BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF: THE PREMCOR REFINING GROUP, INC. PORT ARTHUR, TEXAS	)	ORDER RESPONDING TO PETITIONERS' REQUEST THAT THE ADMINISTRATOR OBJECT TO THE ISSUANCE OF A TITLE V OPERATING PERMIT
Permit Number O1498	)	
ISSUED BY TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ON January 8, 2007	)	Petition Number VI-2007-02

ORDER PARTIALLY GRANTING AND PARTIALLY DENYING
THE PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

On February 16, 2007, the United States Environmental Protection Agency (EPA) received a petition from Environmental Integrity Project, Community In-Power and Development Association, Inc., Public Citizen's Texas office, and the Refinery Reform Campaign (Petitioners) pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7661d(b)(2). The petition requests that EPA object to the CAA title V operating permit (the title V permit) issued by the Texas Commission on Environmental Quality (TCEQ) on January 8, 2007 to Premcor Refining Group, Inc. (Premcor) for the refinery operations in Port Arthur, Jefferson County, Texas. As summarized below, the Petitioners allege:

1. The title V permit's monitoring requirements are not adequate to ensure compliance with all emission limitations and other substantive Clean Air Act requirements.

2. The title V permit's use of incorporation by reference for emission limitations and standards violates title V of the Act and its implementing regulations at 40 C.F.R. Part 70 and renders the title V permit unenforceable.

In considering the allegations made by the Petitioners, EPA reviewed several documents, including the petition, title V permit, statement of basis, referenced New Source Review (NSR) permits, the TCEQ Response to Comments (RTC), and Petitioners' comments to TECQ. Based on a review of all of the information before me, and for reasons detailed in this order, I grant in

part and deny in part the issues raised by Petitioners.

II. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act, 42 U.S.C. § 7661a (d)(1), calls upon each state to develop and submit to EPA an operating permit program intended to meet the requirements of CAA title V. EPA granted interim approval to the State of Texas for the title V (part 70) operating program on June 25, 1996. 61 Fed. Reg. 32693. EPA granted full approval to Texas' operating permit program on December 6, 2001. 66 Fed. Reg. 66318. The program is now incorporated into Texas' Administrative Code at Chapter 122.

All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable State Implementation Plan (SIP). *See* CAA §§ 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a). The title V operating permit program does not generally impose new substantive air quality control requirements (referred to as "applicable requirements"), but does require permits to contain monitoring, recordkeeping, reporting, and other requirements to assure compliance by sources with existing applicable emission control requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992) (EPA final action promulgating Part 70 rule). One purpose of the title V program is to "enable the source, states, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements." 57 Fed. Reg. 32250, 32251 (July 21, 1992). Thus, the title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.

Under section 505(a), 42 U.S.C. § 7661d(a), of the CAA and the relevant implementing regulations (40 C.F.R. § 70.8(a)), states are required to submit each proposed title V operating permit to EPA for review. Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the permit if it is determined not to be in compliance with applicable requirements or the requirements under title V. 40 C.F.R. § 70.8(c). If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act provides that any person may petition the Administrator, within 60 days of expiration of EPA's 45-day review period, to object to the permit. 42 U.S.C. § 7661d(b)(2), *see also* 40 C.F.R. § 70.8(d). The petition must "be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)." Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2). In response to such a petition, the CAA requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the CAA. 42 U.S.C. § 7661d(b)(2). *See also* 40 C.F.R. § 70.8(c)(1); *New York Public Interest Research Group (NYPIRG) v. Whitman*, 321 F.3d 316, 333 n.11 (2nd Cir. 2003).

Under section 505(b)(2), the burden is on the petitioner to make the required demonstration to EPA. *Sierra Club v. Johnson*, 541 F.3d. 1257, 1266-1267 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677-678 (7th Cir. 2008); *Sierra Club v. EPA*, 557 F.3d 401, 406 (6th Cir. 2009) (discussing the burden of proof in title V petitions); *see also NYPIRG*, 321 F.3d at 333 n.11. If, in responding to a petition, EPA objects to a permit that has already been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures set forth in 40 C.F.R. §§ 70.7(g)(4) and (5)(i) – (ii), and 40 C.F.R. § 70.8(d).

III. BACKGROUND

A. The Facility

The Premcor refinery, located at 1801 South Gulfway Drive, Port Arthur (Jefferson County), Texas, is a single-train operation with the capacity to handle 250,000 barrels/day of both sweet and sour crudes. The principal products produced at the refinery are light gases, gasoline, liquefied petroleum gases, kerosene, jet fuels, distillate fuels, intermediate refinery products, coke and sulfur. The existing processing configuration includes a crude unit, fluid catalytic cracking unit, catalytic reformer, delayed coking units, middle distillate hydrotreaters, sulfur recovery units, saturated gas recovery unit, sour water stripper, boiler houses, power plants and miscellaneous support facilities.

B. The Permit and the Petition

Premcor submitted a permit application to TCEQ on May 23, 2000 (with several revisions to the application occurring through November 1, 2004) for the initial issuance of a title V operating permit for Premcor's Port Arthur, Texas refinery. Notices of the draft title V permit were published on January 2, 2005, February 11, 2005 and August 6, 2006. A public meeting on the draft title V permit was held on July 21, 2005, and the public comment period ended on September 5, 2006. Petitioners commented during the public comment period, raising concerns with the draft title V permit. The State proposed the permit to EPA on November 7, 2006; EPA did not object to the permit. On January 8, 2007, the TCEQ issued the title V permit (Number O1498) to Premcor pursuant to state regulatory provisions implementing the Act.

The title V permit incorporates several Prevention of Significant Deterioration ("PSD"), non-attainment New Source Review ("NNSR") and State New Source Review ("NSR") permits (collectively, the "preconstruction permits"). The title V permit incorporates the conditions for preconstruction permits PSD TX-49, 6825A, 2303, 5491, 5491A, 56546, 6825, 6825A, 7600, 802, 8369, 8369A, C-802, C-8456, 45737, R-7600A, X-17038, X-3698, X-3635, as well as several Texas Permits-by-Rule ("PBR") and a Texas Standard Exemption.

IV. ISSUES RAISED BY THE PETITIONER

As noted above, Petitioners raise two general issues: inadequate monitoring and improper use of incorporation by reference. While the incorporation by reference issue is listed second in the petition, EPA is addressing the issue first in this Order.

A. Incorporation by Reference (IBR)

1. Petitioners could not obtain underlying preconstruction permits and/or current versions of the preconstruction permits

Petitioners' Claim: The Petitioners state as follows:

> Petitioners conducted a file review at the TCEQ Beaumont Regional Office, but files for permit numbers 6825, 7600, 8369, C-802, 45737, X-17038, 5491, C-8456, R-7600A, and X-3698 were not available. In addition, the files that were available did not contain complete, current copies of the permits. Instead, various parts of the permits and revisions to the permits were included at different places in the file, making it extremely difficult to obtain a complete, current copy of each permit. Petitioners also called the TCEQ Office of Public Assistance to ask if the underlying permits were available at a local library or other public location near the facility, and were told that they were not.

Petition at 21. Further, Petitioners state that "the permit extensively incorporates by reference numerous underlying...[NSR] ...and ...[PBR]...permits without adequate guidance as to where the referenced permits may be found. The permit's use of incorporation by reference thus violates the requirements of 40 C.F.R. Part 70." *Id.*

EPA's Response: In its response to a comment that the use of incorporation by reference was improper, TCEQ stated that to obtain documents "one only needs to contact the permit reviewer. The executive director is confident that the necessary information to assess compliance is available."[1] Petitioners contacted two separate TCEQ offices seeking the full and current set of incorporated preconstruction permits, to no avail. Incorporation by reference may be appropriate where the cited requirement is part of the public docket or is otherwise readily available, current, clear and unambiguous, and currently applicable. *In the Matter of Tesoro Refining and Marketing*, Petition No. IX-2004-6 at 9 (March 15, 2005)(*Tesoro Order*). In this case, several of the underlying permits were not readily available to the public. Failing to provide the underlying preconstruction permits incorporated into a title V permit is not in compliance with the public participation requirements found at 40 C.F.R. § 70.7(h)(2) or EPA's approval of Texas' title V program.[2] *See also* 40 C.F.R. § 70.4(b)(3)(viii). Therefore, the

[1] TCEQ Response to Community In-Power and Development Association, Inc. Comment No. 4, TCEQ Executive Director's Response to Public Comments for Permit Number O1498, November 7, 2006 (the "RTC").
[2] In approving Texas' title V program, EPA noted that the State will ensure availability of all NSR permits and files to the public. 66 Fed. Reg. 63318, at 63324.

petition is granted on this issue. EPA directs TCEQ to reopen the title V permit and ensure that all of the underlying permits and other documents incorporated by reference are readily available and currently applicable, and references and clear and unambiguous.

2. Incorporation by reference of old or outdated underlying permits

Petitioners' Claim: An underlying permit is "listed as Permit No. 2303 in the facility's operating permit but as Permit No. 2303A in the TCEQ's Beaumont Regional Office's files." Petition at 10.

EPA's Response: The petition is granted on this issue. The situation noted by Petitioners is an example of the confusion that might occur when there are several versions of an underlying permit. EPA recognizes that underlying permits are revised from time to time. Nonetheless, the version of the underlying permit that is incorporated in the title V permit must be readily available in the public records.

3. The title V permit must specifically include emission limitations

Petitioners' Claim: "Part 70 and EPA's guidance are clear that permits must specifically include all emissions limitations, and may only use incorporation by reference for other permit terms if the method of their application is clear and the permit can still 'assure compliance'." Petition at 21.

EPA's Response: The petition is granted in part and denied in part on this issue. 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 *Tesoro Order* at 8. 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 C.F.R. § 70.6(a)(1) and (3). *Tesoro Order* at 8. 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.*

As TCEQ notes in its response to comments, EPA has approved TCEQ's use of incorporation by reference for emissions limitations from minor NSR permits and Permits by Rule. RTC at 14. 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 emissions limitations from minor NSR permits and Permits by Rule). 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 in 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) Texas' use of incorporation by reference of emissions limitations for other requirements. Thus, EPA grants the petition on this issue with regard to TCEQ's use of incorporation by reference for emissions limitations, with the exception of those emissions limitations from minor NSR permits and Permits by Rule.[3] EPA directs TCEQ to reopen the permit and ensure that all such emissions limitations are included on the face of the title V permit.

B. Inadequate Monitoring, Recordkeeping, and Reporting

1. Petitioners raise several claims regarding alleged monitoring, recordkeeping and reporting deficiencies in the title V permit (and underlying permits). Petitioners raised these issues to TCEQ in comments on the draft permit, and received varying levels of response from the State. EPA addresses these claims below.

Before turning to these specific claims, it is important to provide a summary of the current state of the law on monitoring requirements under title V of the Act in light of a recent court decision. In August 2008, the United States Court of Appeals for the District of Columbia Circuit emphasized that section 504(c) of the Act requires *all* title V permits to contain monitoring requirements to assure compliance with permit terms and conditions. *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008); *see also* 40 C.F.R. §§ 70.6(a)(3)(i)(B) and 70.6(c)(1). This decision overturned EPA's interpretative rule, signed December 15, 2006, which had taken the position that permitting authorities were prohibited from adding monitoring requirements to title V permits where the applicable requirements contained some periodic monitoring, even if that periodic monitoring was not sufficient to assure compliance with permit terms and conditions. 71 Fed. Reg. 75422 (Dec. 15, 2006).[4] The Court held that EPA's interpretative rule violated the

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[3] As to Texas' use of incorporation by reference for emissions limitations in minor NSR permits and Permits by Rule, EPA will be evaluating this practice to determine how well it is working. Further, as noted above, it is important for TCEQ to ensure that referenced permits are part of the public docket or otherwise readily available, and currently applicable, and that the title V permit is clear and unambiguous as to how the emissions limits apply to particular emissions units.

[4] The effective date of the interpretive rule was January 16, 2007. The Premcor permit was proposed to EPA on November 7, 2006, and issued as a final permit on January 8, 2007. In its statement of basis for the permit, the State summarized what it believed to be its monitoring obligations as follows:

> The Federal Clean Air Act requires that each federal operating permit include monitoring sufficient to assure compliance with the terms and conditions of the permit. Most of the emission limits and standards applicable to emission units at Title V sources include adequate monitoring to show that the units meet the limits and standards. For those requirements that do not include monitoring, or where the monitoring is not sufficient to assure compliance, the federal operating permit must include such monitoring for the emission

statutory directive in section 504(c) of the Act that each permit must include monitoring requirements to assure compliance with the permit terms and conditions. *Sierra Club,* 536 F.3d at 678. If an applicable requirement contains a periodic monitoring requirement that is inadequate to assure compliance with a term or condition of the title V permit, the Court concluded, title V of the Act requires that "somebody must fix these inadequate monitoring requirements." *Id.* at 678. The Court overturned EPA's interpretative rule, but found that EPA's current regulation at 40 C.F.R. § 70.6(c)(1) – requiring that each permit contain monitoring requirements sufficient to assure compliance with permit terms and conditions – may, and must, be interpreted consistent with the Act. *Id.* at 680.

To summarize, EPA's part 70 monitoring rules (40 C.F.R. §§ 70.6(a)(3)(i)(A) and (B) and 70.6(c)(1)) are designed to satisfy the statutory requirement that "[e]ach permit issued under [title V] shall set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions." CAA § 504(c). As a general matter, permitting authorities must take three steps to satisfy the monitoring requirements in EPA's part 70 regulations. First, under 40 C.F.R. § 70.6(a)(3)(i)(A), permitting authorities must ensure that monitoring requirements contained in applicable requirements are properly incorporated into the title V permit. Second, if the applicable requirement contains no periodic monitoring, permitting authorities must add "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R. § 70.6(a)(3)(i)(B). Third, if there is some periodic monitoring in the applicable requirement, but that monitoring is not sufficient to assure compliance with permit terms and conditions, permitting authorities must supplement monitoring to assure such compliance. 40 C.F.R. § 70.6(c)(1). EPA notes that periodic monitoring that meets the requirements of 40 C.F.R. § 70.6(a)(3)(i)(B) will be sufficient to satisfy the requirements of 40 C.F.R. § 70.6(c)(1) (i.e., will be sufficient to assure compliance with permit terms and conditions). In addition, in many cases, monitoring from applicable requirements will be sufficient to assure compliance with permit terms and conditions. For example, monitoring established consistent with EPA's Compliance Assurance Monitoring ("CAM") rule (40 C.F.R. Part 64) will be sufficient to assure compliance with permit terms and conditions, thus meeting the requirements of 40 C.F.R. § 70.6(c)(1).

In all cases, the rationale for the selected monitoring requirements must be clear and documented in the permit record. 40 C.F.R. § 70.7(a)(5). Further, permitting authorities have a responsibility to respond to significant comments. *See, e.g., In the Matter of Onyx Environmental Services,* Petition V-2005-1 (February 1, 2006), cited in *In the Matter of Kerr-McGee, LLC, Frederick Gathering Station*, Petition-VIII-2007 at 4 (February 7, 2008) *(Kerr-McGee Final Order)* ("it is a general principle of administrative law that an inherent component of any meaningful notice and opportunity for comment is a response by the regulatory authority to significant comments"). This principle applies to significant comments on the adequacy of monitoring.

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units affected.

Statement of Basis at 85.

Several rules and guidelines may prove helpful to States in establishing monitoring for compliance assurance purposes in title V permits. Examples include the monitoring design criteria (appropriate data representativeness, frequency, and measures of quality assurance) outlined in the CAM rule, monitoring under several Maximum Achievable Control Technology ("MACT") standards (40 C.F.R. Part 63), and certain monitoring provided by acid rain rules (40 C.F.R. Parts 72-78).

The determination of whether the monitoring is adequate in a particular circumstance generally will be a context-specific determination. The monitoring analysis should begin by assessing whether the monitoring required in the applicable requirement is sufficient to assure compliance with permit terms and conditions. In many cases, such as with monitoring developed pursuant to the CAM rule, monitoring from the applicable requirement will be sufficient. Some factors that permitting authorities may consider in determining appropriate monitoring are (1) the variability of emissions from the unit in question; (2) the likelihood of a violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emission unit; and (5) the type and frequency of the monitoring requirements for similar emission units at other facilities. The preceding list of factors is only intended to provide the permitting authority with a starting point for their analysis of the adequacy of the monitoring. As stated above, such a determination generally will be made on a case-by-case basis and other site-specific factors may be considered.

Title V and EPA's implementation regulations also contain requirements regarding other types of conditions necessary to ensure compliance, such as reporting requirements. CAA section 504(c) requires that each permit set forth "inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." Further, 40 C.F.R. § 70.6(c)(1) requires that title V permits contain "compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the permit terms and conditions." There are also several specific provisions in part 70 addressing these other types of requirements, such as § 70.6(a)(3)(ii) on recordkeeping.

As explained in EPA's responses to the Petitioners' individual claims below, EPA grants the petition with respect to some specific monitoring, recordkeeping and reporting claims. EPA directs TCEQ to address these issues, and issue a new draft permit for public review and comment. Specifically with regard to these monitoring issues and other monitoring requirements in the permit, TCEQ must ensure it has done the following: (1) satisfied the monitoring requirements of 40 C.F.R. §§ 70.6(a)(3)(i)(A) and (B) and 70.6(c)(1), (2) provided a rationale for the monitoring requirements placed in the permit, see 40 C.F.R. § 70.7(a)(5), and (3) responded to significant comments.

Petitioners' Claim: "[T]he underlying permits, incorporated into the proposed Title V permit by reference, contain the following monitoring, record keeping, and reporting deficiencies

that render the proposed Title V permit noncompliant with the CAA, such that the EPA must object to the proposed permit." Petition at 4.

EPA's Response: EPA grants the petition with regard to some, but not all, of Petitioners' monitoring, recordkeeping and reporting claims, as described below.

a. Permit No. 6825A[5]

(i) *Petitioners' Claim*: In Special Condition 5C, "[t]he facility should be required to monitor visible emissions in case there is an interruption in steam assistance. Monitoring should include continuous video monitoring with a time and date stamp. Additionally, Method 9 should be employed to test opacity." Petition at 4.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ provided the following response:

> The flares have several monitoring requirements to help ensure correct operating procedures. These monitoring requirements are found in 30 TAC § 111, 40 C.F.R. 60, Subpart A, 40 C.F.R. 63, Subpart A and currently in conditions 4A-4C. Additionally, the flare is monitored by a closed circuit camera maintained and operated by Premcor. Since Premcor is required to monitor the flares based on the rules and requirements above monitoring of interruptions of steam assistance and test Method 9 is not necessary. Irrespective of steam assistance, the flares are monitored continuously for visible emissions.

RTC at 4. The petition is granted on this issue. The TCEQ response describes the use of a closed circuit camera at the facility, but this is not a requirement found in the underlying permits or the title V permit. In responding to this comment, TCEQ has failed to explain how the monitoring requirements in the permit are sufficient to assure compliance with its terms and conditions.

(ii) *Petitioners' Claim*: In Special Condition 5D, "[t]he permit should require the facility to monitor 'maintenance and upset' emissions which are directed to flares....[t]hese emissions should be recorded and reported....[and] the permit should define what constitutes 'maintenance

[5] EPA recognizes that Permit 6825A is a permit issued under TCEQ's Flexible Permits program. TCEQ has submitted this program to EPA for approval into the Texas State Implementation Plan. EPA has yet to issue a decision regarding this submission.

In commenting on Permit 6825A, Petitioners reviewed an earlier version, and cited the Special Condition numbers found in that version. TCEQ, in its RTC, cited the Special Condition numbers in the updated version. For example, in Petitioners' Claim (i), Petitioners reference Special Condition #5C, and TCEQ responds by referencing to Special Condition 4A-4C.

and upset' in regard to this condition." Petition at 4. In Special Condition 5F, "[t]he permit should require reporting of all excess emissions of sulfur dioxide pursuant to TCEQ's Chapter 101 emissions event rules." *Id.* at 4.

EPA's Response: In the RTC, TCEQ states that the permit holder must notify TCEQ and record and report any maintenance and upset emissions which exceeds or equals the reportable quantity as defined in 30 Texas Administrative Code ("TAC") § 101, and sulfur dioxide emissions must be reported when exceeding the permitted allowable emission rate. RTC at 4. The petition is granted on this issue. In responding to this comment, TCEQ has failed to explain how the monitoring requirements are sufficient to assure compliance with the terms and conditions of the permit.

(iii) *Petitioners' Claim*: In Special Condition 6, "[t]he permit requires that 'the flare shall operate with no less than 98 percent efficiency and the incinerator shall operate with no less than 99.9 percent efficiency.' Neither of these conditions, however, requires testing to determine efficiency. The permit must require testing to verify that the flare actually operates at 98 percent efficiency and that the incinerator operates at 99.9 percent efficiency. Additionally, the permit allows the TNRCC Executive Director to make exceptions to this condition. Such exceptions render the condition 6 largely unenforceable and should be deleted." Petition at 4.

EPA's Response: TCEQ responded that

> "[t]he flare and incinerator, by design, operate at a destruction efficiency of at least 98 and 99.9 percent, respectively. Incinerator parameters are continuously monitored in Special Condition 15. The flares meet or exceed the destruction efficiency based on being operated within the manufacturer's specifications. The Applicant must comply with several monitoring requirements requiring correct operating procedures of flares found in 30 TAC § 111, 40 CFR 60, Subpart A and 40 CFR 63, Subpart A. Additionally, the flare is monitored by a closed circuit camera maintained and operated by Premcor."

RTC at 4. The petition is granted on this issue. In responding to this comment, TCEQ has failed to explain why testing of the flare and incinerator is not required and how the monitoring requirements in the permit are sufficient to assure compliance with its terms and conditions. In addition, TCEQ provided no response to Petitioners' claim regarding an exception to this requirement. TCEQ must provide a response, explain whether it believes it may grant an exception (and if so provide a citation to proper authority) and make any necessary changes to the title V permit.

(iv) *Petitioners Claim*: In Special Conditions 7A, 12B(2), 12F, 12H, 18E, 23, 31B, 32, and 39D, "[t]he permit states that records must be kept for at least two years. Part 70 requires that records be kept for five years....The TCEQ Executive Director states that '[o]nce the permit holder receives the effective FOP, the permit holder will be required to keep all records at the

facility for a period of at least 5 years'....The Executive Director's response to this deficiency is insufficient to resolve the conflict between the 2-year provision in the underlying permit, which is incorporated by reference, and the 5-year record-keeping requirement in the proposed Title V permit. The proposed Title V permit should explicitly state that any requirement to keep records for a period less than 5 years in any underlying permit is replaced by the 5-year requirement." Petition at 5.

EPA's Response: The petition is granted on this issue. The title V permit should be clear that records must be kept for a period of at least 5 years in accordance with 40 C.F.R. § 70.6(a)(3)(ii)(B).

(v) *Petitioners' Claim*: In Special Condition 7B, "[t]he permit should require all investigation and remedial measures to be recorded." Petition at 5. In Special Condition 8A, "[t]he permit should require a report identifying which valves were routed to a flare and which were equipped with a rupture disk. The requirement that disks be replaced 'at the earliest opportunity' is vague and unenforceable. The permit should require that discs be replaced within 5 days unless delayed until the next process shutdown. Petition at 5.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ provided the following response:

> Special condition 7B has been replaced with 5A-5C. 5A through 5C contains monitoring requirements of relief valve rupture discs in order to help ensure that no unauthorized emissions will occur. Special condition 5C identifies the valves equipped with a rupture disk. Special condition 28I requires that all leaking components be replaced within 15 days or upon unit shutdown.

RTC at 4. The petition is granted on this issue. The TCEQ response does not address the recordkeeping concerns raised by the Petitioners.

(vi) *Petitioners' Claim*: Special Condition 9D "requires annual inspection of the seals on VOC tanks equipped with floating roofs. This is not frequent enough to ensure compliance. Seals should be inspected quarterly." Petition at 6.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ provided the following response:

> The annual visible inspection coincides with monitoring requirements found in the periodic monitoring guidance document which has been approved by the executive director for storage tanks equipped with

> internal floating roofs. Since the executive director's monitoring guidance document requires annual inspections, quarterly inspections will not be required.

RTC at 5. The petition is denied on this issue. "If the petitioner demonstrates that the permit does not comply with the requirements of the Clean Air Act or the applicable state implementation plan, EPA must issue an objection to the permit." *Sierra Club v. Johnson*, 436 F.3d 1269, 1273 (11th Cir. 2006). On this issue, Petitioners have failed to make that demonstration. Petitioners have failed to demonstrate that the State's response was inadequate. *See In the Matter of BP Exploration (Alaska) Gathering Center # 1*, at 8 (April 20, 2007).

(vii) *Petitioners' Claim*: In Special Condition 10, "[t]he permit should require the facility to record all emission control upgrades and the emission reductions obtained through such upgrades." Petition at 6.

EPA's Response: The TCEQ responded that

> [T]he permit holder must obtain prior approval from TCEQ before upgrading emission controls or obtaining emission reductions to the MEART table. The prior approval will consist of proposing an alternate device and having the applicable permit modified if approved. As long as the permit holder is meeting current emission limits in the permit, the TCEQ does not require reporting of any reductions in emissions.

RTC at 5. The petition is denied on this issue. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have failed to demonstrate that the State's response was inadequate.

(viii) *Petitioners' Claim*: In Special Condition 12B(1), "[t]he permit requires that loading emissions will be 'routed to a flare with a destruction efficiency of at least 98 percent for all VOC' but does not require testing to determine the efficiency of the flare. The permit must require periodic testing to verify that the flare actually operates at 98 percent efficiency. Petition at 6.

EPA's Response: The TCEQ responded that the

> "flare by design operates at a destruction efficiency of at least 98 percent. The flares meet or exceed the destruction efficiency based on being operated within the manufacturer's specifications. The flares have several monitoring requirements to ensure correct operating procedures by complying with 30 TAC § 111, 40 CFR 60, Subpart A, 40 CFR 63, Subpart A along with closed circuit cameras maintained and operated by Premcor."

RTC at 5. The petition is granted on this issue. In responding to this comment, TCEQ has failed

to explain why testing of the flare is not required and how the monitoring requirements in the permit are sufficient to assure compliance with its terms and conditions.

(ix) *Petitioners' Claim*: Special Condition 12B(3) "should require the facility to document all attempts to repair leaks immediately rather than 'as soon as possible.' The requirement to repair as 'soon as possible' is too vague to be clearly enforceable. If the leak cannot be repaired immediately, the cargo tank should be emptied immediately. Opacity requirements must be adhered to at all points in the process." Petition at 6.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ provided the following response:

> In accordance with special condition 11(B) 3, the permit holder must attempt to repair the cargo tank as soon as practicable during the loading operation. If for some reason the tank cannot be fixed, the permit holder must fix the cargo tank prior to any new loading operation. If the permit holder does not repair the tank, it should be recorded and reported as a deviation. Additionally, opacity evaluations are reserved for combustion and dust sources; therefore, the cargo tank does not have any opacity limitations.

RTC at 5. The petition is denied on this issue. As noted above, EPA must issue an objection to the title V permit if the Petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have failed to demonstrate that the State's response was inadequate.

(x) *Petitioners' Claim*: For Special Condition 12D, "[i]n addition to inspecting for liquid leaks, the permit should require the facility to document all liquid leaks, the date they were discovered, and the date they were repaired." Petition at 6.

EPA's Response: This claim was originally submitted by Petitioners as a comment to the TCEQ during the public comment period that ended on September 5, 2006. The petition is granted on this issue. TCEQ did not provide a response to this comment in its RTC. The State must respond to this comment.

(xi) *Petitioners' Claim*: In Special Condition 13, the permit "should clarify that opacity must be determined by Method 9. In addition the permit should specify the frequency of required Method 9 tests." Petition at 6.

EPA's Response: In the RTC, TCEQ states that "in order to comply with the opacity limits of special condition 12, Premcor has installed a scrubber that is continuously monitored (four times per hour) to prevent opacity emission events; therefore, Method 9 tests are no longer

required." RTC at 5. The petition is granted on this issue. In responding to this comment, TCEQ has not explained how the monitoring requirements are sufficient to assure compliance with the terms and conditions of the permit.

(xii) *Petitioners' Claim*: In Special Condition 14, "[t]he permit should specify the method required for monitoring cooling tower water VOCs. The current requirement to use 'an approved air stripping system or equivalent' is vague and not practicably enforceable. Likewise, the 'appropriate equipment' that must be maintained in order to minimize VOC emissions from the cooling tower should be specified in the permit. The current requirement is too vague to be practicably enforceable. Additionally, the condition states that records must be maintained for two years. Part 70, however, requires that records be kept for five years." Petition at 7.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ provided the following response:

> Special condition 13A specifies the method for determining compliance on a monthly interval for VOC emissions. The permit holder retains the option to install an equivalent device to control emissions; however, the permit holder must obtain prior approval from the TCEQ. The prior approval will consist of proposing an alternate device and having the applicable permit modified if approved.

RTC at 5. The petition is denied in part on this issue. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have not demonstrated that the State's response on monitoring was inadequate.

As for the portion of the claim referring to the number of years that records must be maintained, the petition is granted on this issue. The title V permit should be clear that records must be kept for a period of at least 5 years in accordance with 40 C.F.R. § 70.6(a)(3)(ii)(B).

(xiii) *Petitioners' Claim*: In Special Condition 17, "[t]he permit should define what constitutes an 'emergency condition.' In addition, Premcor should be required to maintain records of each time vent streams are sent to the flare and documentation as to what emergency condition justified not routing the emissions to the SRU. Further, the Executive Director should not be allowed to create off-permit exemptions to this requirement. Such exemptions would constitute illegal modifications of the PSD permit without required public participation." Petition at 7.

EPA's Response: The petition is granted on this issue. TCEQ's RTC states

> Special condition 16 only allows waste gas streams to be routed

> through the amine regeneration units and processed in the sulfur recovery units. By routing the waste gas stream through the amine regeneration units and the SRU, hydrogen sulfide and sulfur will be removed, which ultimately reduces sulfur dioxide emissions from the flares. An emergency condition could include but is not limited to an unexpected shutdown of the sulfur recovery unit due to malfunction, power outage, etc.

RTC at 5-6. The TCEQ should provide the basis as to why the permit should not define what constitutes an "emergency condition." In addition, the TCEQ should explain why Premcor should not be required to maintain records of each time vent streams are sent to the flare and documentation as to what emergency condition justified not routing the emissions to the sulfur recovery unit (SRU). Finally, TCEQ provided no response to Petitioners' claim regarding an exemption to this requirement. TCEQ must provide a response, explain whether it believes it may grant an exemption (and if so provide a citation to proper authority) and make any necessary changes to the title V permit.

(xiv) *Petitioners' Claim*: In Special Condition 19, "Premcor should be required to maintain records documenting compliance with this condition." Petition at 7.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ provided the following response:

> Special condition 17 requires that the sour water stripper is operated and the tanks are continuously monitored to help ensure that the system is operated properly. This includes any records including credible evidence to document both periods of compliance and noncompliance.

RTC at 6. The petition is denied on this issue. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have not demonstrated that the State's response was inadequate.

(xv) *Petitioners' Claim*: In Special Condition 21, "[t]he permit should require the facility to record the results of monitoring the tail gas incinerator stacks for visible emissions and should specify the method and frequency for such monitoring." Petition at 7.

EPA's Response: According to TCEQ, tail gas incinerator stacks are to be checked for visible emissions on a quarterly basis. RTC at 6. The petition is granted on this issue. In responding to this comment, TCEQ has not explained how the monitoring requirements are sufficient to assure compliance with the terms and conditions of the permit.

(xvi) *Petitioners' Claim*: In Special Condition 23, "Premcor should be required to record any unscheduled shutdown of facilities at the SRU complex resulting in noncompliance with emission caps or conditions and to document the steps taken to implement the sulfur load shedding plan and the actions taken to re-establish compliance." Petition at 8.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ provided the following response:

> The sulfur load shedding plan does not relieve the permit holder from complying with any mass emission rate. Additionally, special term and condition 2 specifically states the permit holder must comply with 30 TAC § 101.201.

RTC at 6. The petition is denied on this issue. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have not demonstrated that the State's response was inadequate.

(xvii) *Petitioners' Claim*: In Special Condition 26, "[t]he permit should require that evaluations of firebox exit temperatures be recorded." Petition at 8.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. TCEQ responded that Special Condition 24A "specifies that the firebox temperatures must be continuously monitored and recorded." RTC at 6. The petition is denied on this issue. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have not demonstrated that the State's response was inadequate.

(xviii) *Petitioners' Claim*: In Special Condition 27A, "[t]he permit must specify monitoring sufficient to assure compliance for visible emissions at heaters and boilers and require the facility to record all results of such monitoring." Petition at 8.

EPA's Response: According to TCEQ, all emission units must be checked at least quarterly for visible emissions. RTC at 6. The petition is granted on this issue. In responding to this comment, TCEQ has not explained how the monitoring and recordkeeping requirements are sufficient to assure compliance with the terms and conditions of the permit.

(xix) *Petitioners' Claim*: In Special Condition 27B, "[t]he facility should be required to record and report all events of visible emissions and repairs." Petition at 8.

EPA's Response: While this claim was originally submitted by Petitioners to the TCEQ

during the public comment period that ended on September 5, 2006, the TCEQ never provided a response. The petition is granted on this issue. TCEQ must provide a response, and include the necessary conditions in the title V permit.

(xx) *Petitioners' Claim*: In Special Condition 28, "[r]ecords should be maintained for 5 years even after Low-NOx burners are installed." Petition at 8.

EPA's Response: While this claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006, the TCEQ never provided a response. The petition is granted on this issue. TCEQ should provide a response, and include the necessary conditions in the title V permit.

(xxi) *Petitioners' Claim*: In Special Condition 30E, "[t]he permit should require gas and hydraulic tests on new or reworked connections to be recorded. Sensory inspections of flanges should also be recorded." Petition at 8.

EPA's Response: The petition is granted on this issue. TCEQ's response ("Condition 28E specifies quarterly monitoring on all new or reworked connections. This includes gas-tests or hydraulic-tests at no less than normal operating pressure. Additionally, the term specifies inspection of flanges by audible, visual, and/or olfactory (AVO) means at least weekly by operating personnel" (RTC at 6)) fails to address the recordkeeping concerns raised by the Petitioners.

(xxii) *Petitioners' Claim*: In Special Condition 30F, "[t]he facility must be required to record the results of monitoring disc integrity as it is a parametric test for emissions." Petition at 8.

EPA's Response: The petition is granted on this issue. TCEQ's response ("Condition 28F requires that all valves equipped with rupture discs require installation of a pressure gauge between the relief valve and rupture disc to monitor disc integrity" (RTC at 6)) fails to address the recordkeeping concerns raised by the Petitioners.

(xxiii) *Petitioners' Claim*: In Special Condition 30G, "[t]he requirements for an 'approved gas analyzer' should be specified in the permit (as in Special Condition #30F) and the results of its monitoring must be recorded." Petition at 8.

EPA's Response: The petition is denied on this issue. As TCEQ notes ("Condition 28F specifies that an approved gas analyzer shall conform to the requirements of 40 C.F.R. § 60.485(a)-(b)" (RTC at 6)), the requirement is specified in the permit. Petitioners have not demonstrated that the State's response was inadequate.

(xxiv) *Petitioners' Claim*: In Special Condition 30I, "Premcor should be required to document in a log the efforts made to repair the leaking component within 15 days and any

rationale for why repair would require unit shutdown." Petition at 9.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ provided the following response:

> Condition 28J specifies that the permit holder must keep records indicating appropriate dates, test methods, instrument readings, repair results, and corrective actions taken for all components.

RTC at 6. The petition is denied on this issue. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have not demonstrated that the State's response was inadequate.

(xxv) *Petitioners' Claim*: In Special Condition 32, "[s]pecific requirements for monitor testing and calibration should be included in the Title V permit." Petition at 9.

EPA's Response: While this claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006, the TCEQ never provided a response. The petition is granted on this issue. TCEQ must provide a response and make any necessary changes to the title V permit.

(xxvi) *Petitioners' Claim*: In Special Condition 33A, "[t]he permit should require the facility to keep records documenting that sensory inspections for HF [hydrogen fluoride] occur every four hours." Petition at 9.

EPA's Response: The petition is denied on this issue. TCEQ noted that Condition 31A "specifies checking for HF leaks every four hours in the operating area by audio, olfactory, and visual checks." RTC at 6. Further, Condition 31D in the permit states that records "shall be maintained at the plant site of the time leaks were detected and all repairs and replacements made due to leaks." RTC at 6. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have not demonstrated that the State's response was inadequate.

(xxvii) *Petitioners' Claim*: In Special Condition 34, "[t]he permit should require the facility to keep records documenting that inspections of locations with HF detection paint occur as required." Petition at 9.

EPA's Response: The petition is denied on this issue. As TCEQ noted, "Condition 31A-D specifies that HF leaks should be found, identified, and repaired. These records include but are not limited to location, repairs, and replacements." RTC at 6. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply

with the requirements of the Act (including the SIP). Petitioners have not demonstrated that the State's response was inadequate.

(xxviii) *Petitioners' Claim*: In Special Condition 37B(5), "[t]he permit empowers the TNRCC [now TCEQ] Executive Director, Regional Director or the Manager of the TNRCC Enforcement Division, Air Section, Engineering Services Team to allow deviations from specified stack sampling procedures and to waive testing for any pollutant. Any off-permit authorizations of deviations or exemptions from the permit requirements would constitute an illegal modification of the PSD permit without required public participation. Further, such conditions would render the permit requirements practicably unenforceable and should be eliminated from the Title V permit." Petition at 9.

EPA's Response: The petition is granted on this issue. Petitioners had made a similar comment to the State and TCEQ provided its response:

> Condition 35B(5) specifies that the permit holder must submit any test methods and test method deviations to both the TCEQ and EPA. In the event that the testing of a particular pollutant is waived, TCEQ and EPA approval would be required. If approved, the permit holder may proceed with emissions sampling in accordance with the plan.

RTC at 6. TCEQ's response does not reflect that Condition 35B(5) appears to allow TCEQ to make deviation and waiver determinations without EPA approval. Condition 35B(5) provides that the "TCEQ Regional Director or the TCEQ Compliance Support Services in Austin shall approve or disapprove of any deviation from specified sampling procedures" and that "[r]equests to waive testing for any pollutant specified in C of this condition shall be submitted to the TCEQ Austin Office of Permitting, Remediation, and Registration, Air Permits Division." TCEQ will need to either provide a citation to proper authority for granting the deviation or exemption, or remove or modify the reference to the deviation or exemption, as appropriate.

(xxix) *Petitioners' Claim*: In Special Condition 40G, "Premcor should be required to maintain records of daily sensor validation." Petition at 9.

EPA's Response: The petition is granted on this issue. The TCEQ's response that "38G requires the owner or operator to perform daily sensor validations" (RTC at 7) fails to address the recordkeeping concern raised by the Petitioners.

(xxx) *Petitioners' Claim*: In Special Condition 42, "[t]he permit should require that fuel gas mix drum monitoring be recorded and reported." Petition at 10.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ responded that "Condition 40A requires fuel gas mix drum recording to be continuously recorded and reported."

RTC at 7. The petition is denied on this issue. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have not demonstrated that the State's response was inadequate.

(xxxi) *Petitioners' Claim*: "The permit requires that monitoring records be stored on-site with availability to the...[TCEQ]...upon request. Many of these records must be filed with the agency with Premcor's six-month monitoring report. In addition, in order to ensure public access to this information, the facility should provide the TCEQ with a list of the records that it has in storage so that the TCEQ can then honor citizen requests for documents by retrieving them." Petition at 10.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ provided the following response:

> The permit holder maintains records of monitoring throughout the plant that is readily available to the TCEQ or any permitting authority. If the public wants to review records for a specific area or unit in the plant, a request for records should be made to the TCEQ Beaumont Regional Office. Once the request is made, the records will be made available as soon as practicable.

RTC at 7. The petition is denied on this issue. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have not demonstrated that the State's response was inadequate.

b. Permit 2303A

In the attempt to analyze Permit 2303A for monitoring concerns raised by the Petitioner, EPA discovered another example of TCEQ's inadequate use of incorporation by reference. EPA is unable to provide individual responses to the Petitioners' claims since the claims are not based on the permit that was incorporated into the title V permit. While the Petitioners' previous comments and TCEQ's RTC reference Permit 2303A, the title V permit incorporates Permit 2303, and the substantive claims raised by the Petitioner do not correspond with the conditions present in Permit 2303. As noted above in the section on incorporation by reference, TCEQ is directed to make the proper permit available when it renotices the title V permit for public comment

c. Permit 5491A

(i) *Petitioners' Claim*: "The permit states that records must be kept for at least two years.

Part 70 requires that records be kept for five years." Petition at 15.

EPA's Response: The petition is granted on this issue. The title V permit should be clear that records must be kept for a period of at least 5 years in accordance with 40 C.F.R. § 70.6(a)(3)(ii)(B).

(ii) *Petitioners' Claim*: In Special Condition 1, "[t]he permit should require the facility to periodically monitor emissions of any air contaminants from the tanks. Additionally these measurements should be recorded [and] reported." Petition at 15.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. TCEQ did not provide a response to this comment in its RTC. The petition is granted on this issue. TCEQ must provide a response and ensure that the monitoring is sufficient to assure compliance with the terms and conditions of the permit.

(iii) *Petitioners' Claim*: In Special Condition 2, "[t]he permit requires annual visual inspection of the secondary seals on tanks 110 and 111. This is not frequent enough to ensure compliance. Secondary seals should be inspected quarterly." Petition at 15.

EPA's Response: TCEQ responded that the executive director determined that inspecting the secondary seal once every 12 months is an adequate demonstration of compliance. RTC at 18. The petition is granted on this issue. The title V permit must have monitoring sufficient to assure compliance with the terms and conditions of the permit. In responding to this comment, TCEQ has not explained how the monitoring requirements are sufficient to assure compliance with the terms and conditions of the permit.

d. Permit 8369A

(i) *Petitioners' Claim*: In Special Condition 1F, "[t]he permit should require leak-checking to be recorded. Sealless or leakless valves should be monitored and recorded in case of defect or malfunction, and measurements from the pressure-sensing device should be recorded. Additionally, the permit should specify that all leaking discs be reported and replaced within 5 days or, if they cannot be repaired while the equipment is in operation, at the next process shutdown." Petition at 15.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. TCEQ did not provide a response to this comment in its RTC. The petition is granted regarding the monitoring, recordkeeping, and reporting part of the claim. TCEQ must provide a response and ensure that the monitoring recordkeeping and reporting requirements are sufficient to assure compliance.

(ii) *Petitioners' Claim*: In Special Condition 1G, "[s]eal systems designed and operated to

prevent emissions or those equipped with automatic failure detection and alarm systems should continue to be monitored in case of defect or malfunction." Petition at 16.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. TCEQ did not provide a response to this comment in its RTC. The petition is granted on this issue. TCEQ must provide a response and ensure that the monitoring is sufficient to assure compliance.

(iii) *Petitioners' Claim*: In Special Condition 1I, "[e]very reasonable effort" is vague and practicably unenforceable. The permit should specify what efforts are required on the part of the facility. Petition at 16.

EPA's Response: The petition is granted on this issue. The permit condition does not specify the criteria, consistent with the SIP, to determine when "every reasonable effort" is applied. See *In the Matter of Midwest Generation (Joliet Generating Station)*, Petition No. V-2004-3 at 59 (June 24, 2005). TCEQ must remove the term "every reasonable effort" from this condition, define the term, or provide criteria to determine "every reasonable effort" and revise the condition to be consistent with the provisions of the underlying applicable requirement.

(iv) *Petitioners' Claim*: In Special Condition 1J, "[t]he permit must require all monitoring and inspection to be recorded including physical inspections that do not detect leaks." Petition at 16.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. TCEQ did not provide a response to this comment in its RTC. The petition is granted on this issue. TCEQ must provide a response and ensure that the recordkeeping requirements are sufficient to assure compliance.

(v) *Petitioners' Claim*: In Special Condition 2, "[t]he permit requires that waste gas from point sources containing VOC and other organic compounds be routed to a 'flare, an incinerator, or recovery system which will operate with no less than 95 percent efficiency.' This condition, however, does not require testing to determine if the equipment is operating with this efficiency. The permit must require periodic testing to verify that the flare, incinerator, or recovery system operates with at least 95 percent efficiency. Additionally, the title V permit should eliminate the TCEQ Executive Director's discretion to make exceptions to this condition as such discretion renders this condition practicably unenforceable." Petition at 16.

EPA's Response: The petition is granted on this issue. TCEQ did not provide a response to this comment. TCEQ has failed to explain why testing of the flare, incinerator, or recovery system is not required and how the monitoring requirements in the permit are sufficient to assure compliance with its terms and conditions. In addition, TCEQ must provide a citation to proper authority allowing TCEQ to grant an exception (if such authority exists), and make any necessary changes to the title V permit.

e. Permit 56546

(i) *Petitioners' Claim*: In Special Condition 4, "[t]he requirement for 'representative documentation which demonstrates that operations covered by this permit are achieving compliance' is vague and unenforceable and cannot substitute for specific monitoring sufficient to assure compliance. In addition, compliance documentation must be maintained for 5 years as mandated by 40 C.F.R. § 70.6(a)(3)(ii)(B)." Petition at 16.

EPA's Response: The petition is granted on this issue. The TCEQ must provide a response that explains whether the requirement for "representative documentation" is sufficient to assure compliance with the terms and conditions of the permit. Further, the title V permit should be clear that records must be kept for a period of at least five years in accordance with 40 C.F.R. § 70.6(a)(3)(ii)(B).

(ii) *Petitioners' Claim*: In Special Condition 5F, "[s]ealless or leakless valves and specified relief valves should to be monitored and recorded in case of defect or malfunction. Additionally, the permit should specify that all leaking discs be reported and replaced within 5 days or, if they cannot be repaired while the equipment is in operation, at the next process shutdown." Petition at 17.

EPA's Response: TCEQ responded that "[s]ealless or leakless valves by design are not expected to leak. Special condition 5I requires that all leaking components be replaced within 15 days or upon unit shutdown. Special condition 5J requires records of all fugitive monitoring of components to be recorded." RTC at 10.

The petition is partially granted on this issue. The title V permit must have monitoring sufficient to assure compliance with the terms and conditions of the permit. TCEQ has failed to provide a rationale to support its decision regarding the monitoring of the valves.

The petition is partially denied on this issue. The 15 day replacement requirement in Special Condition 5I is consistent with EPA rules, and Petitioners have failed to provide a basis as to why the requirement should be reduced to five days. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have failed to support the claim with adequate references, legal analysis, or evidence, and have failed to make that demonstration.

(iii) *Petitioners' Claim*: In Special Condition 5G, "[s]haft sealing systems should be monitored and the data recorded in case of defect or malfunction. For the same reasons, submerged or sealless pumps should also be monitored if used in the alternative." Petition at 17.

EPA's Response: The petition is granted on this issue. TCEQ responded that

> Shaft sealing systems which prevents or detects VOC leaks may be used in lieu of the quarterly testing specified in the permit condition. Submerged and sealless pumps are not expected to leak by design and may be used to meet requirements.

RTC at 10. TCEQ must provide the basis for this substitution and demonstrate how this approach is sufficient to assure compliance with the terms and conditions of the permit.

(iv) *Petitioners' Claim*: In Special Condition 5H, "[t]he permit should require that leaks be repaired or replaced within 5 days. Additionally it should specify what efforts are required on the part of the facility rather than requiring the unenforceable standard 'every reasonable effort'." Petition at 17.

EPA's Response: The petition is partially granted and partially denied on this issue. The petition is denied regarding the 15 day replacement requirement in Special Condition 5I. This requirement is consistent with EPA rules, and Petitioners have failed to provide a basis as to why the requirement should be reduced to five days. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have failed to support the claim with adequate references, legal analysis, or evidence, and have failed to make that demonstration.

The petition is granted regarding the term "every reasonable effort." The permit condition does not specify the criteria, consistent with the SIP, to determine when "every reasonable effort" is applied. See *In the Matter of Midwest Generation (Joliet Generating Station)*, Petition No. V-2004-3, at 59 (June 24, 2005). TCEQ must remove the term "every reasonable effort" from this condition, define the term, or provide criteria to determine "every reasonable effort" and revise the condition to be consistent with the provisions of the underlying applicable requirement.

(v) *Petitioners' Claim*: In Special condition 7G, "[t]he permit must require the facility to maintain records of monitoring for five years." Petition at 17.

EPA's Response: The petition is granted on this issue. The title V permit should be clear that records must be kept for a period of at least five years in accordance with 40 C.F.R. § 70.6(a)(3)(ii)(B).

(vi) *Petitioners' Claim*: "The permit requires that monitoring records be stored on-site with availability to the...[TCEQ]...upon request. Many of these records must be filed with the agency with Premcor's six-month monitoring report. In addition, in order to ensure public access to this information, the facility should provide the TCEQ with a list of the records that it has in storage so that the TCEQ can then honor citizen requests for documents by retrieving them." Petition at 17.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ provided the following response:

> The permit holder maintains records of monitoring throughout the plant that is readily available to the TCEQ or any permitting authority. If the public wants to review records for a specific area or unit in the plant, a request for records should be made to the TCEQ Beaumont Regional Office. Once the request is made, the records will be made available as soon as practicable.

RTC at 10. The petition is denied on this issue. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have not demonstrated that the State's response was inadequate.

f. Permit 802

(i) *Petitioners' Claim*: In Special Condition 3, "[t]he permit should require periodic opacity monitoring sufficient to assure compliance." Petition at 17.

EPA's Response: TCEQ responded that "[t]he Title V permit requires that all permit holders perform quarterly visible or opacity readings for all applicable sources." RTC at 10. The petition is granted on this issue. The title V permit must have monitoring sufficient to assure compliance with the terms and conditions of the permit. TCEQ has failed to provide a rationale to demonstrate that the monitoring requirements in the permit are sufficient to assure compliance.

(ii) *Petitioners' Claim*: In Special Condition 4, "Premcor should be required to analyze the total sulfur content of its natural gas weekly or with each new shipment. Premcor should also be required to test the sulfur content of fuel oil any time it is burned." Petition at 18.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ provided the response that "[s]pecial condition #4 of permit 802 requires the facility to perform quarterly analysis of the fuel and keep records of sulfur in fuel oil." RTC at 10. The petition is denied on this issue. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have not demonstrated that the State's response was inadequate.

g. Permit 7600A

(i) *Petitioners' Claim*: In Special Condition 3B, "[t]he permit empowers the TCEQ Executive Director to allow deviations from specified tank control. Any off-permit

authorizations of deviations or exemptions from the permit requirements would constitute an illegal modification of the PSD permit without required public participation. The permit should state that only the alternatives listed in Special Condition #3C may be used without public process." Petition at 18.

EPA's Response: TCEQ responded that the "Executive Director retains the authority to allow deviations from specified tank control; public notification for each deviation is not required by the regulations where there is no increase or change in the character or amount of emissions. Prior to any changes, the permit holder must obtain approval from the TCEQ." RTC at 11. The petition is granted on this issue. TCEQ must provide a citation to proper authority allowing TCEQ to grant an exemption (if such authority exists), and make any necessary changes to the title V permit.

(ii) *Petitioners' Claim*: In Special Condition 3G, "[t]he permit must require that records be maintained for five years." Petition at 18.

EPA's Response: TCEQ responded that "[o]nce the permit holder receives the effective FOP [Federal Operating Permit], Premcor will be required to keep all records at the facility for a period of at least 5 years." RTC at 11. The petition is granted on this issue. The title V permit should be clear that records must be kept for a period of at least five years in accordance with 40 C.F.R. § 70.6(a)(3)(ii)(B).

(iii) *Petitioners' Claim*: "As written, this...[Special Condition 3I]...is practicably unenforceable. It states that momentary drippings are permitted although sustained drippings are not. It does not, however, specify how long a drip must exist in order to be classified as 'sustained'." Petition at 18.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ provided the following response:

> As defined in the term and condition, a sustained drip is considered to be a drip after the initial connection or disconnection of fittings. If a drip is sustained, it is considered a spill and must be reported. A reported spill may constitute a deviation, which could result in a potential enforcement action.

RTC at 11. The petition is denied on this issue. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have not demonstrated that the State's response was inadequate.

h. Permit by Rule ("PBR") § 106.261 (6/29/2001)

Petitioners' Claim: Petitioners make two claims regarding this PBR. For provision § 106.261(3)-(4), Petitioners state that "[t]he permit should require periodic monitoring of new or increased emissions, including fugitives, to ensure that they comply with emissions limitations." Petition at 18. For provision § 106.261(6), Petitioners state that "[t]he permit requires that visible emissions not exceed 5 percent opacity but does not include any monitoring requirements. Periodic monitoring sufficient to assure compliance should be added to the Title V permit." Petition at 18.

EPA's Response: In response, TCEQ stated that "the facility is required to keep records in accordance with 30 TAC § 106.8. This includes records of new or increased emissions." RTC at 11. Further, "the Title V permit requires that all sources perform quarterly visible or opacity readings for all applicable sources." RTC at 11. The petition is granted on this issue. TCEQ's response mentions recordkeeping but fails to discuss the adequacy of monitoring. The title V permit must have monitoring sufficient to assure compliance with the terms and conditions of the permit. TCEQ has failed to provide a rationale to demonstrate that the monitoring requirements in the permit are sufficient to assure compliance.

i. PBR § 106.472

(i) *Petitioners' Claim*: "The Title V permit should require monitoring to ensure that no visible emissions result while loading or unloading inorganic liquids. The results of the monitoring should be recorded." Petition at 19.

EPA's Response: TCEQ responded that "Premcor is required to keep records in accordance with 30 TAC § 106.8 to show compliance with all PBRs including § 106.472. Premcor is required to certify compliance with all PBRs in the title V permit under Special Term and Condition 19." RTC at 12. The petition is granted on this issue. The title V permit must have monitoring sufficient to assure compliance with the terms and conditions of the permit. TCEQ has failed to provide a rationale to demonstrate that the monitoring requirements in the permit are sufficient to assure compliance.

(ii) *Petitioners' Claim*: "Premcor should be required to maintain a list of chemicals loaded, unloaded or stored pursuant to this rule. This list should identify any compound with an initial boiling point of 300 degrees Fahrenheit or greater listed in 40 C.F.R. Part 261, Appendix VIII. If such compounds are identified Premcor should attach to the list certification that the facilities loading, unloading or storing such compounds are at least 500 feet away from any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facilities." Petition at 19.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ provided the following response:

> Premcor is required to keep records in accordance with 30 TAC § 106.8 to show compliance with all PBRs including § 106.472; as well as compliance with 30 TAC § 106.472(9), which requires a 500 foot distance from sensitive receptors. Premcor is required to certify compliance with all PBRs in the Title V permit under Special Term and Condition 19.

RTC at 12. The petition is denied on this issue. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have not demonstrated that the State's response was inadequate.

j. PBR § 106.511 (12/2/2003)

Petitioners' Claim: "The permit should require the facility to record and report hours that the engines and turbines subject to the rule are used and calculations of the percentage of the normal annual operating schedule of the primary equipment that such use constitutes. In addition, the report should include an explanation of why/how each use qualifies as portable, emergency, and/or standby services." Petition at 19.

EPA's Response: This claim was originally submitted by Petitioners to the TCEQ during the public comment period that ended on September 5, 2006. The TCEQ provided the following response:

> The facility is required to keep records in accordance with 30 TAC § 106.8 to show compliance with all PBRs including § 106.511, which requires that maximum annual operating hours not exceed 10% of the normal annual operating schedule of the primary equipment. Premcor is required to certify compliance with all PBRs in the Title V permit under Special Term and Condition 19.

RTC at 12. The petition is denied on this issue. As noted above, EPA must issue an objection to the title V permit if the petitioner demonstrates that the permit does not comply with the requirements of the Act (including the SIP). Petitioners have not demonstrated that the State's response was inadequate.

k. Standard Exemption § 111 (1/11/1985)

Petitioners' Claim: Petitioner provides three claims on this Standard Exemption: "[t]he facility should be required to monitor to assure that it does not exceed 25 tons per year of any air contaminant. The data should be recorded and reported", "Premcor should be required to keep records of capacity, production and throughput", and "[t]he facility should be required to conduct

sampling at specified intervals to determine that no hazardous compounds listed under 40 C.F.R. 261, Appendix VIII are released. The results of this sampling should be recorded and reported." Petition at 19-20.

EPA's Response: The TCEQ provided the following response:

> Premcor submitted an application to demonstrate compliance with all applicable conditions of the standard exemption, SE 111. The executive director has reviewed this application and granted the exemption; therefore, additional monitoring is not required to determine compliance. Additionally, the Premcor must certify compliance with the exemption on an annual basis. If Premcor exceeds 25 TPY, fails to keep records showing compliance with SE-111 or emits a hazardous chemical listed under 40 CFR 261, Appendix VIII Premcor would no longer be able to operate under this standard exemption.

RTC at 13. The petition is granted on this issue. The title V permit must have monitoring sufficient to assure compliance with the terms and conditions of the permit. It is not clear how Premcor will certify compliance with the exemption without monitoring to determine compliance. TCEQ has failed to provide a rationale to demonstrate that the monitoring requirements in the permit are sufficient to assure compliance.

V. CONCLUSION

EPA grants in part, and denies in part, Petitioners claims regarding incorporation by reference and monitoring (and other requirements) to assure compliance. As noted above, EPA has discussed incorporation by reference in several guidance documents and title V orders. *See, e.g., White Paper 2*; *Tesoro Order*. Incorporation by reference may be appropriate where the cited requirement is part of the public docket or is otherwise readily available, clear and unambiguous, and currently applicable. *Tesoro Order* at 9. As EPA explained in *White Paper 2*, it is important to exercise care to balance the use of incorporation by reference with the need to issue permits that are clear and meaningful to all affected parties, including those who must comply with or enforce their conditions. *White Paper 2* at 34-38. See also *Tesoro Order* at 8. In order for incorporation by reference to be used in a way that fosters public participation and results in a title V permit that assures compliance with the Act, it is important that (1) referenced documents be specifically identified; (2) descriptive information such as the title or number of the document and the date of the document be included so that there is no ambiguity as to which version of a document is being referenced; and (3) citations, cross references, and incorporations by reference are detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation. *See White Paper 2* at 37.

In this case, as discussed above, several of the underlying permits were not readily available to the public. Further, in several instances, TCEQ did not include the emissions

limitations on the face of the title V permit. EPA directs TCEQ to reopen the title V permit and ensure that (1) all of the underlying permits and other documents incorporated by reference are readily available and currently applicable, and references are clear and unambiguous; and (2) all emissions limitations (with the exception of emissions limitations from minor NSR permits and Permits by Rule) are included on the face of the title V permit.

Further, EPA grants the petition with respect to several specific monitoring, recordkeeping and reporting claims discussed above. EPA directs TCEQ to address these issues, and issue a new draft permit for public review and comment. With regard to these monitoring issues and other monitoring requirements in the permit, TCEQ must ensure it has done the following: (1) satisfied the monitoring requirements of 40 C.F.R. §§ 70.6(a)(3)(i)(A) and (B) and 70.6(c)(1); (2) provided a rationale for the monitoring requirements placed in the permit, *see* 40 C.F.R. § 70.7(a)(5); and (3) responded to significant comments.

For the reasons set forth above, and pursuant to Section 505(b) of the Act, 42 U.S.C. § 7661d (b), and 40 C.F.R. § 70.8(d), I partially deny and partially grant the petition and remand the permit to TCEQ for revisions consistent with this Order.

Lisa P. Jackson
Administrator

Dated: MAY 28 2009