision for pre-construction review of PBR applicability claims.

• Lack of Adequate Public Participation: Because PBRs do not contain detailed provisions relating to emission limits and compliance (these are often found in the registrations, which are submitted after the close of public comment), the public is not given an adequate opportunity to comment when PBR rules are issued. Further, Texas rules expressly require PBRs to be "incorporated" into a facility's permit when the permit is amended or renewed. 30 Tex. Admin. Code § 16.116(d). Texas "incorporation" procedures do not provide adequate public participation or meet other requirements for permit amendments.

To the extent PBRs are used at a major facility, used to amend an individual permit, or are non source category specific, they violate the Texas SIP, EPA policy, and prior SIP decisions. Among other PBRs, the draft renewal permit incorporates, PBRs 106.261, 106.262, 106.263, and 106.264. These particular PBRs do not include specific emission limits and fail to include adequate monitoring and reporting requirements and compliance timeframes that violate EPA guidance and prior SIP approvals. To assure compliance with the Act, CITGO must obtain valid authorizations, such as permit amendments, for any emissions currently authorized through illegal PBRs. Until it does so, CITGO is in ongoing noncompliance with the Clean Air Act and the Title V permit cannot incorporate illegal PBRs.

RESPONSE 3: 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 CITGO'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 CITGO draft Title V permit, these requirements are found in Special Terms and Conditions 16 and 17, 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.

COMMENT 4: TCEQ database lists multiple active permits not mentioned in the draft renewal.
A Title V permit is required to consolidate all applicable federal permit limits. The TCEQ central registry lists two permits that are not included in CITGO's title V permit. It is unclear if these permits were appropriately excluded. The Statement of Basis should discuss the exclusion of these permits.

List of included permits in O1420		
Program	Permit	Status
Air New Source Permits	80810	Active
Air New Source Permits	46180	Active

RESPONSE 4: NSR permit 80810 was issued on August 11, 2010 which occurred shortly before the public notice authorization letter was mailed out on August 19, 2010. This permit was added to the New Source Review Authorization References table in the Title V permit.

46180 is not a NSR permit. This is a PBR registration number for PBRs 106.261 and 106.262 that are already listed in the New Source Review Authorization by References table.

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

COMMENT 1: Objection to the Incorporation by Reference of Consent Decree Requirements - Order Responding to Petitioner's Claim at VI.B.2 and 3.

In the Order, EPA granted Petitioners' claims "regarding the incorporation by reference of the terms of the ... EPA Consent Decree (CD), to the extent the terms of those documents are related to compliance with the CAA and implementing regulations (i.e., CAA-related requirements)." Order at 12.

In the Order, EPA stated that "because CDs ... reflect the conclusion of a judicial or administrative process resulting from the enforcement of "applicable requirements" under the Act, all CAA-related requirements in such CDs ... arc appropriately treated as 'applicable requirements' and must be included in title V permits, regardless of whether the applicability issues have been resolved in the CD." EPA concluded that the "Applicable Requirements Summary" and the "Periodic Monitoring Summary" in the CITGO permit that was the subject of the Order "do not include any reference to the CAA-related requirements contained in the ... CD, and therefore, they are incomplete. " Order at 13.

In reviewing the draft renewal permit, EPA notes that the CD is still in effect, there is no reference to the CD in the applicable requirements summary, and there is no reference to the CD-described alternative monitoring plan for heater No. 527-H2. Therefore, a reference to the CD must be placed in the applicable requirements summary, and, since the CD refers to an alternate monitoring plan for heater No. 527-H2, the CD should be referenced in the Compliance Schedule section for this piece of equipment.

RESPONSE 1: 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.

COMMENT 2: Objection for Failure to Include All Applicable Requirements

The draft Title V permit does not meet the requirements of 40 CFR § 70.6(a)(1), since it fails to include "emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." Permits by Rule (PBRs) are included in the definition of "applicable requirement," found at 30 TAC § 122.10(2) of the federally-approved Texas Title V program. The draft Title V permit lists the following PBRs as applicable requirements: 106.261, 106.262, 106.263, 106.454, 106.472, 106.473, 106.478, 106.511, and standard exemption numbers 15, 51 , 53, 57, 58, 61 , 62, and 63. The Title V permit also lists NSR permits 4742 1, 8778A, 7741A, and 2523C. However, as described below, the draft Title V permit fails to clearly identify all applicable requirements for emission units covered by the permit.

The *Applicable Requirements Summary* table fails to include monitoring, recordkeeping, and reporting (MRR) requirements for the following emission units 521-V11 , 521-V7, 521-V-9, 522-E 10A, 522-V19A/B, 525-V11, 527-V-11 , 527-V-1, 527-V-2, 552-S10, 552-TK10001 , 553-S-Pit, 553-V8, 554-TK0001, 554-TK0002, 555-S9, 555-TK0001, 555-TK0002, 555-V10, 561-JCMTR, 561-V13, 566-TK0101, 572-TK0002, 572-TK0013A, 572-TK0013B, 572-TK0214, 572-TK0215, 572TK6020, 572TK6021, 572TK6022, 572TK6023, 572-WWT, 581-CT1, 585-TK0104, 585-TK0105, and GASUNLOAD. In addition, emission unit 546-H2 is not listed in the *Unit Summary* table, *Applicable Requirements Summary* table, or *New Source Review Authorization References by Emissions Unit*. This unit is only listed in the Periodic Monitoring Summary as the "Control Device ID No." for ID No. 546-V18 and 546-V28. The alternate monitoring plan on pages 132 and 133 has "for 546-H1 & 546-H2" handwritten on it. The Title V permit fails to properly identify this emission unit and refer to the alternate monitoring for 40 CFR Part 60, Subpart J, that has been approved.

The *New Source Review Authorization References* table lists PBR 106.261 (12/24/1998), 106.261 (09/04/2000), 106.262, 106.263, 106.478, 106.511, and standard exemption number 51 (08 /30/1988), 57, 63 , and NSR permits 47421 , and 2523C as applicable authorizations, but the *New Source Review Authorization References by Emissions Unit* table does not list any emissions unit subject to those PBRs, standard exemptions, or NSR permits. NSR permit 2523C is attached to the Title V permit in Appendix B. Permit 2523C appears to cover coke handling facilities. The emission units in 2523C do not appear to be listed in the draft Title V. Additionally, permit 2523C only has three special

conditions and the emission units it covers only have emission limits for PM. Permit 2523C does not contain the appropriate MRR to ensure practical enforceability.

Additional inconsistencies in the identification of applicable requirements in the draft Title V permit are associated with PBRs 106.262 and 106.263, for which registration is required. No registration is shown in the TCEQ New Source Review Air Permits database for PBRs 106.262 for 12/24/1998 or 106.263 for emission units covered by this draft Title V permit (regulated entity number RN100238799).

Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit since it is not in compliance with the requirements of 40 CFR § 70.6(a)(1). To resolve this objection, TCEQ must revise the draft Title V permit to identify each emission unit covered by the Title V permit and reference the specific emission limitations, applicable monitoring and testing, recordkeeping, and reporting requirements for each such unit, including the relevant and appropriate PBRs associated with each emission unit.

RESPONSE 2: The ED disagrees that the Title V permit fails to include all applicable requirements. The emission units listed in the comment, 521-V11 , 521-V7, 521-V-9, 522-E 10A, 522-V19A/B, 525-V11, 527-V-11 , 527-V-1, 527-V-2, 552-S10, 552-TK10001 , 553-S-Pit, 553-V8, 554-TK0001, 554-TK0002, 555-S9, 555-TK0001, 555-TK0002, 555-V10, 561-JCMTR, 561-V13, 566-TK0101, 572-TK0002, 572-TK0013A, 572-TK0013B, 572-TK0214, 572-TK0215, 572TK6020, 572TK6021, 572TK6022, 572TK6023, 572-WWT, 581-CT1, 585-TK0104, 585-TK0105, and GASUNLOAD, appear in the Permit Shield attachment for negative applicability to state and federal requirements. The only applicable requirements for these units are the NSR Authorizations. Any MRRT requirements for these units are codified in the underlying authorizations. The ED does not require permit applicants to identify the emission units covered by NSR permits or PBRs if that is the only applicable requirement for that unit.

The ED does not list control devices as separate emission units in the Applicable Requirement Summary when the underlying applicable requirement applies to the source. That is why 546-H2 only appears in Periodic Monitoring Summary as a control device for vents 546-V18 and 546-V28 because the VOC limit in 30 TAC Chapter 115 applies to the vent stream and not the control device.

The Applicable Requirement Summary table clearly has a note to see the alternative monitoring requirement for emission units 546-H1 for 40 CFR Part 60, Subpart J. The alternative monitoring plan approved by EPA Region 6 on page 132 specifies monitoring for the #5 Platformer regenerator purge gas stream to the reformer heater. Emission unit 546-H1 is the No. 5 Platformer Charge Heater as identified on the New Source Review by Authorizations by Emissions Unit table and therefore the note on the AMP plant is appropriate.

The ED disagrees that permit 2525C is practically unenforceable. The general terms and conditions listed on the permit face require that CITGO keep appropriate records to demonstrate compliance with the permit which include the PM emission limits.

PBR registration numbers are not required to be listed in the Title V permit. The ED disagrees that PBR 106.262 or 106.263 have not been registered with the TCEQ.

The ED has attached to the permit in Appendix B a major NSR Summary Table for permit 7741A/PSDTX337M1 and 8778A/PSDTX408M3 to address the monitoring/testing, recordkeeping, and reporting conditions for these major NSR permits. EPA continues to approve TCEQ's IBR of minor NSR permits including PBRs. Permit 2525C is being removed from Appendix B because it does not contain a PSD permit.

COMMENT 3: Objection for Failure to Identify Specific Compliance Option.

The Applicable Requirements Summary table fails to list the sections of 40 CFR Part 60 Subpart GGGa that apply to compliance options for emission unit FUG-ULSD. Failure to include these requirements in any unit specific tables makes the compliance obligations of the facility unclear. The lack of specific monitoring and testing requirements creates ambiguity, raises applicability concerns, and renders the permit unenforceable as a practical matter. In addition, the lack of detail detracts from the usefulness of the permit as a compliance tool for the facility. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit since it does not comport with the requirements of 40 CFR §§ 70.6(a)(1) and (3). To resolve this issue, TCEQ must revise the draft Title V permit to identify each emission unit subject to Subpart GGGa, and identify the specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting requirements for each unit.

RESPONSE 3: The ED disagrees that the permit fails to identify the specific compliance option for 40 CFR Part 63, Subpart GGGa. The reason this requirement was listed in the permit at a high level of applicability is because TCEQ has not developed the permit tools for making applicability determinations for 40 CFR Part 63, Subpart GGGa down to the citation level. Discussions with EPA Region 6 staff have confirmed that this practice is acceptable. CITGO is still required to certify compliance with 40 CFR 63, Subpart GGGa by keeping the appropriate records.

COMMENT 4: Pursuant to 40 CFR § 70.8(e)(1), EPA objects to the issuance of the Title V permit since Special Condition 4 is not in compliance with the requirements of 40 CFR § 70.6(a)(1) and 70.7(a)(5). To resolve this objection, TCEQ must revise Special Condition 4 of the draft Title V permit to list (or otherwise specifically identify) the specific stationary vents that are subject to the specified requirements 0f 30 TAC Chapter 111 and provide an explanation in the Statement of Basis for the legal and factual basis for the Special Condition.

In TCEQ's June 30, 2010 Response to Objection and proposed revised Title V permit for Flint Hills Resources' (Corpus Christi, Texas) East Refinery (Permit No. 01445), the permit provided an identification of stationary vents that EPA found to be adequate. A similar provision incorporated into this Title V permit would adequately resolve the objection.

RESPONSE 4: 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 15% opacity requirement of 30 TAC § 111.111(a)(1)(C) 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 4, 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 4 was added to the Statement of Basis document for the draft Title V permit and is enclosed.

COMMENT 5: Pursuant to 40 CFR § 70.6(a)(1), each title V permit must include, among other things, "[e]missions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance."

All applicable requirements (including BACT limits, NSPS limits, MACT limits, SIP-required control limits, appropriate application representations, and the applicable monitoring, recordkeeping, and reporting (MRR) requirements) must be included in the permit.

However, ensuring the references are clear and unambiguous to the applicable emission units in the draft renewal permit has not been accomplished. The Appendix B to the Title V permit on pages 137-188 provides information on the PSD/NSR authorizations for the emission units. However, when there are several applicable requirements to such authorizations, without a crosswalk, the review of the permit becomes a tedious maze and not practically enforceable. Not only is it a time consuming process for the public to complete review of the FOP in 30 days, but the ambiguity in obtaining and identifying the applicable requirements to the emission unit does not meet the approved program requirements of 40 CFR Part 70. There are options to address this issue. For example, a narrative-type permit organized by emission points that provides the emission limitations for each emission point with their assigned monitoring, recordkeeping, and reporting would be adequate. Or, provide a crosswalk table for each emission point identified in the Title V permit NSR/PSD authorization table linked to the specific

conditions and emission limits with monitoring, recordkeeping, and reporting requirements is required. In the Title V permit issued by TCEQ for Southwestern Public Service Company, Harrington Station Power Plant (Permit No. 01 5), the permit featured a crosswalk table that EPA found to be adequate. A similar table incorporated into this Title V permit would resolve the issue.

RESPONSE 5: In response to EPA's objection, the ED has revised FOP No. O1420 to include, in Appendix B of the permit, a "Major NSR Summary" table for major NSR permits at the site. This table, which identifies all monitoring, recordkeeping, reporting, and testing requirements for each emission point covered by the major NSR permit, was developed by CITGO and reviewed by TCEQ. Thus, it is the ED's position that incorporation by reference of both major and minor NSR permits is acceptable and was fully approved by EPA. However, given EPA's differing opinion, as reflected in the Premcor and CITGO orders, this comment, and the June 10, 2010 letter from EPA Region VI regarding this issue, the ED has revised FOP No. O1420 to include, in Appendix B of the permit, a "Major NSR Summary" table of NSR Permits 8778A/PSDTX408M3 and 7741A/PSDTX337M1, which was initially suggested by EPA as adequate to resolve this issue. Inclusion of the major NSR permits and the "Major NSR Summary" table as an appendix addresses EPA's comment and ensures that the Title V permit is clear and meaningful to all affected parties.

It should be noted that, in a letter dated August 22, 2012, EPA approved TCEQ's approach of attaching the Major NSR Summary table and major NSR permits as an appendix to the Title V permit in order to address IBR of major NSR.

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 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:

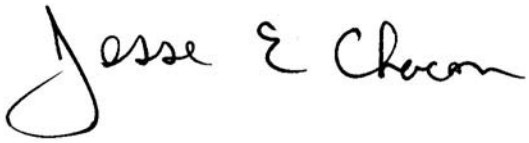
> "Section 70.6(a)(1)(i) requires that the permit reference the authority for each term and condition of the permit. Including in the permit legal citations to provisions of the Act is critical in defining the scope of the permit shield, since the permit shield, if granted, extends to the provisions 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.

Respectfully submitted,



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