Renee Lyle

From: PUBCOMMENT-OCC
Sent: Tuesday, February 13, 2024 3:40 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number 104840
Attachments: CCH 104840.pdf

H

Jesús Bárcena
Office of the Chief Clerk
Texas Commission on Environmental Quality
Office Phone: 512-239-3319

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www.tceq.texas.gov/customersurvey

From: lthomson@environmentalintegrity.org <lthomson@environmentalintegrity.org>
Sent: Monday, February 12, 2024 4:58 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number 104840

REGULATED ENTY NAME FREEPORT LNG PRETREATMENT FACILITY

RN NUMBER: RN106481500

PERMIT NUMBER: 104840

DOCKET NUMBER:

COUNTY: BRAZORIA

PRINCIPAL NAME: FREEPORT LNG DEVELOPMENT LP

CN NUMBER: CN601720345

NAME: Lauren Thomson

EMAIL: lthomson@environmentalintegrity.org

COMPANY:

ADDRESS: 1206 SAN ANTONIO ST
AUSTIN TX 78701-1834

PHONE: 2103262005

FAX:

COMMENTS: See attached.

ENVIRONMENTAL INTEGRITY PROJECT

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February 12, 2024

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

Via Electronic Filing

Re: Contested Case Hearing Request on the Application to Renew Air Permit No. 104840 at the Freeport LNG Liquefaction Plant

Dear Ms. Gharis:

Freeport LNG Development, LP ("Freeport") has applied to the Texas Commission on Environmental Quality ("TCEQ") for the renewal of Air Permit No. 104840 (the "Permit"), which would authorize continued operation of the Freeport LNG Pretreatment Facility ("Pretreatment Facility") located at 2363 County Road 690, Freeport, Brazoria County, Texas, 77541. The Pretreatment Facility is authorized to emit the following air contaminants: carbon monoxide, hazardous air pollutants, sulfuric acid mist, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, ammonia and sulfur dioxide. This letter is timely filed.[1] We respectfully reserve the right to submit additional comments and disputed issues of fact after we receive the permit application and related material, which we have requested.

Freeport's Pretreatment Facility has a history of noncompliance, including emitting unauthorized emissions during a fire and explosion less than two years ago. On June 8, 2022, there was a Boiling Liquid Expanding Vapor Explosion that resulted in a fire. The Pipeline and Hazardous Materials Safety Administration received a heavily-redacted report on the explosion that estimates 10,570 pounds of methane gas was released into the atmosphere, half of which was consumed in a fireball.[2] Similarly, Freeport signed an Agreed Order in August 2021 for an incident that occurred at the Pretreatment Facility in August 2019 that lasted five hours and 27 minutes and released 20,249.499 pounds of carbon dioxide, 1,780.62 pounds of nitrogen oxides, 0.51 pound of sulfur dioxide, and 0.04 lb of sulfuric acid.[3]

[1] The Notice of Receipt of Application and Intent to Obtain a Permit ("NORI") was issued on January 26, 2024. According to the NORI, the deadline for requesting a contested case hearing is 15 days after the date of publication in the newspaper. The date of publication in the newspaper is unclear as of the date of these comments. Therefore, we calculate the earliest possible deadline is for these comments to be due on Saturday, February 10, 2024. Due to the deadline falling on a weekend, the deadline moves to February 12, 2024. See 30 Texas Administrative Code § 1.7 ("Except as otherwise specifically provided by commission rules, in computing any period of time prescribed or allowed by commission regulation or orders or by any applicable statute, the period shall begin on the day after the act, event, or default in question and shall conclude on the last day of that designated period, unless it is a Saturday, Sunday, or legal holiday on which the office of the chief clerk is closed, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a legal holiday on which the office of the chief clerk is closed.").

I. Contested Case Hearing Request

Better Brazoria: Clean Air and Clean Water, Texas Campaign for the Environment, and Sierra Club (collectively, the "Requestors") request a contested case hearing on this Application. Please direct all communication regarding these hearing requests to Ilan Levin and Lauren Thomson, Attorneys at Environmental Integrity Project, and Tom Gosselin, Attorney at Sierra Club, at the contact information in the signature box below.

Better Brazoria: Clean Air and Clean Water is a nonprofit organization formed to educate Freeport residents about environmental issues and to advocate for solutions to protect and improve air and water quality. To accomplish this, Better Brazoria: Clean Air and Clean Water holds community meetings to raise awareness about potentially harmful air and water pollution events in Freeport. The group communicates with the TCEQ and other state and local governmental entities to remain up to date on the latest developments in the area. Better Brazoria: Clean Air and Clean Water continues to engage with the public participation component of the environmental permitting process by submitting comments, and engaging in hearings on air, water, and waste permits. The goal of the organization is to encourage protection of public health through compliance with environmental laws. Members of Better Brazoria: Clean and Clean Water live in close proximity to the Liquefaction Plant and are harmed by Freeport's air pollution.

Texas Campaign for the Environment, a Texas non-profit corporation with offices in Austin, Houston, and Dallas, Texas, fights pollution through grassroots organization campaigns across Texas that improve corporate and governmental anti-pollution policies. Texas Campaign for the Environment members are harmed by emissions from Freeport LNG.

Sierra Club, a California non-profit corporation with an office in Austin, Texas, is the nation's oldest conservation organization. The Sierra Club has thousands of Texas members who are dedicated to exploring, enjoying, and protecting Texas' natural resources and wild places. Sierra Club promotes the responsible use of the Earth's ecosystem and resources and works to restore the quality of the natural and human environment. In addition to organizing nature outings and public education campaigns, Sierra Club and its Texas members pursue advocacy and litigation on issues including clean air and clean water, solid waste reduction, and sustainable energy and land use policies. Sierra Club also has a Beyond Dirty Fuels Campaign, which *inter alia* seeks to halt or minimize the adverse impacts of LNG liquefaction plants and export terminals on the climate, surrounding communities, and the environment. Sierra Club members are affected persons including those who live, work, and recreate in close proximity to the Liquefaction Plant and are harmed by Freeport's air pollution.

[2] Incident Free Operations, Inc., *June 8, 2022 – Loss of Primary Containment Incident Investigation Report*, 20, Oct 30, 2022), https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2022-11/IFO-Group-RCFA-Report-final-redacted.pdf.

[3] TCEQ, Agreed Order Docket No. 2020-1417-AIR-E (Aug. 25, 2021).

Melanie Oldham is a member of both Better Brazoria: Clean Air and Clean Water and Sierra Club. She resides at 922 W. 5th St., Freeport, Texas 77541. Ms. Oldham is affected by pollution from Freeport's Liquefaction Plant because she lives nearby and passes even closer to the Plant when she visits Freeport Beach or Quintana Beach. Ms. Oldham is keenly aware of the dangers of air pollution and water pollution that Freeport emits. She is also aware of the fact that Brazoria County is in severe nonattainment for ozone. Ms. Oldham wants to protect herself and her air from dangerous pollution, including ozone. She is concerned that she will have to curtail her outdoor activities to protect her health if Freeport continues to increase its emissions. And she is worried that ozone levels—which are already unhealthy at times—will get even more unhealthy if Freeport is allowed to continue emitting emissions such as nitrogen oxides and volatile organic compounds.

Ms. Oldham has standing in her own right to request a contested case hearing. The interests that Better Brazoria: Clean Air and Clean Water and Sierra Club seek to protect by requesting this hearing are germane to their purposes, stated above, and neither the claim asserted nor the relief requested requires the participation of the individual members in this case.

Disputed issues include the following:

- Whether the emissions from the permitted facilities threaten the health and safety of the public or nearby residents.
- Whether, and to what extent, facilities associated with the Train 4 Expansion Project are under construction, or whether any authorization for those facilities has expired.
- Whether the proposed emissions will cause or contribute to exceedances of any health- or welfare-based ambient standard, including national ambient air quality standards and prevention of significant deterioration increments.
- Whether the Applicant's permit application complies with the State Implementation Plan.
- Whether the facilities meet Best Available Control Technology standards.
- Whether the emissions calculation methodologies used in the Application or Permit, including those used for setting emission limits and those used for demonstrating compliance, are flawed or outdated.
- Whether proposed monitoring and reporting requirements are adequate to ensure compliance with the Clean Air Act and protect local residents.

II. Additional Comments and Disputed Facts

A. The 2018 amendment to the Permit is void because Freeport failed to satisfy construction deadlines in the Texas Administrative Code and the Permit.

This permit renewal proposes emissions limits based on a permit amendment from April 25, 2018. That amendment authorized Freeport to construct an additional liquefaction train and associated facilities (the "Train 4 Expansion Project").[4] The Train 4 Expansion Project would increase Freeport's export capacity from the current 15.49 metric tons per annum by approximately 33% to over 20 metric tons per annum.[5] Although TCEQ issued Freeport's pre-construction permit on April 25, 2018, as of the date of this comment letter, Freeport has not begun construction on the Train 4 Expansion Project.[6]

i. The permit amendment is void because Freeport did not begin construction within 18 months.

Developers must begin construction of their projects within 18 months under pre-construction permits issued by TCEQ.[7] This requirement comes from both the Texas Administrative Code and the Permit itself.[8] If construction does not begin by this deadline, the permit is automatically void.[9]

After receiving the permit amendment on April 25, 2018, Freeport applied for an extension in July 2021.[10] But by the time Freeport applied for the extension, it was well past the 18-month deadline of October 25, 2019, rendering the permit amendment void. Freeport also subsequently withdrew its application for an extension on September 22, 2021.[11] Accordingly, TCEQ could not and did not issue Freeport an extension.[12] Because Freeport did not begin construction on the Train 4 Expansion Project within 18 months and TCEQ did not extend the deadline, the April 25, 2018, permit amendment regarding the Train 4 Expansion Project is void.

TCEQ's position appears to be that an extension was unnecessary because Freeport was engaging in construction authorized prior to the April 25, 2018 amendment.[13] But even if that were true, engaging in previously authorized construction activities that are not for the Train 4 Expansion Project does not satisfy Freeport's deadline to begin construction under the April 25, 2018 permit amendment. The only construction authorized by that amendment was the Train 4

[4] Permit No. 104840, Permit Face (Apr. 25, 2018) (Project No. 264968); Permit No. 104840, Technical Review, at 1 (Apr. 25, 2018) (Project No. 264968); Federal Energy Regulatory Commission, Freeport LNG Train 4 Project Environmental Assessment, at 8 (Nov. 2018) (Accession 20181102-3028), *available at* https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20181102-3028&optimized=false.
[5] *Freeport LNG Development, L.P. & FLNG Liquefaction 4, LLC*, 167 FERC ¶ 61,155, PP3-4 (May 17, 2019).
[6] *See* Freeport LNG, *Our Business: Train 4 Project Overview*, available at https://freeportlng.com/our-business/train-4-expansion (explaining that Freeport is "developing" the Train 4 expansion project).
[7] 30 Tex. Admin. Code § 116.120 ("A ... permit amendment ... is void if the permit holder ... fails to begin construction within 18 months of issuance" unless the Commission grants an extension.)
[8] *Id.*, Permit No. 104840, Permit Face, at 1 (Apr. 25, 2018) (Project No. 264968).
[9] *See Id.*, 30 Tex. Admin. Code § 116.120.
[10] Permit No. 104840, Technical Review (Sep. 27, 2021) (Project No. 331694).
[11] *Id.*
[12] *Id.*
[13] Permit No. 104840, Agency Review, at pdf 5 (Oct. 4, 2021) (Email from David Havens to Michael Stephenson, *et al.*).

Expansion Project.[14] While the April 25, 2018 amendment did revise emissions limits for the pre-expansion project, that aspect of the amendment did not authorize any new construction of that project. Rather, those revisions were the result of Freeport updating previous "representations of emissions from the" initial project.[15] Thus, construction on the pre-expansion project could not satisfy the 18-month begin construction deadline.

ii. Alternatively, the permit amendment is void because Freeport discontinued construction for more than 18 months and construction cannot be completed within a reasonable time.

TCEQ's regulations and the Permit also provide that permit amendments are void "if the permit holder ... discontinues construction for more than 18 months prior to completion" or "if the permit holder ... fails to complete construction within a reasonable time."[16]

Construction on the initial project concluded on November 30, 2020, when Freeport "completed all remaining Project-related restoration, demobilization and cleanup efforts."[17] This was over three years ago. Construction on the Train 4 Expansion Project has not begun since. Even if previously approved construction activities could prevent a permit amendment from becoming void, the April 25, 2018 amendment is still void because Freeport discontinued construction for more than 18 months prior to completion. Additionally, because construction on the Train 4 Expansion Project hasn't begun, it will not be completed within a reasonable time.

Accordingly, TCEQ must acknowledge that the April 25, 2018 permit amendment is void and cannot renew emissions limits associated with the Train 4 Expansion Project.[18]

B. If TCEQ determines the permit renewal is appropriate, TCEQ must still include the as-built emissions reductions associated with Trains 1 – 3 that were permitted in the April 25, 2018 amendment.

The Texas Administrative Code states: "[a]ll representations with regard to construction plans, operating procedures, pollution controls methods, and maximum emission rates in any registration for a standard permit become conditions upon which the facility or changes thereto, must be constructed and operated."[19]

[14] Permit No. 104840, Technical Review, at 1 (Apr. 25, 2018) (Project No. 264968).
[15] *Id.*
[16] 30 Tex. Admin. Code §§ 116.120(a)(2)-(3); Permit No. 104840, Permit Face at 1 (Apr. 25, 2018) (Project No. 264968).
[17] Freeport LNG Development, L.P. *et al.*, Bi-Weekly Construction Status Report No. 164, at 2 (Dec. 11, 2020) (Accession 20201211-5136), *available at* https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20201211-5136&optimized=false
[18] The Commission does not need to take any formal action to void the permit amendment because the Commission's regulations provide that the permit amendment automatically became void when Freeport failed to satisfy the applicable deadline. 30 Tex. Admin. Code § 116.120(a).
[19] 30 Tex. Admin. Code § 116.615(2); *see also* 30 Tex. Admin. Code § 116.116; Permit No. 104840, Permit Face, at 1.

When Freeport applied for the April 25, 2018 amendment, it updated its emissions representations for the initial project to be less than what was previously authorized.[20] The lower emissions representations were due to a more efficient heat rate, a higher heating value for the combustion gas, and better emission factors.[21] These factors "realize[d] a drop of 9.56 tpy for NO_x alone for the turbine," as well as other emissions reductions.[22]

Even though the April 25, 2018 amendment is now void, the revised emissions limits for Trains 1-3 and its attendant facilities must remain in place if the permit is renewed. Texas Administrative Code 116.615 plainly applies to the representations Freeport made as part of that amendment process.[23] There is no reason to think that those representations are now stale or that Freeport is unable to achieve these updated emissions calculations. Indeed, Freeport has proposed abiding by these lowered emissions limits in its renewal application.[24]

Accordingly, insofar as renewal of Permit 104840 is appropriate, TCEQ must continue to include the emissions decreases for the initial project that were permitted in the April 25, 2018 amendment in the Permit. The emissions increases associated with the Train 4 expansion must be removed from the permit.

C. Commenters may submit additional comments after receiving the complete permit renewal application.

On February 2, 2024, we submitted a Public Information Request ("PIR") to the TCEQ for a copy of the permit application. See *Attachment A*. To date, the requested documents have not been provided. We respectfully reserve the right to submit additional comments and disputed issues of fact after we receive the permit application and related materials.

III. Mailing List Add Request

Please add the following individuals to the mailing list for the above referenced matter:

Ilan Levin
Environmental Integrity Project
1206 San Antonio Street Austin, TX 78701
ilevin@environmentalintegrity.org

Lauren Thomson
Environmental Integrity Project
1206 San Antonio Street Austin, TX 78701
lthomson@environmentalintegrity.org

[20] Permit No. 104840, Technical Review, at 1, 3 (Apr. 25, 2018) (Project No. 264968) ("Due to better project definition, the emissions from Trains 1-3 are now calculated as less than what was previously authorized.")
[21] *Id.*
[22] *Id.*
[23] *See* 30 Tex. Admin. Code § 116.615(2).
[24] *See* Permit No. 104840, Plain Language Summary for New Source Review (NSR) Renewal Application for Air New Source Review Permit Number 104840.

Melanie Tillar
Environmental Integrity Project
1206 San Antonio Street Austin, TX 78701
mtillar@environmentalintegrity.org

IV. Conclusion

The Requestors appreciate the opportunity to file this contested case hearing request and comment letter and reserves the right to amend its comments after receiving a copy of the permit application.

/s/ Ilan Levin
Ilan Levin
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1206 San Antonio St.
Austin, Texas 78701
ilevin@environmentalintegrity.org
Lauren Thomson
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/s/ Tom Gosselin
Thomas Gosselin
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tom.gosselin@sierraclub.org

Attachment A

PIR Request submitted on 02/02/2024 09:05 AM

PIR Code: 24-90986-PIR
Due Date: 02/16/2024

Page One

Name Prefix:
Name: Lauren Thomson
Company/Organization: Environmental Integrity Project
Requestor Type: Non-Profit
Mailing Address 1:
Mailing Address 2:
City:
State/Province/Region:
Zip/Postal Code:
Country:
E-mail Address: lthomson@environmentalintegrity.org
Phone Number:
FAX Number:

Page Two

Sites/Facilities :

RN	Facility	CN	Customer	Program	Additional ID
RN103196689	FREEPORT LNG LIQUEFACTION PLANT	CN601720345	FREEPORT LNG DEVELOPMENT LP	Air New Source Permits	
RN10648150		CN601720345	FREEPORT LNG DEVELOPMENT LP	Air New Source Permits	

Area Description: I am requesting the application materials for the renewal of Air Quality Permit No. 104840 (Freeport LNG Pretreatment Facility) and Air Quality Permit N0. 100114 (Freeport LNG Liquefaction Plant).

Page Three

Date Range:
Agency Programs: Air - New Source Permits (OA)
Addition Record Search. I am requesting the application materials for the renewal of Air Quality Permit No. 104840 (Freeport LNG Pretreatment Facility) and Air Quality Permit N0. 100114 (Freeport LNG Liquefaction Plant). Please consider my request ASAP because there is only a 2 week period to comment. Comments are due mid-Feb. Thank you.
Data Only: No
Confidential Information: Yes
Certified Information: No
Request Documents:

Document	Type
104840.pdf	Facility File
100104.pdf	Facility File