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December 1, 2022

Ms. Laurie Gharis  
Chief Clerk, MC-105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

*Via E-mail and E-filing*

**Re: Reply Brief Regarding Motion to Overturn the Executive Director's Approval of Flint Hills Resources Ingleside LLC's Application to Amend Air Quality Permit No. 6606 to Increase Emissions at the Flint Hills Resources Ingleside Marine Terminal, TCEQ Docket No. 2022-1541-AIR.**

Dear Ms. Gharis,

On behalf of Ingleside on the Bay Coastal Watch Association and Coastal Alliance to Protect our Environment, enclosed please find a copy of our Reply Brief regarding the Motion to Overturn the Executive Director's Approval of Flint Hills Resources Ingleside LLC's application to amend Air Quality Permit No. 6606 to increase emissions at the Flint Hills Resources Ingleside Marine Terminal, TCEQ Docket No. 2022-1541-AIR.

If you have any questions regarding this motion, please contact me at the information below.

Sincerely,

*/s/Colin Cox*

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**TCEQ DOCKET NO. 2022-1541-AIR**

RE: APPLICATION TO AMEND § BEFORE THE  
AIR QUALITY PERMIT NO. 6606 §  
FLINT HILLS RESOURCES § TEXAS COMMISSION  
INGLESIDE, LLC §  
INGLESIDE MARINE TERMINAL § ON ENVIRONMENTAL QUALITY

**MOVANTS’ REPLY BRIEF REGARDING MOTION TO OVERTURN**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Ingleside on the Bay Coastal Watch Association and Coastal Alliance to Protect Our Environment (collectively, “Movants”) file this Reply Brief regarding the Motion to Overturn the Executive Director’s October 11, 2022 decision granting Flint Hills Resources Ingleside LLC’s (“Flint Hills”) application to amend Air Quality Permit No. 6606, authorizing increased emissions of sulfur dioxide (“SO<sub>2</sub>”) from its Ingleside Marine Terminal (the “Terminal”) in San Patricio County, Texas.

Neither Flint Hills’ nor the Executive Director’s responses address the central issue: Flint Hills constructed a Terminal expansion with a permit for a synthetic minor modification for SO<sub>2</sub>, and now, shortly after construction of that expansion has finished, Flint Hills seeks to increase throughput of the expanded Terminal and increase emissions of SO<sub>2</sub> above the major modification threshold.

Whether projects are aggregated or not, this action by Flint Hills relaxes enforceable emission limitations that Flint Hills accepted to receive a synthetic minor permit and renders the amendment a major modification for SO<sub>2</sub>. It is thus subject to federal Prevention of Significant Deterioration review. 40 Code Fed. Reg. § 52.21(r)(4), incorporated in the Texas Clean Air Act at 30 Tex. Admin. Code § 116.160(c)(2)(C).

**I. REPLY**

**A. Flint Hills’ Amendment Relaxes an Enforceable Limitation and is Subject to Prevention of Significant Deterioration Review.**

The central issue in this motion is simple. Flint Hills constructed its 2019 Expansion Project (TCEQ project number 284633) as a minor modification for SO<sub>2</sub>. The permit for the 2019

Expansion Project included enforceable limitations ensuring that the project would not exceed the 40 ton per year major modification threshold for SO<sub>2</sub>.<sup>1</sup> These enforceable limitations included limiting throughput at the Terminal to 138,700,000 barrels per rolling twelve months.<sup>2</sup> Now, in its 2021 Amendment, (TCEQ project number 327436) Flint Hills seeks to relax those limitations, increasing throughput to 187,200,000 barrels per rolling twelve-month period and increasing SO<sub>2</sub> emissions from the expanded Terminal above 40 tons per year.<sup>3</sup>

Federal regulations specify what Flint Hills must do in this situation. Chapter 40 Code of Federal Regulations § 52.21 Prevention of significant deterioration of air quality subsection (r)(4), which is incorporated in the Texas Clean Air Act at 30 Tex. Admin. Code § 116.160(c)(2)(C), states the following:

“At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of paragraphs (j) through (s) of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.”

52.21(r)(4) applies here. Flint Hills’ 2021 Amendment increases throughput by relaxing enforceable limitations on throughput, increases SO<sub>2</sub>, and thereby exceeds the synthetic minor SO<sub>2</sub> limit underpinning the 2019 Expansion Project. This amendment is thus a major modification for SO<sub>2</sub> and must be subject to Prevention of Significant Deterioration Review (40 Code Fed. Reg. 52.21(r)(4) subsections (j)-(s)) as if construction had not yet commenced on the 2019 Expansion Project.

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<sup>1</sup> Permit No. 6606, Special Condition 7 (January 2019) (“Total combined throughput of the barge and ship loading of crude oil and stabilized condensate is limited to 138,700,000 barrels per rolling twelve months. Records of crude oil and stabilized condensate barge and ship loading product throughput shall be maintained for a period of five years and made readily available to representatives of the Texas Commission on Environmental Quality (TCEQ) upon request. (1/19)”).

<sup>2</sup> *Id.*

<sup>3</sup> Flint Hills Resources Ingleside, LLC, *Ingleside Terminal Permit No. 6606 Amendment Application* (April 2021) Executive Summary at 2; Permit No. 6606, Special Condition 7 (October 2022) (“Total combined throughput of the barge and ship loading of crude oil and stabilized condensate is limited to 187,200,000 barrels per rolling twelve months. Records of crude oil and stabilized condensate barge and ship loading product throughput shall be maintained for a period of five years and made readily available to representatives of the Texas Commission on Environmental Quality (TCEQ) upon request. (10/22)”).

52.21(r)(4) applies whether Flint Hills' projects are aggregated or not. It applies because Flint Hills is relaxing enforceable throughput limits at the expanded Terminal and increasing SO<sub>2</sub> emissions beyond the major modification threshold.

**i. Flint Hills' proposed SO<sub>2</sub> increase is due solely to relaxation of enforceable limitations on throughput.**

The proposed SO<sub>2</sub> increase is due solely to increased annual throughput, and not any physical changes at the Terminal. As Flint Hills describes in its application:

“Therefore, [Flint Hills] is proposing to increase the total combined throughput of the barge and ship loading of crude oil and stabilized condensate from 138,700,000 barrels to 187,200,000 barrels per rolling twelve months. [Flint Hills] is not proposing to increase the hourly loading throughputs nor proposing any new construction as part of this project. The annual loading emissions calculations will be based on the increased annual loading rate which will increase the annual uncollected emissions from the ship and barge loading dock (EPN DOCK) as well as the annual controlled emissions from the three marine vapor combustion units (EPNs MVCU1, MVCU2, and MVCU3).”<sup>4</sup>

As stated, Flint Hills is not proposing any construction as part of this project. The SO<sub>2</sub> emissions increase at the marine vapor combustion units are due solely to increased annual throughput at the recently expanded Terminal. In fact, Flint Hills proposes no physical modification of any kind. What Flint Hills proposes is not a new project, but merely to process more product through the 2019 Expansion Project. And processing more product through the expanded Terminal requires relaxing enforceable limitations on throughput and increasing SO<sub>2</sub> above the 40 ton per year major modification threshold. The SO<sub>2</sub> emissions increase is due solely to the relaxation of enforceable limitations on annual throughput, and Flint Hills must thus comply with 52.21(r)(4).

**ii. Flint Hills' action renders synthetic minor limits meaningless.**

Flint Hills' 2019 Expansion Project was a minor modification for SO<sub>2</sub> due in part to limits on annual throughput. This type of enforceable limit on throughput is a legitimate way to limit the Terminal's potential to emit and a legitimate way to secure a synthetic minor permit.<sup>5</sup> If the Commission allows Flint Hills to simply relax that limit and increase throughput after construction of the expansion is complete, without subjecting the permit to the required federal review, it

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<sup>4</sup> Flint Hills Resources Ingleside, LLC, *Ingleside Terminal Permit No. 6606 Amendment Application* (April 2021) Executive Summary at 2.

<sup>5</sup> 30 Tex. Admin. Code §116.12(29) Potential to emit.

renders meaningless the synthetic minor limit that Flint Hills accepted for the 2019 Expansion Project. And nothing will prevent Flint Hills from returning to TCEQ to increase throughput yet again. Flint Hills' actions plainly abuse the concept of synthetic minor permitting.

To be clear, there is a legitimate way for Flint Hills to increase throughput at the terminal. That way is compliance with 52.21(r)(4), which requires that the project undergo Prevention of Significant Deterioration review for SO<sub>2</sub>, including pollution control technology analysis and impacts analysis, among other requirements.

#### **B. Flint Hills' 2021 Amendment Must be Aggregated with the 2019 Expansion Project.**

Flint Hills and the Executive Director argue that aggregation is the central issue of this Motion. For the reasons stated above, Movants dispute this. However, assuming for the sake of argument that aggregation is the central issue, Flint Hills amendment must be aggregated with the 2019 Expansion Project and subject to Prevention of Significant Deterioration review.

EPA promulgated its aggregation policy to prevent sources of pollution from carving a higher-emitting project into two or more lower-emitting "projects" to avoid triggering major New Source Review requirements.<sup>6</sup> Project aggregation "ensures that nominally-separate projects occurring at a source are treated as a single project for [New Source Review] applicability purposes where it is unreasonable not to consider them a single project."<sup>7</sup>

This policy, laid out in EPA's 2009 NSR Aggregation Action, calls for TCEQ to aggregate emissions from nominally separate projects when they are "substantially related."<sup>8</sup> Whether separate projects are "substantially related" and must be aggregated is a case-by-case decision that is both site-specific and fact-driven. Factors relevant to this analysis are 1) whether there is a technical or economic interconnection between the projects and 2) whether the projects took place close in time to each other.<sup>9</sup> Flint Hills 2021 Amendment is substantially related to the 2019

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<sup>6</sup> Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Aggregation; Reconsideration, 83 Fed. Reg. 57,326 at 57325-26 (Nov. 15, 2018).

<sup>7</sup> *Id.* at 57326 (Footnote 6: "It is not permissible to seek to circumvent NSR by securing several minor NSR permits for individual projects with the effect of avoiding major NSR requirements for what is actually a single project.").

<sup>8</sup> Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation and Project Netting, 74 Fed. Reg. 2376 (Jan. 15, 2009), affirmed in Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Aggregation; Reconsideration, 83 Fed. Reg. 57,326 (Nov. 15, 2018).

<sup>9</sup> *Id.* at 2378, 2379

Expansion Project because they are technically and economically interconnected and took place close in time to each other.

**i. Flint Hills’ 2021 Amendment to increase throughput is substantially related to its 2019 Expansion Project because the changes are technically and economically interconnected.**

According to EPA, “To be “substantially related,” there should be an apparent interconnection—either technically or economically—between the physical and/or operational changes, or a complementary relationship whereby a change at a plant may exist and operate independently, however its benefit is significantly reduced without the other activity.”<sup>10</sup>

Here the technical and economic interconnections between the 2019 Expansion Project and the 2021 Amendment to increase throughput at that project are extensive.

The technical interconnectedness is total. The 2021 Amendment merely increases production at the Terminal following the 2019 Expansion Project. As mentioned above, Flint Hills proposed no new construction for the 2021 Amendment. Flint Hills proposed only to increase annual throughput at its recently expanded Terminal, thereby increasing emissions of SO<sub>2</sub> from its marine vapor combustors. “[Flint Hills] is not proposing to increase the hourly loading throughputs nor proposing any new construction as part of this project.”<sup>11</sup> This is a “project” in name only. It involves no construction and no physical changes beyond pushing more product through expanded Terminal.

Flint Hills does not address the 2021 Amendment’s total technical interconnectedness and dependence on the 2019 Expansion Project. Rather, Flint Hills focuses on what it describes as a “discrete economic opportunity” to process more product at the expanded Terminal based on a contract it signed in 2019.<sup>12</sup> But even economically, the 2021 Amendment is impossible without the 2019 Expansion Project. Flint Hills could not have signed a commercial agreement to increase throughput at the Terminal if the 2019 Expansion Project had not been built. Not only is the benefit

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<sup>10</sup> 74 Fed. Reg. at 2378.

<sup>11</sup> Flint Hills Resources Ingleside, LLC, Ingleside Terminal Permit No. 6606 Amendment Application (April 2021) Executive Summary at 2.

<sup>12</sup> Flint Hills Resources Ingleside LLC, Response to Motion to Overturn at 2-4 (Nov. 21, 2022).

of the 2021 Amendment significantly reduced without the 2019 Expansion Project, but the 2021 Amendment cannot even “exist and operate independently” of the 2019 Expansion Project.

It follows that the 2021 Amendment is entirely dependent on the 2019 Expansion Project for its existence and operation. Without the 2019 Expansion Project, Flint Hills would not be able to increase throughput as proposed in its 2021 Amendment. EPA states that “[t]echnical or economic dependence may be evidence of a substantial relationship between changes....”<sup>13</sup> Here, the 2021 Amendment to increase throughput of the expanded Terminal is dependent, both technically and economically, on the 2019 Expansion Project, which is further evidence of the substantial relationship between the projects.

**ii. Flint Hills’ 2021 Amendment to increase throughput is substantially related to its 2019 Expansion Project because the actions took place close in time.**

The timing of the projects also supports the case for aggregation. EPA’s Aggregation Action explains that projects being planned or built close in time can serve as an indication that they are substantially related and should be aggregated.<sup>14</sup> Here, the timing of Flint Hills’ actions supports a finding that the projects are substantially related because the planning took place close in the time. And, as discussed above, for the 2021 Amendment there was no “building” at all.

According to Flint Hills, the 2019 Expansion project commenced operation on November 5, 2019: “The VCUs were constructed following the issuance of the P2I Amendment [2019 Expansion Project] and commenced operation on November 5, 2019.”<sup>15</sup> Alternately, Flint Hills 2021 Amendment application states that the VCU’s began operations in December 2019.<sup>16</sup>

On November 1, 2019, four days prior to the stated start of operations of the 2019 Expansion Project, Flint Hills executed a commercial contract requiring them to increase throughput at the expanded Terminal.

“FHRCC [Flint Hills] was right in its assessment of this new opportunity, and on November 1, 2019, executed a commercial contract requiring it to have the capability to fully load SuezMax vessels at Ingleside once necessary permitting is completed. That capability in turn required a vessel loading throughput condition

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<sup>13</sup> 74 Fed. Reg. at 2378.

<sup>14</sup> 74 Fed. Reg. at 2379.

<sup>15</sup> Flint Hills Resources Ingleside LLC, Response to Motion to Overturn at 16 (Nov. 21, 2022).

<sup>16</sup> Flint Hills Resources Ingleside, LLC, *Ingleside Terminal Permit No. 6606 Amendment Application* at 91, 97, 98, 100, 101. (April 2021).

in the Air Quality Permit No. 6606 to be increased from 138,700,000 barrels per rolling twelve-month period to 187,200,000 barrels per rolling twelve-month period.”<sup>17</sup>

Flint Hills had already committed to increase throughput at the expanded Terminal four days prior to the start of operations of the 2019 Expansion Project. These facts belie Flint Hills’ claim that the projects are separated by more than three years. In truth, Flint Hills was planning to increase throughput before operations at the expanded Terminal had even begun.

In its Aggregation Action, EPA provides the reasoning for its presumption that projects more than three years apart are not substantially related: “We believe that if a previous physical or operational change has operated for a period of three or more years, permitting authorities may presume that a newly constructed change is not substantially related to the earlier change.”<sup>18</sup>

Here, Flint Hills had not operated its 2019 Expansion Project for even one single day before it committed to increase throughput. Flint Hills had likewise not operated the expanded Terminal for three years before applying to TCEQ to increase throughput. It had not even operated for two years, as Flint Hills Application makes clear: “MVCU1, MVCU2, and MVCU3 began operation in December 2019. Because they have not been in operation for at least 24 months, the existing potential to emit is used for actual/baseline emissions.”<sup>19</sup>

Instead, Flint Hills signed a commercial contract requiring it to increase annual throughput before operation of the 2019 Expansion Project had even commenced. Flint Hills cannot avail itself of the presumption of non-aggregation simply because, after committing to increase throughput, it waited sixteen months to submit its application to TCEQ, and then waited another seventeen months for TCEQ to issue the final permit. Flint Hills’ and the Executive Director’s claims that these projects have a presumption against aggregation because the projects took place over three years apart is misleading. Rather, the facts show that the projects were planned close in time and are substantially related.

Because the projects are technically and economically interconnected and took place close in time to each other, they are substantially related and must be aggregated.

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<sup>17</sup> Flint Hills Resources Ingleside LLC, Response to Motion to Overturn at 3-4 (Nov. 21, 2022).

<sup>18</sup> 74 Fed. Reg. at 2380.

<sup>19</sup> Flint Hills Resources Ingleside, LLC, *Ingleside Terminal Permit No. 6606 Amendment Application* at 97, 98, 100 (April 2021).



**iii. Flint Hills omitted project-associated emissions from its federal applicability analysis and circumvented federal review.**

For its 2019 Expansion Project, in addition to increasing emissions in permit 6606, Flint Hills also increased emissions for Maintenance, Startup, and Shutdown (MSS) emissions associated with the new tanks in the expansion. The MSS emissions increases were not listed in permit 6606, but instead included in permit-by-rule 107625, project 292889.

In its original 2019 application for the Expansion Project, Flint Hills correctly included the project-associated portion of the additional MSS emissions from the 2019 Expansion Project in its emissions calculations. The following Table 2F for emissions increases of SO<sub>2</sub> associated with the 2019 Expansion Project — excerpted from Flint Hills 2019 Application — correctly shows both the increases in permit 6606 and the project-associated MSS increases in permit 107625:

**TABLE 2F  
PROJECT EMISSIONS INCREASE**

Pollutant <sup>(1)</sup> : SO <sub>2</sub>			Permit: 6606							
Baseline Period: 2014 to 2015										
B			A							
1	Affected or Modified Facilities <sup>(2)</sup>		Permit NO.	Actual Emissions <sup>(3)</sup> (tons/yr)	Baseline Emissions <sup>(4)</sup> (tons/yr)	Proposed Emissions <sup>(5)</sup> (tons/yr)	Projected Actual Emissions (tons/yr)	Difference (A-B) <sup>(6)</sup> (ton/yr)	Correction <sup>(7)</sup> (ton/yr)	Project Increase <sup>(8)</sup> (ton/yr)
	FIN	EPN								
1	MVCU	MVCU	6606	0.02	0.02	0.00		-0.02		-0.02
2	DOCK	MVCU1/ MVCU2/ MVCU3	6606	0.00	0.00	37.40		37.40		37.40
3	COMBMSS (1 Tank)	COMBMSS (1 Tank)	PBR Registration No. 107625	0.00	0.00	2.31		2.31		2.31
4										
5										
6										
7										
8										
9										
10										
11										
PAGE SUBTOTAL: <sup>(9)</sup>										39.69
									Total	39.69

As the table above shows, the Flint Hills 2019 Expansion Project authorized an increase of 39.69 tons per year of SO<sub>2</sub>, just under the major modification threshold of 40 tons per year of SO<sub>2</sub>. This includes both the increases in permit 6606, reflected in line 2 of the table, as well as the project-associated MSS increases in permit 107625, reflected in line 3 of the table.

Now, in its 2021 Amendment application, Flint Hills updates Table 2F to show increased emissions of SO<sub>2</sub> from the marine vapor combustors resulting from its increased throughput at the expanded Terminal. This updated Table 2F includes some, but not all, of the emissions from the 2019 Expansion Project. In updating Table 2F, Flint Hills has improperly omitted the project-associated MSS emissions increase in permit 107625.

The following Table 2F is from Flint Hills’ 2021 Amendment application:

**TABLE 2F  
PROJECT EMISSIONS INCREASE**

Pollutant <sup>(1)</sup> :		SO <sub>2</sub>		Permit:		6606				
Baseline Period:		2018 to 2019		B		A				
	Affected or Modified Facilities <sup>(2)</sup>		Permit NO.	Actual Emissions <sup>(3)</sup> (tons/yr)	Baseline Emissions <sup>(4)</sup> (tons/yr)	Proposed Emissions <sup>(5)</sup> (tons/yr)	Projected Actual Emissions (tons/yr)	Difference (A-B) <sup>(6)</sup> (ton/yr)	Correction <sup>(7)</sup> (ton/yr)	Project Increase <sup>(8)</sup> (ton/yr)
	FIN	EPN								
1	DOCK/ MVCU1/ MVCU2/ MVCU3	MVCU1/ MVCU2/ MVCU3	6606	0.01	0.01	38.10		38.10		38.10
2										
3										
4										
5										
6										
7										
8										
9										
PAGE SUBTOTAL: <sup>(9)</sup>										38.10
									Total	38.10

This 2021 Table 2F includes the marine vapor combustions emission from the 2019 Expansion Project, but inexplicably omits the MSS emissions increase of 2.31 tons per year authorized by permit 107625 and associated with the additional loading/degassing and land/degassing of the new tanks from that project.

When the MSS emissions of 2.31 tons per year of SO<sub>2</sub> from emission point COMBMSS, authorized in permit 107625, are added to the 2021 Amendment emissions of 38.10 tons per year of SO<sub>2</sub> from the marine vapor combustors in permit 6606, the total SO<sub>2</sub> emission increase from the expanded Terminal is 40.41 tons per year of SO<sub>2</sub>. Because the expanded Terminal’s as-built emissions exceed the significant emission rate threshold of 40 tons per year, the project results in a “significant emissions increase” of SO<sub>2</sub>.<sup>20</sup> And because the project results in a significant

<sup>20</sup> 40 CFR §§ 51.166(b)(39), 51.21(b)(40).

emissions increase, an applicability threshold test (netting) is required to determine if it also results in a significant net emissions increase.<sup>21</sup> As discussed in Movants’ May 2 comments,<sup>22</sup> a netting analysis shows that the 2021 Amendment also results in a net emissions increase of SO<sub>2</sub> greater than 40 tons per year, so the project also results in a significant net emission increase.<sup>23</sup>

Because the emissions from Flint Hills’ 2021 Amendment result in both a “significant emissions increase”<sup>24</sup> of SO<sub>2</sub> and a “significant net emissions increase”<sup>25</sup> of SO<sub>2</sub>, the project is a major modification.<sup>26</sup> And because the project is a major modification, it must undergo federal Prevention of Significant Deterioration review, including a best available control technology analysis and a full impacts analysis.<sup>27</sup>

Flint Hills now claims that it included most, but not all, of the 2019 Expansion Project SO<sub>2</sub> emissions in its 2021 federal applicability analysis so that the analysis would be conservative.<sup>28</sup> However, Flint Hills neglects to explain why it omitted MSS emissions from its conservative analysis.

## II. CONCLUSION AND PRAYER FOR RELIEF

As explained above, Flint Hills has circumvented Prevention of Significant Deterioration review by first constructing a Terminal expansion with a permit for a synthetic minor modification for SO<sub>2</sub>, and then, shortly after constructing that expansion, increasing throughput of the expanded Terminal and increasing emissions of SO<sub>2</sub> above the major modification threshold. In so doing, Flint Hills violated 40 Code Fed. Reg. 52.21(r)(4).

Further, these two nominally separate projects should be aggregated for purposes of determining federal review applicability because they are substantially related. Which is to say that the projects took place close in time and are technically and economically interconnected to

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<sup>21</sup> 30 Tex. Admin. Code 116.160 (b)(1); TCEQ, Major New Source Review – Applicability Determination (APDG 5881v8, Revised 01/22) at Page 15, available at [https://www.tceq.texas.gov/assets/public/permitting/air/Guidance/NewSourceReview/fnsr\\_app\\_determ.pdf](https://www.tceq.texas.gov/assets/public/permitting/air/Guidance/NewSourceReview/fnsr_app_determ.pdf).

<sup>22</sup> Environmental Integrity Project, Coastal Alliance to Protect Our Environment, Ingleside on the Bay Coastal Watch Association, *Comments and Public Meeting Request on the Application to Amend Air Quality Permit No. 6606 to Increase Emissions at the Flint Hills Resources Ingleside Marine Terminal* (May 2, 2022).

<sup>23</sup> 40 CFR §§ 51.166(b)(3) and (23), 52.21(b)(3) and (23).

<sup>24</sup> 40 CFR §§ 51.166(b)(39), 52.21(b)(40).

<sup>25</sup> 40 CFR §§ 51.166(b)(3) and (23), 52.21(b)(3) and (23).

<sup>26</sup> 40 CFR §§ 51.166(b)(2)(i), 52.21(b)(2)(i).

<sup>27</sup> 30 Tex. Admin. Code § 116.160(c).

<sup>28</sup> Flint Hills Resources Ingleside LLC, Response to Motion to Overturn at 12-15 (Nov. 21, 2022).

the degree that the 2021 Amendment would be impossible to implement – and hence unreasonable to propose – without the 2019 Expansion Project.

The Executive Director lacked the authority to issue the permit without the required pollution control technology analysis, impacts analysis, and public participation opportunities. Finally, the Executive Director wrongly denied Movant’s hearing request.

Ingleside on the Bay Coastal Watch Association and Coastal Alliance to Protect Our Environment re-urge their request that the Commission overturn the Executive Director’s approval of Flint Hills’ Amendment for air quality permit number 6606 and remand the application to the Executive Director for processing as a major modification, with the level of review and public participation rights appropriate for such a project.

Respectfully,

/s/Colin Cox

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## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Reply Brief regarding the Motion to Overturn the Executive Director's October 11, 2022 decision granting Flint Hills Resources Ingleside LLC's application to amend Air Quality Permit No. 6606, authorizing increased emissions of sulfur dioxide from its Ingleside Marine Terminal in San Patricio County, Texas, have been served on the following service list via electronic mail or electronic filing on this 1<sup>st</sup> day of December 2022.

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