

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 21, 2022

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 103087, MC 105
Austin, Texas 78711-3087

Re: Executive Director's Response Brief to the Motion to Overturn
Flint Hills Resources Ingleside, LLC
Air Quality Permit No. 6606
TCEQ Docket No. 2022-1541-AIR

Dear Ms. Gharis:

Enclosed for filing is the Executive Director's Response Brief to the Motion to Overturn in the above-entitled matter.

If you have any questions, please do not hesitate to call me at extension 5938.

Sincerely,

A handwritten signature in blue ink that reads "Contessa N. Gay".

Contessa N. Gay
Staff Attorney
Environmental Law Division

TCEQ DOCKET NO. 2022-1541-AIR

APPLICATION BY § BEFORE THE TEXAS COMMISSION
FLINT HILLS RESOURCES §
INGLESIDE, LLC § ON
AIR QUALITY PERMIT NUMBER §
6606 § ENVIRONMENTAL QUALITY
INGLESIDE, SAN PATRICIO §
COUNTY §

EXECUTIVE DIRECTOR’S RESPONSE TO THE MOTION TO OVERTURN

**TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAIRMAN NIERMANN, AND COMMISSIONERS LINDLEY AND JANECKA**

COMES NOW the Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) and files this Brief in Response to Environmental Integrity Project’s (EIP) Motion to Overturn (MTO), on behalf of Ingleside on the Bay Coastal Watch Association and Coastal Alliance to Protect our Environment. The MTO seeks to overturn the decision by the Executive Director to approve Flint Hills Resources Ingleside LLC’s (Flint Hills) New Source Review (NSR) Permit No. 6606 to modify an existing terminal located at 103 Farm-to-Market Road 1069, Ingleside, San Patricio County, Texas 78362, and in support thereof shows the following:

I. Introduction

Flint Hills applied to TCEQ for an NSR Authorization under Texas Clean Air Act (TCAA) § 382.0518. The permit authorizes modification of the Ingleside Marine Terminal. Contaminants authorized under this permit include carbon monoxide (CO), hazardous air pollutants (HAPs), hydrogen sulfide (H₂S), nitrogen oxides (NO_x), organic compounds, particulate matter including

particulate matter with diameters of 10 microns or less and 2.5 microns or less (PM₁₀ and PM_{2.5}, respectively), and sulfur dioxide (SO₂).

The permit application was received on April 7, 2021 and declared administratively complete on April 9, 2021. The Notice of Receipt and Intent to Obtain an Air Quality Permit (first public notice) for this permit application was published in English on April 29, 2021, in the *Corpus Christi Caller Times* and in Spanish on May 4, 2021, in *La Prensa Comunidad*. The Notice of Application and Preliminary Decision for an Air Quality Permit (second public notice) was published on March 31, 2022, in English in the *Corpus Christi Caller Times* and in Spanish on March 29, 2022, in *La Prensa Comunidad*. A public meeting was held on July 14, 2022 at the Portland Community Center, Ballroom B, 2000 Billy G. Webb, Portland, Texas 78374. The notice of public meeting was mailed on June 14, 2022. The public comment period was extended to July 14, 2022, the day of the public meeting. Because this application was received after September 1, 2015, it is subject to the procedural requirements of and rules implementing Senate Bill 709 (84th Legislature, 2015).

The Executive Director's Response to Comments was filed on October 7, 2022 and mailed on October 11, 2022. The amendment for the permit was issued on October 11, 2022.

II. Basis of Review

An MTO is a remedy provided by 30 TAC § 50.139. EIP timely filed an MTO regarding the Executive Director's decision to grant the amendment of the applicant's NSR Permit No 6606.

III. Reply to Motion for Rehearing

A. No timely hearing requests were filed on the amendment application. Therefore, there were no hearing requests for the Executive Director to respond to before issuing the amendment for NSR Permit No. 6606.

Flint Hills submitted the amendment application for NSR Permit No. 6606 on April 7, 2021. The Notice of Receipt of Application and Intent to Obtain Air Permit (NORI) was published in English on April 29, 2021 and published in Spanish on May 4, 2021. The NORI specifically states:

OPPORTUNITY FOR A CONTESTED CASE HEARING. You may request a contested case hearing. A contested case hearing is a legal proceeding similar to a civil trial in state district court. A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision. Further, the Commission will only grant a hearing on those issues submitted during the public comment period and not withdrawn. The deadline to submit a request for a contested case hearing is 30 days after newspaper notice is published. If a request is timely filed, the deadline for requesting a contested case hearing will be extended to 30 days after the mailing of the response to comments.¹

¹ Notice of Receipt of Application and Intent to Obtain Air Permit, Air Quality Permit Number 6606, mailed April 13, 2021, published in English April 29, 2021, published in Spanish May 4, 2021.

As noted in the NORI, the deadline to submit a contested case hearing request is 30 days after newspaper notice. The 30-day period began on May 4, 2021 after the notice was published in Spanish in *La Prensa Comunidad*. The 30-day period after that newspaper notice ended on June 3, 2021. No contested case hearing requests were timely filed during that 30-day period, therefore, the deadline to request a contested case hearing was not extended to 30 days after the mailing of the response to comments. EIP submitted a hearing request on July 14, 2022, over a year after the 30-day period ended. No other timely hearing requests were received on the application.

In the absence of timely hearing requests on the permit amendment, the Executive Director had no hearing requests to review and recommend action by the Commission at an Agenda meeting. EIP's MTO claims the hearing request was wrongfully denied, however, EIP's hearing request is clearly not timely. Therefore, the Executive Director's approval of the amendment application for NSR Permit No. 6606 was proper, and there are no related timely hearing requests that would support EIP's MTO.

B. Maintenance, Startup, and Shutdown Emissions were not required in Flint Hills' Amendment Application. Therefore, the Flint Hills' Amendment is not considered a major modification.

EIP's MTO asserts that the Flint Hills permit amendment application is a major modification while Flint Hills only sought a minor amendment. However, as discussed in the Executive Director's Response to Comments (RTC) document, this is not the case.²

In 2013, the Executive Director issued a Permit-by-Rule (PBR) to Flint Hills Ingleside Resources, LLC under PBR Registration No. 107625. In 2019, Flint Hills submitted an application for a New Source Review (NSR) amendment seeking to authorize new tanks, new vapor combustion units, and increases in loading. The Executive Director revised the Maintenance, Startup, and Shutdown (MSS) for these sources under the PBR Registration No. 107625. While the MSS emissions fell under PBR Registration No. 107625, all other emissions are included under Permit No. 6606. The 2019 Expansion Project (TCEQ Project Number 284633) aggregated MSS emissions from the PBR registration, which EIP's MTO agrees with. However, EIP's MTO claims the MSS emissions were improperly excluded from the permit amendment authorized by the Executive Director on October 11, 2022.

During the permit review, the Executive Director's staff found that there was no construction of new storage tanks, and it was only the amount of loading throughput on the system that changed. The amount of loading will increase the emissions of volatile organic compounds (VOC) and hydrogen sulfide (H₂S) for the storage tanks. However, routine emissions from the storage

² Executive Director's Response to Public Comment, Air Quality Permit Number 6606, filed with the TCEQ Office of the Chief Clerk on October 7, 2022, and mailed on October 11, 2022.

tanks will not include sulfur dioxide (SO₂) as this only happens during MSS emissions and the permit application represented there will be no increase in MSS emissions above what was represented in the 2019 Expansion Project.

Therefore, Flint Hills applied for the proper minor permit amendment. Aggregation was not necessary in this situation and further, the Flint Hills' permit amendment did not represent aggregation would occur. As discussed in the Executive Director's RTC³, EPA guidance states that projects that are more than three years apart are presumed to not be technically and economically related should not be aggregated unless there is a compelling reason. Additionally, there was no increase in utilization and no debottlenecking in the permit amendment application for MSS activities. Therefore, Flint Hills' Permit Amendment application is not a major modification.

Furthermore, if there were concerns regarding whether this permit amendment was a major or minor amendment, the issue could have been raised and a contested case hearing request could have been submitted. As discussed above, there were no timely hearing requests received during the NORI comment period of the application.

C. Flint Hills' Amendment is not considered a major modification. Therefore, compliance with Prevention of Signification Deterioration regulations is not required.

³ *Id* at Response 39.

EIP's MTO claims that the Executive Director failed to follow the appropriate public participation procedure because Prevention of Signification Deterioration (PSD) review would have required an additional step of public participation. As discussed in the Executive Director's RTC⁴, this permit is not subject to PSD permitting because all pollutants with this project are below the significant emission rates. As this project was not subject to PSD permitting, this project is not subject to PSD review nor is it subject to additional public participation requirements.

IV. Conclusion

For the foregoing reasons, the Executive Director respectfully requests that the Commission deny EIP's Motion to Overturn the Executive Director's Decision on the applicant's NSR Permit No. 6606.

⁴ *Id* at Response 39.

Respectfully submitted,

Texas Commission on Environmental
Quality

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Office of Legal Services

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Environmental Law Division



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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Executive Director's Response to Environmental Integrity Project's Motion to Overturn the Executive Director's Decision on Flint Hills Ingleside LLC's New Source Review Permit 6606 have been served on the following service list via electronic mail on this 21st day of November 2022.



Contessa N. Gay

MAILING LIST

Flint Hills Resources Ingleside, LLC

DOCKET NO. 2022-1541-AIR;

PERMIT NO. 6606

FOR THE CHIEF CLERK:

via electronic filing

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