

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

June 1, 2022

TO: Persons on the attached mailing list.

RE: BASF TotalEnergies Petrochemicals LLC
Permit No. 41945

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the TCEQ central office, the TCEQ Beaumont regional office, and the Port Arthur Public Library, 4615 9th Avenue, Port Arthur, Jefferson County. The facility's compliance file, if any exists, is available for public review at the TCEQ Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two types of requests follows.

How to Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities. A person who may be affected by emissions of air contaminants from the facility is entitled to request a contested case hearing.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

How to Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

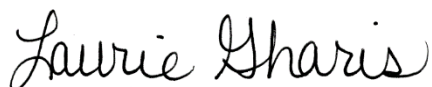
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Participation and Education Program, toll free, at 1-800-687-4040.

Sincerely,



Laurie Gharis
Chief Clerk

LG/ms

Enclosure

MAILING LIST
for
BASF TotalEnergies Petrochemicals LLC
Permit No. 41945

FOR THE APPLICANT:

John Lycan
Vice President Port Arthur Site Manager
BASF TotalEnergies Petrochemicals, LLC
P.O. Box 2506
Port Arthur, Texas 77643

Gary Wojnowski
BASF TotalEnergies Petrochemicals, LLC
P.O. Box 2506
Port Arthur, Texas 77643

INTERESTED PERSONS:

Hilton Kelley
Community In-Power and Development
Association Inc.
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Port Arthur, Texas 77640

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Vic McWherter, Attorney
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FOR THE CHIEF CLERK
via electronic mail:

Laurie Gharis, Chief Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
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Austin, Texas 78711-3087

TCEQ AIR QUALITY PERMIT NUMBER 41945

APPLICATION BY § **BEFORE THE**
BASF TOTALENERGIES § **TEXAS COMMISSION ON**
PETROCHEMICALS LLC § **ENVIRONMENTAL QUALITY**
BASF FINA NAFTA REGION OLEFINS §
COMPLEX
PORT ARTHUR, JEFFERSON COUNTY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the New Source Review Authorization application and Executive Director's preliminary decision.

As required by Title 30 Texas Administrative Code (TAC) § 55.156, before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk received timely comments from the following person: Hilton Kelley (Commenter) on behalf of Community In-Power and Development Association Inc. (CIDA Inc.). This Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

BACKGROUND

Description of Facility

BASF TotalEnergies Petrochemicals LLC (Applicant) has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA) § 382.0518. This will authorize the continued operation of an existing facility that may emit air contaminants.

This permit will authorize the Applicant to continue operation of a BASF Fina NAFTA Region Olefins Complex. The plant is located at State Highway 366, Gate 99, at the intersection of Highway 366 and Highway 73, Port Arthur, Jefferson County. Contaminants authorized under this permit include carbon monoxide, hazardous air pollutants, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, and sulfur dioxide.

Procedural Background

To continue operating an existing permitted facility that may emit air contaminants, the person planning the continued operation must obtain a permit renewal from the commission. This permit application is for a permit amendment and renewal of Air Quality Permit Number 41945.

The permit application was received on April 28, 2021 and declared administratively complete on May 5, 2021. The Notice of Receipt and Intent to Obtain an Air Quality Permit for this permit application was published in English on May 12, 2021, in the

Port Arthur News and in Spanish on May 16, 2021, in *El Perico*. The Notice of Application and Preliminary Decision for an Air Quality Permit (second public notice) was published in English on March 23, 2022, in the *Port Arthur News* and in Spanish on March 20, 2022, in *El Perico*. 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).

COMMENTS AND RESPONSES

Health Effects/Air Quality

Comment 1: The Commenter expressed concern about the effect of the emissions from the proposed project on the air quality and health of people, particularly sensitive populations suffering from cancer, respiratory problems and skin afflictions caused by chronic exposure to environmental toxins. (Hilton Kelley)

Response 1: The Executive Director is required to review permit applications to ensure they will be protective of human health and the environment. For this type of air permit application, potential impacts to human health and welfare or the environment are determined by comparing the Applicant's proposed air emissions to appropriate state and federal standards and guidelines. These standards and guidelines include the National Ambient Air Quality Standards (NAAQS), TCEQ Effects Screening Levels (ESLs), and TCEQ rules. As described in detail below, the Executive Director determined that the emissions authorized by this permit are protective of both human health and welfare and the environment.

NAAQS

The U.S. Environmental Protection Agency (EPA) created and continues to evaluate the NAAQS, which include both primary and secondary standards, for pollutants considered harmful to public health and the environment.¹ Primary standards protect public health, including sensitive members of the population such as children, the elderly, and those individuals with preexisting health conditions. Secondary NAAQS protect public welfare and the environment, including animals, crops, vegetation, visibility, and buildings, from any known or anticipated adverse effects from air contaminants. The EPA has set NAAQS for criteria pollutants, which include carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), sulfur dioxide (SO₂), particulate matter less than or equal to 10 microns in aerodynamic diameter (PM₁₀), and PM less than or equal to 2.5 microns in aerodynamic diameter (PM_{2.5}).

¹ 40 CFR 50.2

The Applicant conducted a NAAQS analysis for SO₂, PM₁₀, PM_{2.5}, NO₂, and CO. The first step of the NAAQS analysis is to compare the proposed modeled emissions against the established de minimis level. Predicted concentrations (GLCmax)² below the de minimis level are considered to be so low that they do not require further NAAQS analysis. Table 1 contains the results of the de minimis analysis.

Table 1. Modeling Results for Minor NSR De Minimis

Pollutant	Averaging Time	GLCmax (µg/m ³)	De Minimis (µg/m ³)
SO ₂	1-hr	0.03	7.8
SO ₂	3-hr	0.03	25
SO ₂	24-hr	0.02	5
SO ₂	Annual	0.001	1
PM ₁₀	24-hr	0.3	5
PM _{2.5}	24-hr	0.3	1.2
PM _{2.5}	Annual	0.02	0.2
NO ₂	1-hr	0.4	7.5
NO ₂	Annual	0.02	1
CO	1-hr	86	2000
CO	8-hr	74	500

The pollutants below the de minimis level should not cause or contribute to a violation of the NAAQS and are considered protective of human health and the environment.

Effects Screening Levels

ESLs are specific guideline concentrations used in TCEQ's evaluation of certain pollutants. These guidelines are derived by the TCEQ's Toxicology Division and are based on a pollutant's potential to cause adverse health effects, odor nuisances, and effects on vegetation. Health-based ESLs are set below levels reported to produce adverse health effects, and are set to protect the general public, including sensitive subgroups such as children, the elderly, or people with existing respiratory conditions. The TCEQ's Toxicology Division specifically considers the possibility of cumulative and aggregate exposure when developing

² The GLCmax is the maximum ground level concentration predicted by the modeling.

the ESL values that are used in air permitting, creating an additional margin of safety that accounts for potential cumulative and aggregate impacts. Adverse health or welfare effects are not expected to occur if the air concentration of a pollutant is below its respective ESL. If an air concentration of a pollutant is above the screening level, it is not necessarily indicative that an adverse effect will occur, but rather that further evaluation is warranted.

The Applicant conducted a health effects analysis using the Modeling and Effects Review Applicability (MERA) guidance.³ The MERA is a tool to evaluate impacts of non-criteria pollutants. It is a step-by-step process, evaluated on a chemical species by chemical species basis, in which the potential health effects are evaluated against the ESL for the chemical species. The initial steps are simple and conservative, and as the review progresses through the process, the steps require more detail and result in a more refined (less conservative) analysis. If the contaminant meets the criteria of a step, the review of human health and welfare effects for that chemical species is complete and is said to "fall out" of the MERA process at that step because it is protective of human health and welfare. All pollutants, including the air contaminants specified in the comment satisfy the MERA criteria before and at step 3 and therefore are not expected to cause adverse health effects.

State Property Line Analysis (30 TAC Chapter 112)

Because this application has sulfur emissions, the Applicant conducted a state property line analysis to demonstrate compliance with TCEQ rules for net ground-level concentrations for sulfur dioxide (SO₂) and hydrogen sulfide (H₂S), as applicable. This analysis demonstrated that resulting air concentrations will not exceed the applicable state standards. Results of the State Property Line Analysis is provided in Table 2.

Table 2. Project-Related Modeling Results for State Property Line

Pollutant	Averaging Time	GLCmax (µg/m ³)	De Minimis (µg/m ³)
SO ₂	1-hr	0.05	16.34
H ₂ S	1-hr	0.001	2.16

In summary, based on the Executive Director's staff review, it is not expected that existing health conditions will worsen, or that there will be adverse health effects on the general public, sensitive subgroups, or the public welfare and the environment as a result of proposed emission rates associated with this project.

Quality of Life/Aesthetics/Property value

Comment 2: The Commenter expressed concern about the effect of the proposed project on the community's quality of life, on the community's property value, and on their ability to enjoy their properties. (Hilton Kelley)

³ See APDG 5874 guidance document.

Response 2: The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider potential effects from plant location, quality of life/aesthetics, zoning, effects on property values or tourism when determining whether to approve or deny a permit application, unless a statute or rule imposes specific distance limitations that are enforceable by the TCEQ. Except under limited circumstances, which do not exist under this particular permit application, the issuance of a permit cannot be denied on the basis of plant location. Zoning and land use are also beyond the authority of the TCEQ for consideration when reviewing air quality permit applications, and such issues should be directed to local officials. The issuance of an air quality authorization does not override any local zoning requirements that may be in effect and does not authorize an applicant to operate outside of local zoning requirements.

Violations/Enforcement

Comment 3: The Commenter asked about the consequences of violating the terms of the permit. (Hilton Kelley)

Response 3: Violations are usually addressed through a notice of violation letter that allows the operator a specified period of time within which to correct the problem. The violation is considered resolved upon timely corrective action. A formal enforcement referral will be made if the cited problem is not timely corrected, if the violation is repeated, or if a violation is causing substantial impact to the environment or neighbors. In most cases, formal enforcement results in an agreed enforcement order including penalties and technical requirements for corrective action. Penalties are based upon the severity and duration of the violation(s). Violations are maintained on file and are included in the calculation of a facility and a person's compliance history. Compliance history ratings are considered during permit application reviews.

Demonstrate Compliance with Permit:

Comment 4: The Commenter expressed concern about compliance with emission and concentration limits pertaining to air contaminants. (Hilton Kelley)

Response 4: Special Conditions have been included as part of the proposed permit to ensure the Applicant can demonstrate compliance with the emission limitations set forth in the permit. Emissions from the C4 Boiler will be verified by initial stack tests and will be monitored by a continuous emission monitoring system (CEMS). The permit holder is also required to maintain records to demonstrate compliance, including the monitoring listed above. Records must be made available upon request to representatives of the TCEQ, EPA, or any local air pollution control program having jurisdiction. The Regional Office may perform investigations of the plant as required. The investigation may include an inspection of the site including all equipment, control devices, monitors, and a review of all calculations and required recordkeeping.

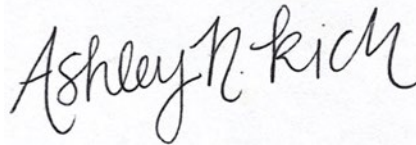
The TCEQ evaluates all complaints received. If a facility is found to be out of compliance with the terms and conditions of its permit, it will be subject to investigation and possible enforcement action. Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the TCEQ Beaumont Regional Office at 409-898-3838 or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186.

Citizen-collected evidence may be used in such an action. See 30 TAC § 70.4, Enforcement Action Using Information Provided by Private Individual, for details on gathering and reporting such evidence. Under the citizen-collected evidence program, individuals can provide information on possible violations of environmental law. The information, if gathered according to agency procedures and guidelines, can be used by the TCEQ to pursue enforcement. In this program, citizens can become involved and may eventually testify at a hearing or trial concerning the violation. For additional information, see the TCEQ publication, "Do You Want to Report an Environmental Problem? Do You Have Information or Evidence?" This booklet is available in English and Spanish from the TCEQ Publications office at 512-239-0028 and may be downloaded from the agency website at <http://www.tceq.texas.gov> (under Publications, search for document number 278).

CHANGES MADE IN RESPONSE TO COMMENT

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,
Texas Commission on Environmental Quality
Toby Baker, Executive Director
Erin E. Chancellor, Director
Office of Legal Services
Charmaine Backens, Deputy Director
Environmental Law Division



Ashley Rich, Staff Attorney
Environmental Law Division
State Bar Number: 24109284
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY