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

November 17, 2010

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: Executive Director's Response to EPA Objection  
Renewal  
Permit Number: O2269  
ExxonMobil Corporation  
ExxonMobil Baytown Chemical Plant  
Baytown, Harris County  
Regulated Entity Number: RN102574803  
Customer Reference Number: CN600123939

Dear Mr. Edlund:

On August 20, 2010, the U.S. Environmental Protection Agency (EPA) Region 6 Office signed a letter identifying objections to the issuance of the proposed federal operating permit for the above referenced site. In accordance with Title 30 Texas Administrative Code § 122.350 (30 TAC § 122.350), the Texas Commission on Environmental Quality (TCEQ) may not issue the permit until the objections are resolved.

The TCEQ has completed the technical review of your objections and offers the enclosed responses to facilitate resolution of the objections. In addition, the attached responses to the objections describe the changes, if applicable, that have been made to the revised proposed permit and supporting statement of basis (SOB). The revised proposed permit and SOB are attached for your review.

Mr. Carl E. Edlund, P.E.

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Consistent with 30 TAC §122.350, please provide an indication of your acceptance or assessment of the responses and resolutions to the objections as soon as possible. After receipt of your acceptance to the responses and resolutions to the objections, TCEQ will issue the proposed permit. Thank you for your cooperation in this matter. Please contact Ms. Angie Eastman at (512) 239-5945 if you have any questions concerning this matter.

Sincerely,



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

SH/AE/aw

cc: Ms. Annie Williams, SHE Department, ExxonMobil Corporation, Baytown  
Mr. Barry J. Baisden, SHE Manager, ExxonMobil Oil Corporation, Baytown  
Director, Environmental Public Health Division, Harris County Public Health and  
Environmental Services, Pasadena  
Air Section Manager, Region 12 - Houston

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

Project Number: 12586

## EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

### Permit Number O2269

The Texas Commission on Environmental Quality (TCEQ) Executive Director (ED) provides this Response to EPA's Objection to the renewal of the Federal Operating Permit (FOP) for ExxonMobil Corporation, ExxonMobil Baytown Chemical Plant, Permit No. O2269, Harris County, Texas.

### BACKGROUND

#### Procedural Background

The Texas Operating Permit Program requires that owners and operators of sites subject to 30 Tex. Admin. Code (TAC) Chapter 122 obtain a FOP that contains all applicable requirements to facilitate compliance and improve enforcement. The FOP does not authorize construction or modifications to facilities, and it does not authorize emission increases. To construct or modify a facility, the responsible party must have the appropriate new source review authorization. If the site is subject to 30 TAC Chapter 122, the owner or operator must submit a timely FOP application for the site and ultimately must obtain the FOP to operate. ExxonMobil Corporation applied to the TCEQ for a renewal of the FOP for the ExxonMobil Baytown Chemical Plant located in Baytown, Harris County on October 10, 2008, and notice was published on June 25, 2010 date in *The Baytown Sun*. The public comment period ended on August 11, 2010. During the concurrent EPA review period, TCEQ received an objection to the permit from EPA on August 20, 2010.

In accordance with state and federal rules, the permit renewal may not be issued until TCEQ resolves EPA's objections.

#### Description of Site

ExxonMobil Corporation owns and operates the ExxonMobil Baytown Chemical Plant, located at 5000 Bayway Drive in Baytown, Harris, Texas 77522. The Baytown Chemical Plant originally had three Title V permits, O1278, O2269, & O2270, this renewal incorporates the three permits into one Title V permit O2269. The Baytown Chemical Plant produces four main grades of synthetic rubber products, polypropylene, olefins & aromatics. This permit contains the requirements for all of the production unit sources located at this plant.

The following responses follow the references used in EPA's objection letter.

**EPA OBJECTION NO. 1: Objection to the Incorporation of Flexible Permit into the Title V permit.** The *New Source Review (NSR) Authorization References* table in the draft Title V permit incorporates by reference Flexible Permit No. 20211, renewed on December 21, 2006. Flexible permits are issued pursuant to 30 TAC Chapter 115, Subchapter G; however, those provisions were disapproved by EPA on June 30, 2010, pursuant to Section 110 of the federal Clean Air Act (CAA), 42 U.S.C. §7410, *See* 75 Fed. Reg. 41312 (July 15, 2010), and are not part of the applicable implementation plan for the State of Texas (Texas SIP).

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Therefore, pursuant to 40 CFR § 70.8(c)(1), EPA must object to the issuance of this Title V permit because the terms and conditions of the incorporated flexible permit cannot be determined to be in compliance with the applicable requirements of the Texas SIP. The failure to have submitted information necessary to make this determination constitutes an additional basis for this objection, pursuant to 40 CFR § 70.8(c)(3)(ii). To resolve this objection, additional information must be provided by the applicant showing how the emissions authorized by the flexible permit meet the air permitting requirements of the federally-approved provisions of the Texas SIP. Also, the terms and conditions of flexible permits based upon the requirements of 30 TAC Chapter 115, Subchapter F must be identified as State-only terms and conditions, pursuant to 40 CFR § 70.6(b)(2).

**TCEQ RESPONSE:** As a preliminary matter, the ED believes that resolution of EPA concerns regarding flexible permits is a common objective for both TCEQ and the EPA. The concerns discussed below regarding the use of the Title V permitting process to challenge independent flexible permits on a case-by-case basis does not diminish the importance of reaching an expeditious resolution to the NSR flexible permit issue. The ED recognizes the flexible permit rules, located in 30 TAC Chapter 116, Subchapter G, and submitted to EPA in 1994, have been disapproved by EPA effective August 16, 2010. However, the Texas federal operating permit (FOP) program is EPA-approved. TCEQ reviews applications and issues FOPs according to EPA-approved program rules found in 30 Texas Administrative Code (TAC), Chapter 122. The Texas Operating Permit Program was granted full approval on December 6, 2001 (66 FR 63318), and subsequent rule changes were approved on March 30, 2005 (70 FR 161634). The application procedures, found in 30 TAC § 122.132(a) require an applicant to provide any information required by the ED to determine applicability of, or to codify any "applicable requirement." In order for the ED to issue an FOP, the permit must contain all applicable requirements for each emission unit (30 TAC § 122.142). "Applicable requirement" is specifically defined in 30 TAC § 122.10(2)(h) to include all requirements of 30 TAC Chapter 116 and any term and condition of any preconstruction permit. As a Chapter 116 preconstruction authorization, flexible permits are applicable requirements, and shall be included in applications and Texas issued FOPs, in compliance with Texas's approved program. According to the EPA review procedures of Chapter 122, EPA may only object to issuance of any proposed permit which is not in compliance with the applicable requirements or requirements of this chapter. Therefore, this objection is not valid under the program EPA has approved in Texas because the applicant provided information as to the applicable Chapter 116 requirements, including flexible permits, and the ED has included these requirements in the draft FOP. EPA objections to individual permits issued under an EPA approved operating permit program are not appropriate for concerns that relate to programmatic elements.

The ED disagrees with the allegation that the failure of the applicant to have submitted information necessary to make a determination of whether they were in compliance with the SIP constitutes an additional basis for this objection, pursuant to 40 CFR § 70.8(c)(3)(ii). Section 70.8(c)(3)(ii) is premised on the *permitting authority* not "submitting any information necessary [for EPA] to review adequately the proposed permit." The ED has provided all

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information requested by EPA, when asked, including NSR permits and other supporting information. The flexible permit applications, technical reviews, and flexible permits clearly do not allow sources to utilize the flexible permit authorization mechanism to circumvent major NSR permitting requirements. Specifically, 30 TAC Chapter 116 requires that all new major sources or major modifications be authorized through nonattainment or PSD permitting under Subchapter B, Divisions 5 and 6.

The ED also disagrees that additional information must be provided by the applicant showing how the emissions authorized by the flexible permit meet the air permitting requirements of the federally-approved provisions of the Texas SIP. The flexible permit application, technical review, and flexible permit documentation demonstrates that the emissions authorized by the flexible permits meet the air permitting requirements of the federally approved provisions of the SIP regarding requirements for impacts review, emission measurement, BACT, NSPS, NESHAP, MACT, performance demonstration, modeling or ambient monitoring if required, MECT applicability, and nonattainment or PSD permitting if applicable. Texas submitted the initial flexible permit rule for EPA review and action in 1994. EPA's delay in acting on the flexible permit rules, the approval of the state's federal operating permit program and confusion regarding whether the approved federal operating permit program provided federal enforceability for flexible permits, resulted in a very long period of detrimental reliance on this permit mechanism by regulated entities and TCEQ.

Notwithstanding the disapproval of the flexible permit rules in 30 TAC Chapter 116, Subchapter G, the flexible permit review requirements are parallel to the SIP-approved 30 TAC Chapter 116, Subchapter B permit review and no substantive differences in significant permit elements exist. Indeed, the technical review of the flexible permit No. 20211 application provides information regarding how Subchapter B requirements in § 116.111 are met, including: compliance with the SIP approved Subchapter B rules and review requirements, unit-specific limits based on BACT review at the time of the permit issuance, demonstrations that each emission unit and the facility covered by NSR Permit No. 20211 meets all applicable NSPS, NESHAP requirements, and air dispersion modeling conducted by applicant. The flexible permit and technical review are enclosed with this response. ExxonMobil may separately submit to EPA additional information showing compliance with the Subchapter B requirements. Additionally, the ED does not agree that it is appropriate, necessary or legally required under either 40 CFR Part 70 or the EPA approved federal operating permit program in Texas to require a condition in the operating permit to require a source to prepare and submit a written analysis of any future change/modification to ensure that minor and/or major NSR requirements under the SIP have not been triggered. The federally approved SIP already requires this analysis as part of any future NSR review. See 30 TAC Chapter 116, Subchapter B, Divisions 5 and 6. Minor NSR applicability requirements are adequately specified in the permit and commission rules governing NSR permits; thus, the applicant is currently subject to the requirements to demonstrate, upon any future change, when minor or major NSR requirements will apply.

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However, the ED recognizes that some companies are in negotiations with EPA to include a special term and condition in the draft FOP requiring that they submit an application to reissue a permit, through the SIP-approved amendment, alteration, or renewal process, with a deadline for application submittal, and specific information to EPA and TCEQ for review prior to public notice. If ExxonMobil agrees to such a process, the TCEQ will work with ExxonMobil to change the draft permit appropriately.

Finally, the flexible permit terms and conditions are not appropriate to be identified as state-only in the FOP. The EPA approved definition of a "state-only requirement" in 30 TAC § 122.10(28) is "any requirement governing the emission of air pollutants from stationary sources that may be codified in the permit at the discretion of the ED. State-only requirements shall not include any requirement required under the Federal Clean Air Act or under any applicable requirement." Therefore, the EPA approved program provides the ED with discretion to determine which requirements must be identified as "state-only" and explicitly prohibits anything defined as an "applicable requirement" from being "state-only." Since flexible permits issued in 30 TAC Chapter 116 are "applicable requirements," they may not be included as "state-only" requirements. Instead, they are applicable requirements which are subject to public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping requirements, compliance demonstration and certification requirements, and appropriate periodic or compliance assurance monitoring requirements. "State-only" requirements are specifically not required to meet requirements that are specific to 40 CFR Part 70. See 122.143(18). As stated previously, the flexible permit terms and conditions comply with SIP approved permit rules and assure compliance with future applicable NSR requirements. Again, with regard to flexible permits, the TCEQ will continue its dialogue with EPA to achieve the mutual goal of NSR permits issued under SIP approved rules.

**EPA OBJECTION NO. 2: Objection to the incorporation by reference of PSD Permit.** The *New Source Review (NSR) Authorization References* table in the draft Title V permit incorporates PSDTX996 issued on June 1, 2001, by reference. EPA also notes that a more recent version of the PDS Permit PSDTX996M1 was issued on June 10, 2005 and that this version should be the one referenced. EPA has discussed the issue of incorporation by reference in *White Paper Number 2 for Improved implementation of the Part 70 Operating Permits Program* (March 5, 1996) (White Paper 2). As EPA explained in White Paper 2, incorporation by reference may be useful in many instances, though it is important to exercise care to balance the use of incorporation by reference with the obligation to issue permits that are clear and meaningful to all affected parties, including those who must comply with or enforce their conditions. *Id.* at 34-38. See also *In the Matter of Tesoro Refining and Marketing*, Petition No. IX-2004-6 at 8 (March 15, 2005) (Tesoro Order). As EPA noted in the Tesoro Order, EPA's expectations for what requirements may be referenced and for the necessary level of detail are guided by Sections 504(a) and (c) of the CAA and corresponding provisions at 40 CFR § 70.6(a)(1) and (3). *Id.* Generally, EPA expects that Title V permits will explicitly state all emission limitations and operational requirements for all applicable emission units at a facility. *Id.*

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We note that TCEQ's use of incorporation by reference for emissions limitations from minor NSR permits and Permits by Rule was approved by EPA. *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). Please note that *In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02 at 6 fn 3 (May 28, 2009) and *In the Matter of CITGO Refining and Chemicals Co.*, Petition No. VI-2007-01 at 11-12, fn 5 (May 28 2009) EPA stated that the Agency will be evaluating the use of incorporation by reference for emissions limitations in minor NSR permits and Permits by Rule to determine how well this practice is working. In approving Texas' limited use of incorporation by reference of emission 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 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 30039; 59 Fed. Reg. 44572, 44574.

EPA did not approve (and does not approve of) TCEQ's use of incorporation by reference of emissions limitations for other requirements. *See In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02 at 5 and *In the Matter of CITGO Refining and Chemicals Co.*, Petition No. VI-2007-01 at 11. Pursuant to 40 CFR § 70.8(c)(1), EPA object to the issuance of the Title V permit because it incorporates by reference the major New Source Review permit PSDTX996M1 and fails to include emission limitations and standards as necessary to assure compliance with all applicable requirements. *See* 40 CFR § 70.6(a)(1). To resolve this objection, TCEQ must restate the emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements, from PSDTX996M1 into the body of the draft Title V permit.

**TCEQ RESPONSE:** In response to EPA's objection, the ED has revised FOP No.O2269 to include, in a new Appendix B of the permit, a copy of NSR Permit No. 36476 and PSDTX996M1 and its corresponding terms and conditions, and emission limitations. With regard to IBR of major NSR, the ED respectfully disagrees with EPA's interpretation of its approval of Texas's operating permit program on this issue. The ED recognizes that respective agency staff are actively involved in continuing, extensive discussions on how to resolve this issue; namely, how much detail of the underlying major NSR authorization should be reiterated in the face of the Title V permit. The federally approved operating permit program for Texas has allowed for applicable requirements to be incorporated by reference into the FOP since 1996. *See* Final Interim Approval, 61 Fed. Reg. 32693, June 25, 1996; Final Full Approval, 66 Fed. Reg. 63318, December 6, 2001; and Final Approval of Resolution of Deficiency, 70 Fed. Reg. 16134, March 30, 2005. Title 30 TAC §122.142 states that the operating permit shall contain the specific regulatory citations in each applicable requirement identifying the emission limitations and standards. Additionally, EPA discussed the use of incorporation by reference in the preamble to the final Part 70 rule, discussing the requirements of § 70.6, Permit Content, stating:

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

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

As a result of Texas' initial exclusion of minor NSR as an applicable requirement of the Texas Operating Permit program, and EPA's final interim approval of a program that provided for a phase-in of minor NSR requirements using incorporation by reference, EPA was sued by various environmental groups. *See Public Citizen, Inc. v. U.S. E.P.A.*, 343 F.3d 449 (5<sup>th</sup> Cir. 2003). The petitioner's brief raised several issues, including the use of incorporation by reference of minor NSR, because the exclusion of minor NSR as an applicable requirement was a program deficiency identified by EPA. The petitioner's brief acknowledges that Texas' Operating Permit program incorporates all preconstruction authorizations by reference, through use of a table entitled "Preconstruction Authorization References". The Petitioner's brief includes an example of this table, which clearly contains sections for Prevention of Significant Deterioration (PSD), nonattainment (NA), 30 TAC Chapter 116 Permits, Special Permits and Other Authorizations, and Permits by Rule under 30 TAC Chapter 106. See Brief of Petitioners, p. 30. The brief goes on to discuss the sample permit, Permit 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

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Part 70 provisions addressing the content of Title V permits specify what Title V permits 'shall include,' but do not speak to how the enumerated items must be included." See, Brief of Respondents, pp. 25-26. The Court did not distinguish between minor and major NSR when concluding that IBR is permissible under both the CAA and Part 70.

Thus, it is the ED's position that incorporation by reference of both major and minor NSR permits is acceptable and was fully approved by EPA. However, given EPA's differing opinion, as reflected in the Premcor and CITGO orders, this objection, and the June 10, 2010 letter from EPA Region VI regarding this issue, the ED has revised FOP No. O2269 to include, in a new Appendix B of the permit, a copy of NSR Permit No. 36476 and PSDTX996M1 and its corresponding terms and conditions, and emission limitations, which was initially suggested by EPA as adequate to resolve this objection. Inclusion of the major NSR permits as an appendix should address EPA's objection and ensure that the Title V permit is clear and meaningful to all affected parties. The ED will continue efforts with EPA on how to resolve IBR of major NSR on a broader, programmatic basis.

**EPA OBJECTION NO. 3: Objection to Special Condition 19 for Failing to Meet Compliance Certification Requirements.** Special Condition 19 of the draft Title V permit states that the permit holder shall certify compliance with all terms and conditions. The compliance certification requirements for Title V permits are state in 40 CFR § 70.6(c)(5) and incorporated at 30 TAC § 122.146. Pursuant to 40 CFR §70.8(c)(1), EPA objects to the issuance of the Title V permit because Special Condition of the draft Title V permit conflicts with the general terms and conditions reference to 30 TAC § 122.146. To resolve this objection, TCEQ must amend Special Condition 19 to include all requirements for compliance certifications, as set forth in 30 TAC §122.146 including the identification of the methods or other means for determining the compliance status with each term and condition of the permit.

EPA requests that TCEQ revise Special Condition 19 to use the following language to resolve out objection on this special condition:

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

**TCEQ RESPONSE:** First, the ED notes that Special Condition 19 in the draft permit does not refer to compliance certification. That term is Special Condition 35 in the draft FOP. The ED does not agree that Special Condition 35 of the draft permit needs to be revised in order to meet regulatory requirements. Special Condition 35 of the draft permit is in compliance with the specific requirements of the EPA approved Federal Operating Permit program, as found in 30 TAC Chapter 122. Specifically, § 122.146(5), requires the annual compliance certification to

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include or reference the specified elements, including: the identification of each term or condition of the permit for which the permit holder is certifying compliance, the method used for determining the compliance status of each emission unit, and whether such method provides continuous or intermittent data; for emission units addressed in the permit for which no deviations have occurred over the certification period, a statement that the emission units were in continuous compliance over the certification period; for any emission unit addressed in the permit for which one or more deviations occurred over the certification period, specific information indicating the potentially intermittent compliance status of the emission unit; and the identification of all other terms and conditions of the permit for which compliance was not achieved. All permit holders are required to comply with the requirements of 30 TAC § 122.146, as well as all other rules and requirements of the commission.

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

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

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

**EPA OBJECTION NO. 4: Objection to Special Condition 3.** Under the Special terms and Conditions provisions of the draft Title V permit, Condition 3 requires stationary vents with certain flow rates comply with identified provisions of 30 TAC Chapter 111 of the Texas SIP. However, there is no identification of the specific stationary vents that are subject to those requirements. As such, this condition fails to meet the requirements of 40 CFR § 70.6(a)(1), in that the condition lacks the specificity to ensure the compliance with the applicable requirements associated with those unidentified emission units. In addition, the Statement of Basis document for the draft Title V permit does not provide the legal and factual basis for Condition 3, as required by 40 CFR § 70.(a)(5). Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit since Condition 3 is not in compliance with the requirements of 40 CFR § 70.6(a)(1) and 70.7(a)(5). To resolve this objection, TCEQ must revise Condition 3 of the draft Title V permit to list (or otherwise specifically identify) the specific stationary vents that are subject to the specified requirements of 30 TAC Chapter 111 and provide an explanation in the Statement of Basis for the legal and factual basis for Condition 3.

**TCEQ RESPONSE:** 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*

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*Streamlined Development of Part 70 Permit Applications*, July 10, 1995. The ED documented in the draft FOP that the Chapter 111 visible emission requirements for stationary vents were site-wide requirements - applying uniformly to the units or activities at the site. Because the applicant indicated in its application that only the Chapter 111 site-wide requirements apply to these stationary vents and other sources, the applicant is not required to list these smaller units individually in the unit summary, and therefore, these emission units did not appear in the applicable requirements summary table in the draft FOP.

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

However, the ED does agree that the FOP could be revised to more clearly group stationary vents according to which opacity limit applies. The site has vents that are subject to the 30% opacity requirement of 30 TAC § 111.111(a)(1)(A) but has chosen to require the 20% opacity requirement of 30 TAC § 111.111(a)(1)(B), for all stationary vents at the site, as noted in the revised Special Condition 3, which is a site-wide term and condition, as allowed in the *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995.

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

**EPA OBJECTION NO. 5: Object to Special Condition 25.** Special Condition 25 of the draft Title V permit applies to "containers using controls specified in 40 CFR Part 63, Subpart PP;". Special Condition 25 lists the Subpart PP standards for containers, level 1 and lever 2 controls, test methods and procedures, and inspection and monitoring requirements. Special Condition 25 does not list the emission unit(s) to which it applies. Further, the applicable requirements of Subpart PP are not listed in the *Applicable Requirements Summary* table for the emission units to which they apply. Failure to include the requirements of 40 CFR 63, Subpart PP in any unit-specific tables makes the compliance obligations of the facility unclear. Finally, [t]his method of incorporation by reference without regard to the individual emission units that are subject to the regulation renders this aspect of the Title V permit unenforceable as a practical matter and incapable of meeting the Title V permit application and content requirements

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necessary to ensure compliance with all applicable requirements. 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) & (3). To resolve this objection, TCEQ must revise the Title V permit to identify each emission unit covered by the draft Title V permit and identify the specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting requirements for each such unit, including those emission units covered by Special Condition 25.

**TCEQ RESPONSE:** Special Term and Condition 23, relating to 40 CFR Part 63, Subpart PP, covers site-wide conditions for containers that load and store hazardous waste until disposal from the site. The requirements identified in Special Condition 23 are "generic" and applied identically to all containers that load and store hazardous waste, therefore 40 CFR Part 63, Subpart PP is listed as a site-wide requirement in the draft permit in accordance with the EPA's *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995. Since there are no unit specific requirements within Subpart PP that apply to any individual units at the site, no emission unit was identified separately in the Applicable Requirement Summary table for this permit.

**EPA OBJECTION NO. 6: Objection to failure to Identify Specific Compliance Option.** The *Applicable Requirements Summary* table fails to list the sections of three subparts of the federal regulations that apply to compliance options for certain emission units. Specifically, the table fails to list the sections of:

- a. 40 CFR Part 63, Subpart EEEE that are applicable requirements for emission unit BPBD311
- b. 40 CFR Part 63, Subpart FFFF that are applicable requirements for the emission units that must comply with Subpart FFFF; and
- c. 40 CFR Part 63, Subpart FFFFF that are applicable requirements for emission units BTCPFUG and D3000.

Failure to include these requirements in any unit-specific tables makes the compliance obligations for 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 for 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 objection, TCEQ must revise the draft Title V permit to identify each emission unit covered by the Title V permit and identify the specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting requirements for each such unit, including those emission units subject to the requirements referenced above.

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**TCEQ RESPONSE:** In response to this objection, the TCEQ requested the company provide the applicable requirements for 40 CFR Part 63, Subparts EEEE and FFFF. The company provided the applicable standards, monitoring and testing, recordkeeping, and reporting requirements, including options selected. TCEQ reviewed these requirements and included them in the Title V permit Applicable Requirements Summary Table for units subject to 40 CFR Part 63, Subparts EEEE and FFFF. Additionally, MACT GGGGG applicability for unit ID BTCPFUG, MACT FFFF applicability for unit IDs LPUCOL1, LPUD302, LPUD600, LPUDR101A/B, LPUT620, PROLPU, TK0709, TK3011, TK3023, & TK709, were removed since those MACTs are no longer applicable to those units. New MACT applicability was added to the following unit IDs: MACT FFFF: BAPPWWC, BPUWWC, FS09, FS23, FS24, CT70, PCUWWC, PROBAPP, PRODHU, PROMABAPP, PROPCU, TK4013; MACT EEEE: BPBCD17LD, BPBD1BLD, BPBD1CLD, BPBD310LD, BPBD330LD, BPBD306, BPBD115. Unit IDs IAUD800, LR27, LR28, PPD4721, PPD4727A, PPD4727B, PPD5101, PPD5102, PPD5103, PPD5114, PPD5117, PPD5152, PPD5181, PPD5420, PPD5431, PPD6101, PPD6102, PPD7101, PPD7102, PPD7152, PPDX145 all emit pollutants classified as Group 2 chemicals and have been placed in the Special Term and Condition 27, to show the record keeping and reporting requirements.

**EPA OBJECTION NO. 7: Objection to Failure to Identify Applicable Requirements.** The *Applicable Requirements Summary* table fails to list the sections of 40 CFR Part 60, Subpart NNN and Part 61, Subpart FF that are applicable requirements for emission units FS09-VENT, FS23-VENT, and FS24-VENT. Additionally, the *Applicable Requirements Summary* table fails to list the sections of 40 CFR Part 61, Subpart FF that are applicable requirements for emission unit FS12-VENT. The *Applicable Requirements Summary* table lists only a high level general citation for these subparts and then notes "\*\*\*See CAM Summary" in the "Monitoring and Testing Requirements" column. The CAM summary fails to give sufficient level of detail to determine acceptable monitoring for the referenced subparts. The CAM summary also repeatedly gives reference to "manufacturer's recommendations", "Manufacturer's specification", and "other written procedures". 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 requirements of 40 CFR § 70.6(a)(1) & (3). To resolve this objection, TCEQ must revise the draft Title V permit to identify the specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting requirements for each such unit, including the emission units subject to 40 CFR Part 60, Subpart NNN and 40 CFR Part 61, Subpart FF as referenced above. TCEQ must also indicate clearly what the manufacturer's recommendations or specifications are if they are to dictate monitoring requirements.

**TCEQ RESPONSE:** The draft permit has been updated to include options chosen by ExxonMobil, as allowed by 40 CFR Part 60, Subpart NNN and Part 61, Subpart FF.

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TCEQ disagrees that the CAM requirements need to specify the specific manufacturer's recommendations in the permit. These recommendations do not dictate monitoring requirements but are referred to in the context of quality assurance/quality control (QA/QC) procedures to validate that the monitoring devices are calibrated accurately. The specific text in the permit reads, "The monitoring device (or instrumentation) shall be calibrated, operated, and maintained in accordance with the manufacturer's specifications or other written procedures that provide an adequate assurance that the device is calibrated, operated, and maintained accurately."

TCEQ's approach is consistent with EPA's Summary of Comments and Responses on the Draft CAM Technical Guidance Document, August 1998 which can be read at the following URL: <http://www.epa.gov/ttn/emc/cam/camres.pdf>. TCEQ commented in this document (noted by commenter [8] on page 1) and specifically stated on page 22 that:

"The QA/QC procedures are very detailed and in many cases are not suited to permit terms or conditions. Rather than trying to codify specific QA/QC procedures in the permit, the permit holder will follow manufacturer's recommendations and maintain the appropriate instructions or manuals on site. This will ensure that detailed QA/QC procedures are followed, is consistent with common industry practice, and will help reduce the number of permit revisions."

On page 23, EPA stated that calibration procedures should be based on manufacturer's recommendations although it may not be the best approach to simply state that in the permit even though it is frequently used. EPA also states in some instances the recommended procedures are either too stringent or impractical and in other cases they may not be adequate.

TCEQ does not agree that the calibration/maintenance recommendations or procedures provided by the vendor or manufacturer of a specific monitoring/control device would not be adequate for QA/QC. Manufacturers typically benchmark the monitoring (or control) devices to ensure that they operate within specified parameters as long as the proper maintenance and calibration procedures are performed. In other cases, the permit holder may maintain written procedures for monitor calibration/accuracy requirements that are site specific. Permit holders keep the specifics of these procedures as part of the operation and maintenance (O&M) plan on-site.

TCEQ has developed CAM and periodic monitoring (PM) options that permit holders may choose to satisfy either CAM or PM for applicable requirements that lack the requisite monitoring. These options, which were modeled from the technical examples provided in the EPA CAM guidance document, appear in guidance documents at these links [http://www.tceq.state.tx.us/assets/public/permitting/air/Guidance/Title\\_V/compliance.pdf](http://www.tceq.state.tx.us/assets/public/permitting/air/Guidance/Title_V/compliance.pdf) and [http://www.tceq.state.tx.us/assets/public/permitting/air/Guidance/Title\\_V/periodicmon.pdf](http://www.tceq.state.tx.us/assets/public/permitting/air/Guidance/Title_V/periodicmon.pdf).

These options were designed to streamline the submittal of CAM and PM requirements, while still assuring compliance. To clarify TCEQ's approach in listing the manufacturer's specifications for the calibration and maintenance of monitoring or control devices in the PM and

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CAM summaries, language has been added to the permit's Special Terms and Conditions that require the permit holder to maintain the specific manufacturer's recommended QA/QC procedures on-site as part of the O&M plan. This language is noted below in italics.

Modifications to CAM Special Terms and Conditions:

28. Unless otherwise specified, the permit holder shall comply with the compliance assurance monitoring requirements as specified in the attached "CAM Summary" upon issuance of the permit. In addition, the permit holder shall comply with the following:
- A. The permit holder shall comply with the terms and conditions contained in 30 TAC § 122.147 (General Terms and Conditions for Compliance Assurance Monitoring).
  - B. The permit holder shall report, consistent with the averaging time identified in the "CAM Summary," deviations as defined by the deviation limit in the "CAM Summary." Any monitoring data below a minimum limit or above a maximum limit, that is collected in accordance with the requirements specified in 40 CFR § 64.7(c), shall be reported as a deviation. Deviations shall be reported according to 30 TAC § 122.145 (Reporting Terms and Conditions).
  - C. The permit holder may elect to collect monitoring data on a more frequent basis and average the data, consistent with the averaging time specified in the "CAM Summary," for purposes of determining whether a deviation has occurred. However, the additional data points must be collected on a regular basis. In no event shall data be collected and used in particular instances in order to avoid reporting deviations. All monitoring data shall be collected in accordance with the requirements specified in 40 CFR § 64.7(c).
  - D. The permit holder shall operate the monitoring, identified in the attached "CAM Summary," in accordance with the provisions of 40 CFR § 64.7. *The permit holder shall calibrate and maintain monitoring devices and instrumentation in accordance with manufacturer's specifications or other written procedures as identified in the "CAM Summary." These specific QA/QC procedures shall be maintained with the site's operation and maintenance (O&M) plan.*

**EPA OBJECTION NO. 8: Objection to Failure to Include all Applicable Requirements.**

The draft Title V permit fails to meet the requirements of 40 CFR 70.6(a)(1) 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." TCEQ's definition of "applicable requirement" (found at 30 TAC § 122.10(2)) includes an extensive list of federal and state provisions. Minor NSR permits and Permits by Rule (PBRs) are included in TCEQ's definition of applicable requirement. Therefore, the emission limitations and standards for minor NSR permits and any PBRs that require preconstruction authorization must be listed on the face of the Title V permit. In addition, emission units covered by a PBR shall list on the

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face of the Title V permit the emission limitations and standards that apply under a MACT, NSPS, or NESHAP.

The draft Title V permit does not contain enough information to clearly identify if all applicable requirements have been included in the Title V permit. The *New Source Review Authorization References* table lists the following PBR authorizations as applicable requirements: 106.124, 106.183, 106.261, 106.262, 106.263, 106.264, 106.371, 106.373, 106.472, 106.473, 106.478, 106.511, 105.512, 106.532, 106.533, and numerous old standard exemptions. Only emission unit D3000, with an authorization for PBR 106.533, is shown to have applicable requirements listed in the *Applicable Requirements Summary* Table.

The draft Title V permit does not list any emission units to be authorized under PBR 106.124, 106.183, 106.261, 106.262, 106.263, 106.264, 106.371, 106.373, 106.472, 106.473, 106.478, 106.511, 105.512, or 106.532. The Title V permit fails to identify the specific units that these PBRs apply.

PBRs 106.261, 106.262, 106.263, 106.373, 106.473, 106.512, and 106.533 require registration. The database shows over 50 PBR registrations each for PBRs 106.261 and 106.262 when only three are listed for each of these PBRs in the draft Title V permit. The database also shows multiple PBR registrations for PBRs 106.478 and 106.533 when only two are listed for PBR 106.478 and one for PBR 106.533 in the draft Title V permit. 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) & (3). To resolve this objection, TCEQ must revise the draft Title 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 those emission units subject to the PBRs referenced above.

**TCEQ RESPONSE:** As an initial matter, the ED strongly disagrees with EPA's assertion that "*The emission limitations and standards for minor NSR permits and any PBRs that require preconstruction authorization must be listed on the face of the Title V permit.*" The ED reminds EPA of its frequent and clear statements that Texas's incorporation by reference of minor NSR is acceptable and meets both Part 70 and more importantly Texas' EPA-approved implementing rules. This Objection is in conflict with the Administrator's statements regarding acceptance of minor NSR IBR in the Orders regarding *Premcor* and *Citgo*. Based on EPA's still-current position and guidance as further explained below, this objection is without merit on this issue.

Texas' general 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.<sup>1</sup> Subchapter A includes applicability, requirements for permitting by rule,

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<sup>1</sup> Texas Health & Safety Code (THSC) § 382.05196 and implementing rules in 30 TAC chapter 106, relating to PBRs, prohibit an owner or operator of a facility from using a PBR to authorize a major stationary source or major modification. This does not preclude the use of a PBR for non-major changes at a major stationary source, as that

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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. The New Source Review (NSR) Authorization References table in the draft Title V permit incorporates the requirements of NSR Permits, including Permits by Rule (PBR), 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 ExxonMobil Corporation draft Title V permit, these requirements are found in Special Terms and Conditions 14 through 16, 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 New Source Review Authorization (NSR) 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. Those NSR Authorizations that are identified in the NSR Authorization References table and not found in NSR Authorization References by Emission Unit table (PBRs 106.122, 106.261, 106.371) are the only applicable requirement for an emission unit and the NSR Authorization and is applied identically to all subject emission units.

Permits by Rule 106.263, 106.373, 106.512, and 106.533 are listed in the NSR Authorization Reference table, and, as noted in the objection, have not been registered with the TCEQ. However, EPA's statement that these PBR claims must be registered is incorrect. These PBRs only require registration when specific conditions apply as specified in the rule text for each of the PBRs. PBR 106.263 requires registration only if the PBR authorizes temporary maintenance and more than 180 consecutive days is required to complete the project. PBR 106.373 requires registration only if the refrigeration system authorized uses anhydrous ammonia. PBR 106.418 requires registration only when facilities release more than 10 TPY or more of VOC emissions from all printing operations. PBR 106.512 requires registration only when the engine is rated at 240 horsepower or greater.

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The NSR database shows multiple registrations for PBRs 106.261, 106.262, 106.478, and 106.533. For example, PBR 106.261 was issued on 06/17/1997, 10/15/1997, 11/07/1997, 08/03/1998, 09/11/1998, and 09/14/1998, all under version date 03/14/1997, therefore PBR 106.261 is listed only once in the NSR Authorization Reference table. PBR 106.262 was issued on 01/26/1999, 02/16/1999, 12/03/1999, and 02/23/2000 all under version date 12/24/1998, therefore PBR 106.261 is listed only once in the NSR Authorization Reference table. PBRs 106.261 and 106.262 version 11/01/2003 has been added to the draft permit. PBR 106.263 version date of 03/14/1997 was incorrect and change to 11/01/2001. PBR 106.478 was issued on 09/23/1997, 07/14/1998, 10/01/1998, and 06/30/1999, all under version date 03/14/1997, therefore PBR 106.478 is listed only once in the NSR Authorization Reference table. PBR 106.533 version 03/14/1997 has been added to the draft permit. All emission sources authorized by a PBR or standard permit have been added to the New Source Review Authorization Reference by Emission Unit table in the permit to accurately identify the relevant and appropriate PBRs, registrations, and/or standard exemptions associated with each emission unit.