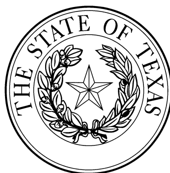
Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

MR BRIAN K. LEVER
MANAGER, BORGER REFINERY
CONOCOPHILLIPS COMPANY
PO BOX 271
BORGER TX 79008-0271

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment
Significant Revision
Permit Number: O1440
ConocoPhillips Company
Borger Refinery
Borger, Hutchinson County
Regulated Entity Number: RN102495884
Customer Reference Number: CN601674351
Account Number: HW-0018-P

Dear Mr. Lever:

The Texas Commission on Environmental Quality (TCEQ) Executive Director's proposed final action is to submit a proposed federal operating permit (FOP) to the U.S. Environmental Protection Agency (EPA) for review. Prior to taking this action, all timely public comments have been considered and are addressed in the enclosed TCEQ Executive Director's Response to Public Comment (RTC). The executive director's RTC also includes resulting modifications to the FOP, if applicable.

As of August 17, 2010 the proposed permit is subject to an EPA review for 45 days, ending on October 1, 2010.

If the EPA does not file an objection to the proposed FOP, or the objection is resolved, the TCEQ will issue the FOP. If you are affected by the decision of the Executive Director (even if you are the applicant) you may petition the EPA within 60 days of the expiration of the EPA's 45-day review period in accordance with Texas Clean Air Act § 382.0563, as codified in the Texas Health and Safety Code and the rules [Title 30 Texas Administrative Code Chapter 122 (30 TAC Chapter 122)] adopted under that act. This paragraph explains the steps to submit a petition to the EPA for further consideration. The petition shall be based only on objections to the permit raised with reasonable specificity during the public comment period, unless you demonstrate that it was impracticable to raise such objections within the public comment period, or the

grounds for such objections arose after the public comment period. The EPA may only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of 30 TAC Chapter 122. The 60-day public petition period begins on October 2, 2010 and ends on November 30, 2010. Public petitions should be submitted during the petition period to the TCEQ, the EPA, and the applicant at the following addresses:

Texas Commission on Environmental Quality
Office of Permitting & Registration
Air Permits Division
Technical Program Support Section, MC-163
P.O. Box 13087
Austin, Texas 78711-3087

U.S. Environmental Protection Agency (EPA)
Attn: Air Permit Section Chief (6PD-R)
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

U.S. Environmental Protection Agency
Administrator Mike O. Leavitt
Ariel Rios Building (AR 1101A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Mr Brian K. Lever
Manager, Borger Refinery
ConocoPhillips Company
Po Box 271
Borger TX 79008-0271

Thank you for your cooperation in this matter. If you have questions concerning the processing of this permit application, please contact Mr. Chuck Lowary, P.E. at (512) 239-1263.

Sincerely,

Jesse E. Chacon, P.E., Manager
Operating Permits Section
Air Permits Division
Texas Commission on Environmental Quality

JEC/EL

cc: Mr. Quarshie Awuah Okyere, Environmental Representative, ConocoPhillips Company,
Air Section Manager, Region 1 - Amarillo
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas (Electronic copy)

Enclosures: Executive Director’s Response to Public Comment
Proposed Permit
Modifications Made from the Draft to the Proposed Permit

Project Number: 14832

bcc: Mr. Brad Patterson, TCEQ Office of Public Assistance, MC-108, Austin
Ms. Deanna Avalos, Final Documents Team, TCEQ Office of the Chief Clerk, MC-105, Austin
Attorney name - Terry Salem & John Minter, TCEQ Environmental Law Division (MC-173), Austin
File Copy

Modifications Made from the Draft to the Proposed Permit

1. Textual description was revised to include determination language from Rule Interpretation R1-111.010 for 30 TAC § 111.111(a)(4)(A), *Visible Emissions, Gas Flares* for units 66FL1, 66FL12, 66FL2, 66FL3 and 66FL4.

2. Appendix B and its attachments have been modified to properly paginate the PSD documents into the FOP.

3. Table 1 has been reformatted into a Word document to make it more readable. The table has been revised to clarify which specific tanks are related to which specific monitoring conditions in NSR permit 9868A/PSDTX102M7. The table has also been revised to delete the incorrect reference listing 66FL4 as a scrubber.

4. Permit 14441A has been added to the New Source Review Authorization References table in permit O1440.

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Texas Commission on Environmental Quality (TCEQ) Executive Director provides this Response to Public Comment and the executive director's preliminary decision on the ConocoPhillips Company, Federal Operating Permit (FOP) application. As required by Title 30 Texas Administrative Code § 122.345 (30 TAC § 122.345) the executive director prepares a notice of proposed final action, which includes a response to all timely comments. These comments are summarized in this response. The Office of Chief Clerk (OCC) timely received comment letters from the following persons: Sparsh Khandeshi, on behalf of Environmental Integrity Project (EIP) and the Lone Star Chapter of the Sierra Club.

BACKGROUND

Procedural Background

The Texas Operating Permit Program requires that owners and operators of sites subject to 30 TAC Chapter 122 obtain a FOP that contains all applicable requirements in order to facilitate compliance and improve enforcement. The FOP does not authorize construction or modifications to facilities, nor does the FOP authorize emission increases. In order to construct or modify a facility, the facility 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 in order to operate. ConocoPhillips Company applied to the TCEQ for a significant revision to the FOP for a petroleum refining plant located in Borger, Hutchinson County on February 24, 2010, and notice was published on June 15, 2010. The public comment period ended on July 15, 2010.

Description of Site

ConocoPhillips Company has applied to the TCEQ for an FOP significant revision that would authorize the applicant to operate the Borger Refinery. The facility is located from the North Circle intersection of SH 136, 152, and 207 in NW Borger take Spur 245 for 1 mile where it intersects Spur 119 in Hutchinson County, Texas 79007.

The Borger Refinery currently processes over 150,000 barrels of crude per day and 30,000 barrels of Y1 and Y2 natural gas liquids (NGL). The main products produced are Low Sulfur Gasoline (LSG), Ultra Low Sulfur Diesel (ULSD), Jet fuel, NGL products (ethane/propane mix, propane, and butanes) and paraffin solvents.

Crude is blended and sent to the Crude Distillation Unit (CDU) where the crude is separated into intermediates for further processing. These intermediates are: naphtha, kerosene (Jet), light diesel, heavy diesel and atmospheric tower bottoms.

- The naphtha is sent to fractionators to separate C6 and lighter materials from C7 and heavier naphtha. The C6 and lighter material is directed to fractionators and combine with Y1 and Y2 NGL material. There is a process unit to isomerize normal

butane to isobutane and another unit to saturate benzene to cyclohexane and isomerize C5 and C6 compounds to higher octane. The C7 and heavier naphtha is sent to a naphtha hydrodesulfurization (HDS) unit and then to two semi-regeneration catalytic gasoline reformer units (CRU) to raise octane and produce gasoline.

- The kerosene and light diesel are sent to an HDS unit and fractionated into Jet and ULSD. The heavy diesel is sent to the heavy diesel HDS which also makes ULSD.
- The atmospheric tower bottoms is sent to the vacuum tower where heavier material is separated and sent to the Coker unit and the lighter Gas Oil and diesel are sent to the GO HDS unit. The Coker unit products are also sent to the GO HDS unit.
- The GO HDS removes sulfur and nitrogen compounds from the feed and cracks some gas oil to naphtha and diesel. The naphtha is sent to the C6 fractionators and the diesel is ULSD product. The remaining gas oil is sent to two Fluid Catalyst Cracking (FCC) units. The GO HDS has a number of associated process units. There are two Steam Methane Reformer (SMR) units that produce high purity hydrogen. The hydrogen is used in the GO HDS and ULSD units. The sulfur that is removed is treated in a two train Claus sulfur unit that also has a SCOT Tail Gas Treating Unit (TGTU). There is a second, smaller Claus sulfur unit with a SCOT TGTU in the refinery. Sulfur is also used as a feed to a Methyl Mercaptan (MESH) unit and is also sent to a separate Chemical plant that is located across the entrance road.
- The FCCs crack the gas oil feed to gasoline, diesel range Light Cycle Oil (LCO), C3-C4 olefins and light ends.
- The mostly C4 remaining olefin material is sent to the HF alkylation unit. The alkylation unit combines isobutane with the olefin feed to make high quality gasoline.
- Various gasoline and diesel streams are blended to produce a final product. While some truck loading occurs, most products are shipped out via several pipelines.

ConocoPhillips Company has applied to the TCEQ for an FOP significant revision that would authorize the applicant to update regulatory applicability for multiple units, both new and existing. The majority of changes were a result of the recent Gasoline Benzene Reduction Project authorized under PSDTX 102M7. The purpose of this project was primarily to reduce emissions in compliance with new EPA standards.

COMMENTS AND RESPONSES

All comments were submitted by Sparsh Khandeshi on behalf of Environmental Integrity Project (EIP) and the Lone Star Chapter of the Sierra Club.

Mr. Khandeshi's comments appear to be stated within the context of this being a renewal project versus a significant revision project. Several questions asked were outside the specific review area of the significant revision application. However, responses to those queries were provided, and modifications were made, where merited.

COMMENT A: The *Notice of Draft Federal Operating Permit* for the ConocoPhillips Borger Refinery states that "[t]he significant revision will result in a change of emissions for the following air pollutant(s): increase in volatile organic compounds, nitrogen oxides, sulfur dioxide, carbon monoxide, particulate matter, and sulfuric acid." We are uncertain how a facility can increase its emissions of these pollutants through a renewal of a title V permit. The Statement of Basis does not include an explanation of these increases. On the contrary, it states that emissions will decrease. Because TCEQ cannot permit additional emissions through the title V process, it should explain these emissions increases in the Statement of Basis or republish an accurate notice.

RESPONSE A: The FOP itself does not authorize new construction or new emissions. The submittal of the significant revision of FOP No. O1440 also included the incorporation of the amendment to NSR Permit 9868A/PSDTX102M7 which was the permit that authorized emissions increases. The incorporation of a PSD modification requires a significant revision to the operating permit~~, which requires the same processes as the renewal, so these actions were combined.~~ ~~The~~ and thus must meet the requirements of 30 TAC Chapter 122, §122.320 which ~~specify~~specifies the information that must be included in public notifications for significant operating permit revisions, which includes a list of the air pollutants with emission changes, which is why the public notice language indicates that there have been emission changes. In addition, please note that the amendments to the NSR permit referenced above also went through separate administrative and technical comment periods, which included notices for emission increases. However, the ED understands that the notice template language could be clarified, and will review future notices to improve clarity on this issue. ~~The statement of basis has also been changed to clarify that the emission changes result from the underlying NSR action which is being incorporated into this FOP.~~

COMMENT B: There are several emission points that do not have adequate emission limits.

1. The draft permit exempts SO_2 emissions from GRP-RFUEL during malfunction events. *See* Draft Renewal, 45. A recent EPA decision and the Texas SIP make it clear that emission limits apply at all times. There is a similar exception for the opacity limit on 66FL1, 66FL12, 66FL2, 66FL3, and 66FL4. *See Draft Renewal* at 46-47. TCEQ should fix these problems by deleting the exemptions. Furthermore, TCEQ should remove any other similar exemptions for emissions during malfunction events from the Title V permit.

Units SKIDBLR and 85B2 do not have PM and NO_x emission limits. The Applicable Requirements Summary chart cites 40 C.F.R. 60.40b(a) for these units. Draft Permit at 36-37. This regulatory citation provides the basis for applicability of the NSPS subpart not an emission limit. While it would be reasonable to assume that the PM and NO_x emission of the subpart would apply to the unit, the permit must explicitly state this. This permitting oversight would be remedied if TCEQ actually included each emission limit rather than a citation.

RESPONSE B: The Executive Director (ED) believes that emission points have adequate emission limits.

1. 40 CFR Part 60, Subpart J, §60.104, *Standards for Sulfur Oxides,* allows an exemption for the SO2 emission for GRP-FUEL. §60.104(a) and (a)(1) state, "No owner or operator subject to the provisions of this subpart shall burn in any fuel gas combustion device any fuel gas that contains hydrogen sulfide (H_2S) in excess of 230 mg/dscm (0.10 gr/dscf). The combustion in a flare of process upset gases or fuel gas that is released to the flare as a result of relief valve leakage or other emergency malfunctions is exempt from this paragraph". 30 TAC Chapter 111, §111.111(a)(4)(A) states, "Visible emissions from a process gas flare shall not be permitted for more than five minutes in any two-hour period, except as provided in §101.11(a) of this title (relating to Exemptions from Rules and Regulations)". A subsequent TCEQ Rule Interpretation, R1-111.010, was issued on October 30, 2003 on the rule reference found in §111.111(a)(4)(A) to §101.11(a), which was rescinded in rulemaking for 30 TAC Chapter 101, adopted August 21, 2002. The rulemaking also changed the term "upset" to "emission event". The rule interpretation stated that §111.111(a)(4)(A) should read as follows: "Visible emissions from a process gas flare shall not be permitted for more than five minutes in any two-hour period, except as provided in §101.222(b) of this title (relating to Demonstrations)".

Although 40 CFR Part 60, Subpart J, §60.104(a)(1) for GRP-RFUEL does allow for exemptions from the stated limits during upset conditions, those emission events must be reported and may be subject to enforcement action under 30 TAC Chapter 101, as are the §111.111(a)(4)(A) requirements for 66FL1, 66FL12, 66FL2, 66FL3 and 66FL4.

The textual description for 40 CFR Part 60, Subpart J for GRP-RFUEL, which is not an enforceable part of the permit, will remain unchanged. The textual description for 30 TAC Chapter 111 for 66FL1, 66FL12, 66FL2, 66FL3 and 66FL4, also not an enforceable part of the permit, has been changed to reflect the TCEQ rule interpretation determination language, although the applicability citations will remain unchanged. This language in the textual description will also be changed for the §111.111(a)(4)(A) applicability determination in future permits.

2. Units SKIDBLR and 85B2 fire only gaseous fuels and therefore have no applicable emission limits under 40 CFR Part 60, Subpart Db for NOx, PM or opacity. However, they do have applicability under the rule and require that recordkeeping and recording requirements be maintained. In a situation such as this, TCEQ policy is to include the basis for applicability rather than leave a 'blank space' for the nonexistent emission limit citations.

COMMENT C: Insufficient Monitoring. Title V permits must include monitoring requirements that are sufficient to assure compliance with applicable emissions limits and standards. The D.C. Circuit Court of Appeals vacated EPA's rule prohibiting state and local authorities from adding provisions to title V permits if needed to "assure compliance." *Sierra Club, et al., v. EPA,* 536 F.3d 673 (D.C. Cir. 2008). The court emphasized that "[e]ach permit . . . shall set forth . . . monitoring requirements to assure compliance with the permit terms and conditions." *Id.* at 677 (quoting 42 U.S.C. § 7661c(c)).

Below are several examples of units that have emissions limits but do not have sufficient monitoring requirements. In addition to addressing the lack of adequate monitoring

requirements for the units discussed below, TCEQ should conduct a comprehensive review of each emission limit and ensure it has a corresponding monitoring requirement that is adequate to guarantee compliance.

1. The draft renewal permit does not have sufficient monitoring to ensure compliance with the various limits on the refinery flares. The permit requires that flares operate without smoke at all times. The corresponding monitoring requirements only require the flare to be observed once a day. This is insufficient because the monitoring is not frequent enough. This problem could be solved if TCEQ required the facility to use continuous monitoring of the flare, a technologically feasible option.

2. Furthermore the refinery flare that receives gas from Units 45V1 and 45V2 are required to reduce the emission of HAPs by 98%. *See* Draft Permit at 39-40. One major issue is that the permit does not identify which flare the units in question are routed to. But even if it were known, the mandated operating parameters described in condition 2 of the attached PSDTX102M7 permit do not guarantee 98% combustion efficiency. A recent study at Marathon's Texas City refinery demonstrated that flare efficiency can drop well below 98% in moderate to high-wind conditions. *See* Clean Air Engineering, Performance Test of a Steam Assisted Elevated Flare With Passive FTIR (May 2010) (on file with EIP). As a result, TCEQ should require ConocoPhillips to develop and adopt operating parameters and actual emission monitoring to make certain that the refinery complies with the emission limit requiring 98% destruction efficiency at all times.

3. Unit 2673 and 1025 also have insufficient monitoring and recordkeeping. The applicable requirement dictates that these units are to be checked for leaks on a weekly basis. But recordkeeping is only triggered when an actual leak is found. Therefore, there is no way for TCEQ to determine if ConocoPhillips actually checks these units for leaks on a weekly basis.

The units discussed above are just a small sample of some of the units in O1440 that do not have sufficient monitoring to ensure compliance. Not only should TCEQ address the monitoring deficiencies highlighted, but also conduct its own comprehensive review of each unit to ensure the applicable emissions limits and standards are matched by sufficient monitoring and recordkeeping requirements to ensure compliance.

RESPONSE C: Consistent with 40 Code of Federal Regulation (CFR) Part 70, ConocoPhillips permit includes: (1) monitoring sufficient to yield reliable data from the relevant time period that is representative of compliance with the permit; and (2) monitoring sufficient to assure compliance with the terms and conditions of the permit. The executive director has determined that the monitoring required by this permit demonstrates compliance for the applicable state and federal requirements. For those requirements that do not include monitoring, or where the monitoring is not sufficient to assure compliance, the federal operating permit includes such monitoring for the emission units affected. Additional periodic monitoring or CAM was identified for emission units after a review of applicable requirements determined that additional monitoring was needed to assure compliance. Over ~~450~~370 emission units were reviewed and additional monitoring incorporated for many. Each applicable requirement is reviewed to determine

whether monitoring, recordkeeping, reporting, and testing (MRRT) are sufficient to assure compliance with that standard or requirement. Applicable requirements undergo this review when the requirement changes to ensure consistent application of MRRT sufficient to assure compliance for all permits that contain the applicable requirement. If additional monitoring is required, it is included in the "Additional Monitoring Requirements" attachment of the permit and the basis of the monitoring is included in the Statement of Basis, pages 49-59.

In accordance with the General Condition No. 67 in the underlying NSR permit and in accordance with 30 TAC 116.115(b)(2)(E)(i), ConocoPhillips maintains a copy of the permit along with records containing the information and data (gathered through monitoring) sufficient to demonstrate compliance with the permit, including production records and operating hours. The Maximum Allowable Emission Rate Limits were calculated using the maximum firing rate, the heating value of the fuel (the value is looked up from a table) and an emission factor taken from AP-42, Chapter 1, or provided by the vendor. The monitored fuel flow rate, with the heating value of the fuel and the factor that was used to calculate the maximum allowable emission rate, is used to calculate the actual emission rate to demonstrate compliance, unless a CEMS is utilized.

In response to the specific examples provided by the commenter, the ED provides the following specific information.

1. 30 TAC §111.111(a)(4)(A) for gas process flares 66FL1, 66FL12, 66FL2, 66FL3 and 66FL4 states, "Visible emissions from a process gas flare shall not be permitted for more than five minutes in any two-hour period,.." Compliance is determined under §111.111(a)(4)(A)(ii) which states, "a daily notation in the flare operation log that the flare was observed including the time of day and whether or not the flare was smoking..If smoking is detected, compliance with the emission limits of this paragraph shall be determined using Reference Method 22, Reference Method 9, or an alternative test method approved by the Executive Director and EPA. The observation period for this compliance determination shall be no less than two hours unless noncompliance is determined in a shorter time period or operational changes are made to the flare that stop the smoking. A Method 22 or Method 9 observation will be, waived provided the operator reports the flare to be in an upset condition under the requirements of §101.6 of this title (relating to Notification Requirements for Major Upset)".

The ED does not agree that additional flare monitoring of visible emissions is necessary to assure compliance. In support of this conclusion, the ED will provide the following explanation regarding the purpose and operation of flares in general~~, with specific information regarding the flare in operation at this site in the Statement of Basis for FOP No. O1440~~.

Flares are safety mechanisms, which must be sized and designed to manage the facility's worst case operating scenario (which presents the most challenging scenario for operation) without visible emissions that exceed the specified opacity requirements. Steam-assisted flares (like the ones at this site) in particular have an even lower probability of visible emissions when operated correctly. The ConocoPhillips flares in

question are ~~is~~ steam-assisted and ~~is~~ sized to manage worst-case operating scenarios. The flares have ~~has~~ already demonstrated that they ~~it~~ can operate with no visible emissions during the performance demonstrations as required by NSR Permit No 9868A, Special Condition 2 to meet the requirements of ~~under~~ 40 C.F.R. § 60.18. It should also be noted that the requirements cited in §111.111(a)(4)(A) and NSR 9868A, Special Condition 2, above are in large part 'mirrored' from §60.18(c)(1) and (f)(1) and (2).

There is no currently-available, EPA-approved mechanism for testing or monitoring emissions from an operating flare. Instead, once a flare has satisfied the performance demonstration requirements under 40 CFR § 60.18, federal law requires that the presence of a pilot flame be continuously monitored to document that a flame is present at all times. *See* 40 CFR § 60.18(f)(2). NSR Permit No. 9868A, which is included in the FOP Permit No. O1440 under Appendix B, requires continuous monitoring of the presence of a pilot flame. *See* FOP Permit No. O1440 Special Term and Condition 20; NSR Permit No 9868A, Special Condition 2. Therefore, the federal operating permit already requires continuous monitoring necessary to assure compliance.

However, in addition to the continuous monitoring of the pilot flame, FOP No. O1440 also requires that visible emissions from the flare vents be observed and recorded on a daily ~~quarterly~~ basis. This is more frequent than quarterly visible emissions monitoring which is the frequency ~~is~~ consistent with the legal standards that have been acceptable to EPA and TCEQ for decades. *See* 40 CFR § 60.18(f)(1); 30 TAC § 111.111(a)~~(1)(B)~~(4)(A); FOP No. O1440 ~~Special Term and Condition 3.a.(iv).1~~. Additionally, these units must meet ~~are subject to~~ the requirements of 40 CFR Part 60, Subpart A, General control device and work practice requirements ~~and Part 63, Subpart A, Control device and work practice requirements for flares,~~ which require Test Method 22 to be used to determine the compliance with visible emissions provisions. Method 22 requires continuous monitoring for the duration of an observation period of sufficient length to meet the requirements for determining compliance with the emissions standard in the applicable subpart.

TCEQ is not aware of any facts that would compel additional monitoring beyond that which has been consistently required under federal law and in Texas permits over the past several decades, especially in the absence of any EPA- or TCEQ-approved methods for monitoring flare emissions. The flares are designed to be utilized to manage process emissions as well as ~~from~~ upsets of process equipment. Further, emissions from upsets must be recorded and reported, and are subject to corrective action and enforcement pursuant to TCEQ rules set forth under 30 TAC Chapter 101. The performance demonstrations, continuous pilot flame monitoring, and quarterly visible emissions monitoring is sufficient to yield reliable data to assure compliance with the terms and conditions of the permit regarding visible emissions from flares during normal operations.

2. The two process vents from the methyl mercaptan unit, 45V1 and 45V2, are controlled as Group1 vents under MACT G. Both vents are routed to Unit 43 Sulfur Recovery Unit and are controlled by its incinerator, 43I1. However, during an emergency, malfunction, or shutdown, the two streams can be routed to flare 66FL12. As the primary control device, incinerator 43I1 shall be operated and is equipped with a continuous temperature monitor to insure that the exit firebox temperature operates at a minimum 1180°F, as required by

Special Conditions 8 and 9 of NSR Permit 9868A/PSDTX102M7. As the backup control device, flare 66FL12 operates in conjunction with the work practices outlined in §60.18(c)(3)(ii) and (4)(i) for steam-assisted flares which specifies operation with a minimum heat value (≤300 BTU/scf) and limits operation to a maximum tip velocity (≥60ft/sec). This strategy of diverting uncontrolled emissions from vents to vapor recovery systems and other alternatives to flares, with flares serving only as a backup system, is consistent with a recommendation cited in the Industry Professionals for Clean Air (IPCA) Comments Regarding [TCEQ sponsored] Flare Task Force Stakeholder Meeting of 30 March 2009.

Special Condition 2 of NSR Permit 9868A/PSDTX102M7 requires that flares shall be designed and operated in accordance with the following requirements:

A. The combined refinery fuel natural gas and waste stream to the flare shall meet the Title 40 Code of Federal Regulations § 60.18 (40 CFR § 60.18) specifications of minimum heating value and maximum tip velocity under normal, upset, and maintenance flow conditions. Compliance with this condition shall be demonstrated by monitoring required in Section D below. Flare testing per 40 CFR § 60.18(f) may be requested by the Texas Commission on Environmental Quality (TCEQ) Regional Office, in addition to New Source Performance Standards (NSPS) or federal requirements, to demonstrate compliance with this condition.

B. The flare(s) shall be operated with a flame present at all times, have a constant pilot flame, or have an automatic reignition system. The pilot flame shall be monitored by a thermocouple, an infrared monitor, or equivalent device as defined by 40 CFR § 60.18 and 40 CFR § 63.11. The time, date, and duration of any loss of pilot flame shall be recorded. Each monitoring device shall be accurate to, and shall be calibrated at, a frequency in accordance with the manufacturer's specifications. (**11/05)**

C. The flares shall be operated with no visible emissions except periods not to exceed a total of five minutes during any two consecutive hours. This shall be ensured by the use of steam assist to the flare (for steam-assisted flares).

D. The holder of this permit shall install a continuous flow monitor on Flare Emission Point Nos. (EPNs) 66FL1, 66FL2, 66FL3, 66FL4, 66FL6, and 66FL12 that provides a record of the vent stream flow to each flare. The flow monitor sensors should be installed in the vent stream such that the total vent stream to the flare is measured. The average hourly values of the flow shall be recorded and maintained electronically. The holder of this permit shall record the daily average flow rate (24-hour average) to each flare and the hourly average during upset conditions. Records of the flows shall be maintained for a period of two years and be made available to the Executive Director of the TCEQ upon request. **(5/08)**

The continuous flow monitor shall operate as required by this section at least 95 percent of the time when the flare is operational, averaged over a rolling 12-month period. **(11/05)**

The holder of this permit shall conduct an analysis (grab sample) of the flare composition (total volatile organic compounds [VOC], hydrogen sulfide [H_2S], and Btu content) on a semiannual basis (once during the summer months and once during the winter months). The sampling shall be conducted such that the total vent stream to the flare is included in the analysis. Records of the grab sampling results shall be maintained for a period of five years and made available to representatives of the TCEQ upon request. **(4/05)**

There is no currently-available, EPA-approved mechanism for testing or monitoring emissions from an operating flare. Instead, once a flare has satisfied the performance demonstration requirements under 40 CFR § 60.18, federal law requires that the presence of a pilot flame be continuously monitored to document that a flame is present at all times. *See* 40 CFR § 60.18(f)(2). The permit requires continuous monitoring of the presence of a pilot flame. *See*, Title V Permit Special Term and Condition 20; Permit No. 9868A, Special Condition 2. Therefore, the permit already requires continuous monitoring as set forth under federal law.

In particular, there are no federal or state requirements or guidance that set forth standards for monitoring flare destruction and removal efficiency (DRE). The DRE standards set forth in the Permit are those that are expected to be achieved based on design specifications developed by flare manufacturers when the flare is operating during normal operating conditions. Several studies have been conducted that have concluded that flares typically meet these standards when properly designed and operated. *See* "Overview of Flaring Efficiency Studies," Cain, Seebold, & Young, 2002; "Evaluation of the Efficiency of Industrial Flares: H2S Gas Mixtures and Pilot assisted Flares," EPA-600/2-86-080, 1986.

TCEQ is aware that some data may exist to suggest that a number of factors (including not only steam assistance but also wind impacts and flame stability, among others) can influence flare DRE. To address this issue and evaluate flare practices comprehensively, TCEQ appointed a technical Task Force to review flaring emissions in late 2008. Since that time, several public meetings have been held with stakeholders, and the Executive Director has issued a draft Report that recommends additional studies and a review of existing regulatory requirements. Testing is scheduled in the fall of 2010 and will be conducted at a semi-controlled testing facility using specialized remote sensing technology and conventional sampling technology to measure flare emissions data. Once the Task Force completes its review and develops new guidance or rules, flare monitoring requirements in all permits will be changed accordingly.

TCEQ is not aware of any other facts that would compel additional monitoring beyond that which has been consistently required under federal law and in Texas permits over the past several decades, especially in the absence of any EPA- or TCEQ-approved methods for monitoring flare emissions. The flares are designed to be utilized to manage emissions

from upsets of process equipment. Further, emissions from upsets must be recorded and reported, and are subject to corrective action and enforcement pursuant to TCEQ rules set forth under 30 TAC Chapter 101. The performance demonstrations, continuous pilot flame monitoring, and quarterly visible emissions monitoring is sufficient to yield reliable data to assure compliance with the terms and conditions of the permit regarding DRE from flares during normal operations.

3. Mr. Khandeshi clarified that his question on 40 CFR Part 60, Subpart QQQ (VOC Emissions from Petroleum Refinery Wastewater Systems) was actually extracted from Special Condition 5 in the draft permit, related to §60.692-2(a) - (c), (e). In Texas federal operating permits (FOPs), units identified as emission units or emission points, such as units 1025 and 2673, are listed in the applicable requirements table. All other NSPS QQQ units, such as process drains, sewer lines, junction boxes, etc., which are not identified as emission units or emission points, are addressed in the area applicability in the special conditions.

The specific rule requirements in question are outlined as follows: §60.692-2(a) - (c), *Standards for Individual Drain Systems,* require initial and weekly, monthly, or semiannual inspections of drains, sewer lines and junction boxes. §60.697(b)(1) - (3), *Recordkeeping Requirements*, require recordkeeping when a problem is found which could result in VOC emissions and the corrective action for each such instance. §60.698(b)(1), *Reporting Requirements*, requires semiannual certifications attesting that the equipment necessary to comply with these standards has been installed and that both initial and follow-on inspections, or tests, have been carried out in accordance with these standards. The citation reads, "Each owner or operator of a facility subject to this subpart shall submit to the Administrator within 60 days after initial startup a certification that the equipment necessary to comply with these standards has been installed and that the required initial inspections or tests of process drains, sewer lines, junction boxes, oil-water separators, and closed vent systems and control devices have been carried out in accordance with these standards. Thereafter, the owner or operator shall submit to the Administrator semiannually a certification that all of the required inspections have been carried out in accordance with these standards".

The ED believes that §60.698(b)(1) provides adequate assurance that the required weekly, monthly and semiannual inspections are accomplished (for both the emission units identified in the applicable requirements table and for those in Special Condition 5) and that any additional recordkeeping to document those inspections would be redundant to the existing rule requirement.

COMMENT D: The draft renewal permit impermissibly incorporates numerous Permits by Rule (PBR) authorizations, the text of which do not appear in the draft renewal or statement of basis. For your convenience, those PBRs are listed below in the table format from the draft renewal permit.

Permits By Rule (30 TAC Chapter 106) for the Application Area	
Number: 106.261	Version No./Date: 11/01/2003

Number: 106.262	Version No./Date: 11/01/2003
Number: 106.263	Version No./Date: 11/01/2001
Number: 106.371	Version No./Date: 09/04/2000
Number: 106.472	Version No./Date: 09/04/2000
Number: 106.511	Version No./Date: 09/04/2000
Number: 106.533	Version No./Date: 07/04/2004

Table 1: ***New Source Review Authorization References Table on draft renewal - p. 226***

Although TCEQ currently allows major sources to authorize emissions through PBRs, EPA has stated that it was approving the use of PBRs only for non-major facilities. See EPA's approval of Texas' general PBR provisions into the SIP. 68 Fed. Reg. 64543, 64544 (Nov. 14, 2003).

EPA guidance provides that facilities with emissions even approaching the major source threshold must authorize emissions through a case-by-case review of an individual permit. *Potential to Emit Guidance for Specific Source Categories* (April 14, 1998) p. 2. (Case-by-case reviews are "essential for complex sources warranting close scrutiny . . . and sources that limit their emissions to near-major amounts"). Incorporating PBRs in the manner proposed makes the case-by-case review nearly impossible. The Texas Health and Safety Code likewise prohibit the use of PBRs by "major" facilities. Tex. Health & Safety Code § 382.05196(a). These limits are intended to both ensure that federal major NSR requirements are met and protect the NAAQS. Despite these limits, Texas allows major sources to authorize increases in emissions through PBRs. As a result, sources are allowed to modify their major source NSR permit requirements without complying with federal public participation requirements.

The CAA requires state implementation plans (SIP) to include provisions for regulating the modification and construction of stationary sources as necessary to assure compliance with the NAAQS. 42 U.S.C. §§ 7410(a)(2)(A)-(C). Texas PBRs must, therefore, include provisions to assure such compliance, including provisions making the permits practicably enforceable.[1] EPA, however, has repeatedly notified Texas that its existing PBRs are inconsistent with the approved SIP and EPA policy and do not assure compliance. PBRs cannot be used to authorize emissions from major sources, cannot be used to amend individual permits, must be source specific and must not be incorporated into the proposed renewal draft. If PBRs are incorporated into this title V permit in the way suggested by the draft permit, air quality will be jeopardized, public participation will be thwarted. Furthermore, this incorporation conflicts with Texas' statutory law, EPA guidance and EPA action on Texas' and other states' SIPs.

Specific problems with the incorporation of PBRs into the title V permit include the following:

- Interference with attainment or maintenance of the NAAQS. In order to assure protection of the NAAQS, Texas' PBR program must include a mechanism for denying PBR authorizations for cause. CAA § 110(a)(2)(c); 40 C.F.R. § 51.160. There must be preauthorization review of applications for coverage under individual PBRs to assure the emissions authorized by PBRs will not contribute to violations of control strategies or interfere with attainment or maintenance. *See 71* Fed. Reg. 14439, 14441 (March 22, 2006) ("EPA proposes a conditional approval because this rule, as adopted by the Missouri Air Conservation Commission on June 26, 2003, does not expressly include a mechanism for pre-construction review of [PBR] applications …") Texas rules include no provision for pre-construction review of PBR applicability claims.

- Lack of Adequate Public Participation: Because PBRs do not contain detailed provisions relating to emission limits and compliance (these are often found in the registrations, which are submitted after the close of public comment), the public is not given an adequate opportunity to comment when PBR rules are issued. Further, Texas rules expressly require PBRs to be "incorporated" into a facility's permit when the permit is amended or renewed. 30 TEX. ADMIN. CODE § 116.116(d). Texas "incorporation" procedures do not provide adequate public participation or meet other requirements for permit amendments.

[1] EPA has repeatedly found that to be practicably enforceable minor source permits must: (1) apply to a clearly defined category of sources that is narrow enough to allow specific limits and compliance monitoring to be identified and achieved by all sources in the category, (2) include technically accurate limits providing assurance that emissions will not exceed federal thresholds, (3) include a compliance timeframe (hourly/daily, etc.), and (4) include a specific compliance monitoring method sufficient to protect the standard involved. *Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and Section 112 Rules and General Permits* (Jan. 25, 1995); See also, 61 Fed. Reg. 53633, 53635 (Oct. 15, 1996) and 62 Fed. Reg. 2587, 2589 (Jan. 17, 1997). Similarly, the Texas Health and Safety Code requires that PBRs apply only to "types of facilities that will not significantly contribute air contaminants to the atmosphere" and only to "similar" facilities. TEX. HEALTH & SAFETY CODE § 382.051(b)(4).

[1] EPA has repeatedly found that to be practicably enforceable minor source permits must: (1) apply to a clearly defined category of sources that is narrow enough to allow specific limits and compliance monitoring to be identified and achieved by all sources in the category, (2) include technically accurate limits providing assurance that emissions will not exceed federal thresholds, (3) include a compliance timeframe (hourly/daily, etc.), and (4) include a specific compliance monitoring method sufficient to protect the standard involved. *Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and Section 112 Rules and General Permits* (Jan. 25, 1995); See also, 61 Fed. Reg. 53633, 53635 (Oct. 15, 1996) and 62 Fed. Reg. 2587, 2589 (Jan. 17, 1997). Similarly, the Texas Health and Safety Code requires that PBRs apply only to “types of facilities that will not significantly contribute air contaminants to the atmosphere” and only to “similar” facilities. TEX. HEALTH & SAFETY CODE § 382.051(b)(4).

To the extent PBRs are used at a major facility, used to amend an individual permit, or are non source category specific, they violate the Texas SIP, EPA policy, and prior SIP decisions. Among other PBRs, the draft renewal permit incorporates, PBRs 106.261 and 106.262. These particular PBRs do not include specific emission limits and fail to include adequate monitoring and reporting requirements and compliance timeframes in violation of EPA guidance and prior SIP approvals. To assure compliance with the CAA, ConocoPhillips must obtain valid authorizations, such as permit amendments, for any emissions currently authorized through illegal PBRs. Until it does so, ConocoPhillips is in ongoing noncompliance with the CAA and the title V permit cannot incorporate illegal PBRs.

RESPONSE D: 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.[1] Subchapter A includes applicability, requirements for permitting by rule, 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; nor is incorporation of PBRs in to ConocoPhillip's operating permit impermissible. All current and historical PBRs and standard exemptions (predecessors to PBRs) are available on the TCEQ website for review. Title 30 TAC Chapter 106 provides types of authorizations for certain types of facilities or changes within facilities which the Commission has determined will not make a significant contribution of air contaminants to the atmosphere. A PBR is a permit which is adopted under Chapter 106, and is only available to sources which belong to categories for which the Commission has adopted a PBR in that chapter. A PBR cannot be used to amend an individual NSR permit. 30 TAC §116.116(d), which is SIP-approved, sets forth that all changes authorized under Chapter 106 to a permitted facility shall be incorporated into that facility's permit when the permit is amended or renewed. Therefore, the ED disagrees with the assertion that PBRs incorporation into FOPs is impermissible.

Different versions of PBR are related to specific facilities or changes claimed at a specific moment in time. Versions only apply to a particular facility when the construction or change occurred under 106.4. Some of the PBRs claimed do not require registration (specifically 106.183 for boilers, heater and other combustion devices, 106.472 for organic and inorganic liquid loading and unloading, 106.478 for storage tank and change of service, and 106.371, cooling water units), thus, authorization letters will not always be available for those particular PBRs.

Regarding specific problems the commenter describes with PBRs (i.e. public participation, interference with the NAAQS) these issues are beyond the scope of this FOP action.

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1 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 term is defined in federal law.

COMMENT E: The Incorporation of Emission Limits By Reference Is Impermissible. The ConocoPhillips Title V permit for the Borger Refinery is a labyrinth of internal and external cross-references. This maze of citations makes it extremely difficult to determine the applicable emissions, monitoring, and recordkeeping requirements. TCEQ could avoid this problem by following the letter and the spirit of the CAA by actually including the emissions limits and other applicable requirements into the body of the title V permit. A title V permit should serve as a "source specific bible for Clean Air Act compliance." *Virginia v. Browner,* 80 F.3d 869, 873 (4th Cir. 1996). To achieve this goal, the permit should consolidate all the applicable requirements into a single document. *See N.Y. PRIG v. Whitman,* 321 F.3d 316, 320 (2nd Cir. 2003); 42 U.S.C. § 7661c(a)-(c) (2010); 40 C.F.R. § 70.6(a)(1) (2010). Instead of providing the emissions, monitoring, and recordkeeping requirements within the title V permit, TCEQ includes regulatory citations, or other permits that establish the applicable requirement. Thus, instead of creating a "source specific bible," the ConocoPhillips title V permit for the Borger Refinery is a directory.

The plain language of the CAA and EPA's implementing regulations confirm that a title V permit should be more than a directory. The CAA states that "[e]ach permit issued . . . shall include enforceable emission limitations and standards." 42 U.S.C. § 7661(a). The statute does not say that the permit shall include a reference to the applicable emission limitations and standards. EPA's implementing regulations confirm this interpretation and requires permits to include both 1) "[e]missions limitations and standards" and 2) a specific reference to the "origin and authority of each term or condition." 40 C.F.R. § 70.6(a)(1), (a)(1)(i) (2010).

EPA has consistently confirmed this interpretation and has already disapproved of TCEQ's reliance on the incorporation of regulatory requirements by reference. *Order Responding to Petitioners' Request that the Administrator Object to the Issuance of a title V Permit,* Petition No. VI-2007-01, *In the Matter of: CITGO Refining and Chemicals Co., West Plant, Corpus Christi, Texas,* at 11 (May 28, 2009) *(CITGO Order)* (EPA does "not approve Texas' use of incorporation by reference of emission limitations for" requirements that are not minor NSR permits and permits by rule"). Instead EPA explains that "applicable emissions limits . . . should be explicitly identified in . . . [a] title V permit." *Id.* Region 6 has reaffirmed its position on incorporation by reference articulated in the *CITGO Order* in recent title V Objection letters. *See* EPA Region 6, *Objection to Federal Operating Permit No. 2000, ExxonMobil Oil Corporation, Beaumont Refinery, Jefferson County, Texas* at Sec. 3 (Dec. 30, 2009) (hereinafter *Beaumont Refinery);* EPA Region 6, *Objection to Federal Part 70 Operating Permit Valero Refining Texas, Texas City Refinery, TCEQ Permit No. O-01253* (Oct. 30, 2009); EPA Region 6, *Objection to Federal Part 70 Operating Permit Chevron Phillips Chemical Company, Ethylene Unit (EU 1592) and Utilities TCEQ Permit No. O-2113* (Oct. 30, 2009); EPA Region 6, *Objection to Federal Part 70 Operating Permit Formosa Plastics Corporation, TCEQ Permit No. O-1957* (Oct. 30, 2009).

1. Incorporation by Reference to Regulatory Provisions. After attempting to use TCEQ's Applicable Requirements Summary table to determine the emission limits at ConocoPhillips Borger Refinery it is clear why incorporation reference to a regulatory is impermissible. Most egregiously, in some cases, the citation provided for an emission

limit does in fact establish and emission limit. For example, for the SKIDBLR and 85B2 the summary table cites 40 C.F.R. § 60.40b(a) as the PM and NO_x emission limit for these units. But the cited regulation only provides the basis for determining applicability for NSPS subpart Db. Even for the units where the provided citation establishes an emissions limit, it is difficult to determine what the applicable requirement is because there are multiple compliance options. For example, applicable requirements summary table entry for HAPS emissions from 45V1 lists 40 C.F.R. § 63.113(a)(2), (h), 63.115(f). In this example, 63.113(a)(2) allows a facility to reduce emissions of organic hazardous air pollutants by 98% or to a concentration of 20 parts per million by volume. The draft permit does not have enough information to determine which of these two limits is applicable. There are many other instances in the draft permit where this occurs. TCEQ could avoid this problem and the ones described above by putting the actual emission limit into the draft permit.

2. Incorporation by Reference to NSR Permit Authorizations. The emission limits, monitoring requirements, and recordkeeping requirements for at least 56 units are incorporated by reference to an NSR permit. While we appreciate that TCEQ has attached the referenced permits to the end of the title V permit, this is not sufficient to satisfy the requirement that the title V permit include the actual emission limit. The main problem is that, even with the referenced permit included, it is not easy to determine what the actual requirements are. For example, unit 0511, included as part of GRP-PSD in the Applicable Requirements Table, is only identified as tank in the PSD permit and not characterized anywhere else in the permit. Therefore, it is impossible to determine if the tank provisions within the attached permit apply because there are several exemptions based on the size of the tank and feed it stores. TCEQ should address this problem by identifying each emissions unit, providing a brief description of the unit, and the applicable emissions, monitoring, and recordkeeping requirements.

3. *TCEQ* database lists multiple active permits not mentioned in the draft renewal. Although some or all of the following list of excluded permits may be referenced in the additional title V permit for the facility (O2166), it is unclear if the permits in the following list of permits were appropriately excluded. The Statement of Basis should discuss the exclusion of these permits. EIP is particularly concerned about the PSD permit that is listed as active in TCEQ's Central Registry but is not mentioned in the draft renewal.

List of Excluded Permits in O1440		
Program	**Permit**	**Status**
AIR NEW SOURCE PERMITS	PSDTX102M6	ACTIVE
AIR NEW SOURCE PERMITS	11429A	ACTIVE
AIR NEW SOURCE PERMITS	11449A	ACTIVE
AIR NEW SOURCE PERMITS	11935A	ACTIVE
AIR NEW SOURCE PERMITS	14441A	ACTIVE
AIR NEW SOURCE PERMITS	43073	ACTIVE
AIR NEW SOURCE PERMITS	71385	ACTIVE
AIR NEW SOURCE PERMITS	80799	ACTIVE

RESPONSE E: 1. The ED acknowledges that air quality requirements can be voluminous, particularly for certain source categories such as refineries. Large sites are subject to numerous federal requirements including New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Pollutants (NESHAPs), as well as state rules and permits. The federally approved operating permit program was developed with this complexity in mind, and the applicable requirement summary table and accompanying unit summary table are designed to provide an efficient index to applicable requirements for emission units at sites subject to the operating permit program, to allow regulators, companies, and the public to "match" the requirement to the emission unit and avoid enforcement problems that could result from transcription errors or misinterpretations associated with paraphrasing the underlying applicable requirement. The ED therefore requires applicants to provide detailed information regarding each emission unit in order to verify the relevant applicable requirements for that unit. The FOP then identifies the relevant citations which document the applicable requirements for each emission unit, with which the applicant must comply and annually certify compliance.

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 final Part 70 rule, discussing the requirements of § 70.6, Permit Content, stating:

> 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.

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.

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 (5th 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 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, objections to several operating permits, and the June 10, 2010 letter from EPA Region VI regarding this issue, the ED has revised FOP No. O1440 to include, in a new Appendix B of the permit, a copy of NSR Permit No. 9868A and PSDTX102M7, NSR Permit No. 85872 and PSDTX1158, and their corresponding terms and conditions, and emission limitations, in addition to the tables entitled "Monitoring, Recordkeeping, Reporting

Requirements - PSD Permits" and "Off-Permit Sources" which ~~was~~ were negotiated by ConocoPhillips and EPA Region VI. The ED will continue efforts with EPA on how to resolve IBR of major NSR on a broader, programmatic basis.

2. The ED does not agree that the PSD permits incorporated into the FOP do not meet the requirements of Chapter 122 or Part 70. PSD permit terms and conditions and emission limits for the ConocoPhillips site are included in the operating permit. Each attached PSD permit is clearly referenced in the permit table of contents as Appendix B.

As discussed above, in litigation challenging EPA's full approval of the Texas program, EPA stated in its brief to the U.S. Fifth Circuit Court of Appeals, "[n]othing in the statute or regulations prohibits incorporation of applicable requirements by reference." The Court agreed that incorporation by reference is permissible stating "The Title V and Part 70 provisions specify what Title V permits "shall include" but do not state how the items must be included. Notably, the court did not distinguish between minor and major NSR when stating that IBR was permissible under both Title V and Part 70.

The commenter is incorrect that EPA has already disapproved TCEQ's use of IBR, citing the recent Premcor and CITGO Orders. In fact, as the commenter noted in its May 10, 2010 letter, EPA has not objected to TCEQ's incorporation of minor NSR and permits by rule (PBRs) in these Orders. EPA specifically granted the petition in regard to incorporation of major NSR permits. These Orders are not final actions and the ED respectfully disagrees with EPA's interpretation of their approval of Texas's operating permit program on this issue, as discussed above.

NSR authorizations, emission limits, terms and conditions and monitoring requirements are all applicable requirements of the operating permit to which they are incorporated, whether this is done by reference, or as part of the permit. NSR permit terms, conditions and emission limits are subject to the reporting, deviation and compliance certification requirements of the operating permit program as defined in Chapter 122 of the Texas Administrative Code. Unlike many other states, incorporation by reference is particularly appropriate in Texas where the preconstruction permits are a separate authorization from the operating permit. The procedures for issuance, amendment and renewal of preconstruction permits are also separate and distinct from the operating permits program; and these larger facilities frequently make changes at their sites requiring changes to NSR permits.

These permits can be found in the main TCEQ file room, located on the first floor of Building E, 12100 Park 35 Circle, Austin, Texas. Air Permits Division does have a standardized naming system for documents. The document type, permit number, company name, and project type are included in the subject line of the document. This naming system has been in place for several years. However, older projects may not be identified as such. TCEQ would be glad to assist any member of the general public or EPA with finding any documents or answering questions regarding them. The Office of Public Assistance (OPA) may be contacted at 1-800-687-4040 for help with any question.

The ED acknowledges that the table font was so small as to be unreadable and has modified the table to be more legible. The Monitoring, Recordkeeping, Reporting

Requirements - PSD Permits table in the draft operating permit identifies emission limits associated with all units, the compound emitted, and the applicable unit-specific monitoring and recordkeeping conditions. Each PSD permit is included in Appendix B of the operating permit and thus each monitoring and recordkeeping provision is accessible by referencing the permit. The ED also acknowledges that it was difficult to determine specific tank requirements in the referenced PSD permit since it contains several tank exemptions based on size and feed stored in NSR permit 9868A/PSDTX102M7, Special Condition 31. Please note that the Monitoring, Recordkeeping, Reporting Requirements - PSD Permits table has since been revised to clarify which specific tanks are related to which conditions in NSR permit 9868A/PSDTX102M7. The table has also been clarified by deleting an incorrect reference to 66FL4 as a scrubber when it is actually a flare.

3. As required under the operating permit program rules, each Title V application and permit must include a reference to all requirements (including rules and preconstruction permits) applicable to any unit at the permitted site. The TCEQ worked with the permittee to ensure that the NSR authorizations in FOP No. O1440 accurately reflect all current and active NSR authorizations. The most recent modification of the PSD permits are included in O1440. ~~The TCEQ Central Registry has been updated to be consistent with FOP No. O1440 and the TCEQ's Air Permits Database.~~ The ED recommends that anyone with questions or concerns about information contained in the operating permit, or file, contact the Air Permits Division (APD) at the number listed in the public notice, so that staff may assist in understanding the permit requirements.

~~As noted in the Statement of Basis, the renewal of O1267 was also a consolidation of two operating permits covering the Port Arthur refinery; incorporating the requirements of O2222 in to permit O1267.~~

Specifically, the following has been confirmed or completed:

- ~~None of the authorizations in FOP No. O2222 were excluded from FOP No. O1267.~~

- The PSD permits referred to in the table "List of Excluded Permits in O1440"noted in the commenter's letter dated July 15, 2010, are in fact listed in FOP No. O1440 with their most recent modification number (e.g., M1, M2, etc.), with the exceptions noted below:

  - PSDTX102M6 is listed in Central Registry but is an error. PSDTX102M7 is the most recent permit number (and modification number). All previous modifications of a federal Title I permit (PSD or NA) are subsumed by the most current major modification. Central Registry currently has only three categories for permits: ACTIVE, PENDING and CANCELLED. Cancelling a previously subsumed PSD modification is currently infeasible since to do so would cancel the PSD permit. APD has sent a proposal to the Central Registry suggesting that a fourth category, SUBSUMED, be created, and that it be used to designate any previously subsumed

PSD or NA modifications. ~~The Central Registry has been updated to remove this incorrect reference.~~

- ~~PSDTX059M2 has been incorporated into PSDTX043.~~
- ~~All but one of the non-PSD permits listed in the table "List of Excluded Permits in~~ O1440~~" are inactive. The Central Registry has been updated to indicate these permits are cancelled~~
- NSR permit 43073 is currently listed in O1440.
- NSR permit 71385 is currently listed in O2166 for the Methyl Mercaptan Plant.
- NSR permit 80799, for maintenance, startup and shutdown (MSS) activities, was not included in the significant revision since it had just been issued prior to public notice and was not feasible to include except by revision, at a later date.
- NSR special exemptions 11429A, 11449A, 11935A and 14441A were issued in the early 1980s for a temporary gas-fired boiler, railcar blasting and painting, emergency fire water pump, and fire brigade training facility. In 1971, the Texas Legislature authorized the Texas Air Control Board (TACB) to exempt certain facilities or types of facilities from case-by-case permitting. Pursuant to legislature authority, the TACB adopted the standard exemptions (pre-permit by rule) and the site specific exemption (special exemption); both were limited to the same 25/250 TPY insignificant source restriction. Most special exemptions are no longer in service or have been incorporated into other NSR case-by-case permits. Very few NSR special exemptions remain active; those that are cannot be amended. 14441A, for the fire brigade training area, remains active and will be included on the proposed permit O1440. The temporary boiler, in 11429A, is no longer in service; the railcar area has been incorporated into NSR permit 80799, for MSS activities; and the emergency fire water pump has been incorporated into NSR permit 9868A. The Central Registry has been updated to indicate that NSR special exemptions 11429A, 1449A and 11935A are cancelled.

- ~~Registration No. 11273 is an active PBR authorization for unit Id. No. 16ISOMFUGS.~~

~~Please note that two of the PBR registrations noted in the commenter's letter dated May 10, 2010 (Nos. 51145 and 51263) have previously been incorporated into NSR permits and should have been listed as inactive or voided. Additionally, the remaining two PBRs are found in the TCEQ NSR database because they are still active. There is a pending NSR project request from TOTAL to incorporate these PBRs into the appropriate NSR permit authorization, which will be documented appropriately in this FOP in the future.~~

~~The TCEQ Central Registry has been updated to be consistent with FOP O1267 and the TCEQ's Air Permits Database, which contains the most up to date information of the permits at TOTAL Port Arthur Refinery. (Please note that PBR registration no. 56753~~

~~should be listed as PBR registration no. 56735 and has been corrected in the Statement of Basis.)~~

COMMENT F: The Draft Permit does not Include a Schedule of Compliance. Title V requires ConocoPhillips to submit a schedule of compliance with its permit application. 42 U.S.C. § 7661b(b)(1). TCEQ recently published a notice that ConocoPhillips had several CAA violations at the Borger Refinery. 35 Tex. Reg. 5962-63 (July 2, 2010). There is no indication in the draft permit that ConocoPhillips submitted a schedule of compliance with its permit application. This is a necessary because the schedule creates enforceable requirements which must be included as part of the title V permit. 42 U.S.C. §§ 7661(3), 7661a(b)(5). To address this problem TCEQ must amend the draft permit to include a compliance schedule for these violations noticed in Texas Register.

RESPONSE F: The ED acknowledges that an opportunity was provided, in the 35 Texas Register, 5962-63 (July 2, 2010) for public comment on alleged violations by the ConocoPhillips Company, Borger Petroleum Refinery, DOCKET NUMBER: 2010-0178-AIR-E. The Register stated that public comment must be received no later than August 2, 2010. It further stated, "Section 7.075 also requires that the Commission promptly consider any written comments received and that the Commission may withdraw or withhold approval of an Agreed Order (AO) if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of statutes and rules within the Commission's jurisdiction or the Commission's orders and permit issued in accordance with the Commission's regulatory authority." Please note that an AO is not sent until such time as the Commission approves the Order after consideration described above and after the AO is administratively issued. Please also note that depending on the specific compliance requirements outlined in the AO, a compliance plan still may not be warranted.

The ED disagrees that the draft permit must be amended to include a schedule of compliance since no enforcement action was required when the draft permit went to public notice on June 15, 2010.

COMMENT G: The Draft Permit Incorporates Flex Permit 9868A and PSDTX102M7**.** The Title V FOP incorporates Flex Permit 9868A and PSDTX102M7 in the NSR Authorization References. Commenters acknowledge permittee's efforts to begin the process of identifying the applicable federal limits and monitoring requirements in the title V permit. However, in order to meet federal standards and comply with the CAA, permittee will need to identify all applicable federal emission limits and monitoring requirements, including those emission limits authorized under NSR and PSD. A flex permit is not a valid SIP-approved permit and may not be used in lieu of, or to circumvent, federal emission limits.

RESPONSE G: 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, 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 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, Mass Emissions Cap & Trade Rule (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 ~~pending~~ final 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. 49131 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 Permit No. 49131 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.

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 ConocoPhillips agrees to such a process, the TCEQ will work with ConocoPhillips 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.

The ED does not agree that the PSD permits incorporated into the FOP do not meet the requirements of Chapter 122 or Part 70. PSD permit terms and conditions and emission limits for the ConocoPhillips site are included in the operating permit. Each attached PSD permit is clearly referenced in the permit table of contents as Appendix B.

As discussed above, in litigation challenging EPA's full approval of the Texas program, EPA stated in its brief to the U.S. Fifth Circuit Court of Appeals, "[n]othing in the statute or regulations prohibits incorporation of applicable requirements by reference." The Court agreed that incorporation by reference is permissible stating "The Title V and Part 70 provisions specify what Title V permits "shall include" but do not state how the items must be included. Notably, the court did not distinguish between minor and major NSR when stating that IBR was permissible under both Title V and Part 70.

The commenter is incorrect that EPA has already disapproved TCEQ's use of IBR, citing the recent Premcor and CITGO Orders. In fact, as the commenter noted in its May 10, 2010 letter, EPA has not objected to TCEQ's incorporation of minor NSR and permits by rule (PBRs) in these Orders. EPA specifically granted the petition in regard to incorporation of major NSR permits. These Orders are not final actions and the ED respectfully disagrees with EPA's interpretation of their approval of Texas's operating permit program on this issue, as discussed above.

NSR authorizations, emission limits, terms and conditions and monitoring requirements are all applicable requirements of the operating permit to which they are incorporated, whether this is done by reference, or as part of the permit. NSR permit terms, conditions and emission limits are subject to the reporting, deviation and compliance certification requirements of the operating permit program as defined in Chapter 122 of the Texas Administrative Code. Unlike many other states, incorporation by reference is particularly appropriate in Texas where the preconstruction permits are a separate authorization from the operating permit. The procedures for issuance, amendment and renewal of preconstruction permits are also separate and distinct from the operating permits program; and these larger facilities frequently make changes at their sites requiring changes to NSR permits.

These permits can be found in the main TCEQ file room, located on the first floor of Building E, 12100 Park 35 Circle, Austin, Texas. Air Permits Division does have a standardized naming system for documents. The document type, permit number, company name, and project type are included in the subject line of the document. This naming system has been in place for several years. However, older projects may not

be identified as such. TCEQ would be glad to assist any member of the general public or EPA with finding any documents or answering questions regarding them. The Office of Public Assistance (OPA) may be contacted at 1-800-687-4040 for help with any question.

The ED acknowledges that the table font was so small as to be unreadable and has modified the table to be more legible. The Monitoring, Recordkeeping, Reporting Requirements - PSD Permits table in the draft operating permit identifies emission limits associated with all units, the compound emitted, and the applicable unit-specific monitoring and recordkeeping conditions. Each PSD permit is included in Appendix B of the operating permit and thus each monitoring and recordkeeping provision is accessible by referencing the permit.

COMMENT H: The Draft Permit Discourages Public Participation. The opportunity for public participation is procedurally required by the title V process through a public comment period. 40 C.F.R 70.7(h). The federally required public participation requirements must be meaningful. *See Sierra Club v. Johnson,* 436 F.3d 1269, 80-81 (11th Cir. 2007) (EPA argued that regardless of the procedural violations, there had been a meaningful opportunity for public participation); *Rybacheck v. U.S. EPA,* 904 F.2d 1276 (9th Cir. 1990) ("The crucial inquiry is whether [the documents provided by the agency] gave adequate notice [of the proposed decision]"). TCEQ satisfies this requirement in name only. In the context of title V permitting there can only be meaningful public participation when the permitting agency provides sufficient information to enable the public to comprehend what the relevant emission units are, the relevant characteristics, a complete explanation of the terminology used in the permit, and a clear identification of the emissions limits and corresponding monitoring requirements.

1. The Permit Does Not Define all of the Terms and Abbreviations Used in the Permit**.** For the public to understand and meaningfully participate in the comment process TCEQ must adequately define each abbreviation and special permitting terminology.

- The Unit Summary table has a column labeled "SOP Index No." The permit does not provide a description of what "SOP Index No." means or what the entries in the column mean. This is especially confusing because the Unit Summary lists different regulatory requirements for the same emissions unit depending on the "SOP Index No."

- The Unit Summary table has a column labeled "Requirement Driver." Nearly every entry into this column is "No changing attributes." Neither the draft permit nor the statement of basis provides an explanation of what this entry into the column means. TCEQ should amend the permit to better explain this and the purpose of this column.

- The Applicable Requirements Summary table uses the abbreviation "PRO" in the sub column "Type." The acronym list included at page 252 of the permit does not define this acronym. A TCEQ representative explained that "PRO" means process over the phone and agreed to include the definition in the acronym list.

TCEQ should ensure this acronym is defined in the final permit if it has not already done so.

2. The Draft Permit Is Difficult to Navigate Because of a Failure to Properly Paginate the Document. The Applicable Requirements Summary Table directs readers to "Table 1" for many of the emissions limits, monitoring, and recordkeeping requirements. The table of contents shows that "Table 1" is on page 346. The page numbering for the document ends at page 252. This makes it difficult to find Table 1. TCEQ should fix this problem by properly paginating the entire document.

3. "Table 1" is not User Friendly**.** "Table 1" provides citations to the applicable emissions limits, monitoring, and recordkeeping requirements. This Table is difficult to read because it is organized by Unit Type, but it does not use the same unit type that is used in either the Applicable Requirements Summary table or the Unit Summary Table. For example, 66FL4 is listed as a "Flare" in the Unit Summary table, an "EU" (emission unit) in the Applicable Requirements Summary table, and a "Scrubber" in "Table 1." This makes it difficult to find the referenced limits because it is hard to find any individual entry in the table. TCEQ should fix this problem by using the same "Unit Type" entry for all three tables in the permit.

Furthermore, "Table 1" is hard to read because of the tiny font size. We acknowledge that TCEQ has made this table more legible than it has been in previous permits, but it is still too small for most people to read with out a magnifying glass. TCEQ should fix this problem by including a native copy rather than a scanned one.

RESPONSE H: 1. Terms and Abbreviations Used in the Permit.

SOP Index No. and *Requirement Driver.* The SOB currently addresses Requirements Drivers with the statement, "The first table, the Unit Summary, includes a list of units with applicable requirements, the unit type, the applicable regulation, and the requirement driver. The intent of the requirement driver is to inform the reader that a given unit may have several different operating scenarios and the differences between those operating scenarios." The SOB currently addresses the SOP Index No. with the statement, "The applicable requirements summary table provides the detailed citations of the rules that apply to the various units. For each unit and operating scenario, there is an added modifier called the "index number," detailed citations specifying monitoring and testing requirements, recordkeeping requirements, and reporting requirements. The data for this table are based on data supplied by the applicant on the OP-SUM and various OP-UA forms."

The two terms are used jointly to identify the unique regulatory requirements of units which may have changing operating scenarios. The terms actually come into play when there are multiple operating scenarios for a given unit. For example, some storage tanks may be capable of storing multiple VOCs; a storage tank which stores VOC with a vapor pressure of less than 1.5 psia will have different regulatory requirements and a different SOP Index No. and Requirement Driver than would a VOC with a vapor pressure of 11.0 psia.

The statement, “No changing attributes” in the Requirement Driver column of the Unit Summary table indicates that there is only one scenario, or, in the case of multiple scenarios, that it is the ‘basic’ scenario. It has become TCEQ policy to identify each operating scenario, even the ‘basic’ scenario, with a unique SOP Index No. In the case of multiple scenarios, the follow-on scenarios are each identified with a new SOP Index No. and all subsequent Requirement Drivers are then populated, in the permit. In the case of a single scenario only, the Requirement Driver column in the permit indicates “No changing attributes”. However, the requirement driver can still be identified for the appropriate unit/SOP Index No. combination in the “Basis of Determination” column in the Determination of Applicable Requirements table in the Statement of Basis (SOB). The follow-on requirement drivers dictated as a result of changed operating scenarios are also indentified in the same SOB table. The description for SOP Index No. and Requirement Driver above have been included in the SOB for FOP O1440.

PRO. The abbreviation “PRO” stands for ‘process’. The terminology is used because some rules, or rule citations, were developed to regulate the ‘process’ rather than specific emission units or emission points [i.e., NSPS J, §60.104(a)(2)(i)]. Please also note that, in the draft permit, the header row of the first column in the Unit Summary table is labeled, “Unit/Group/Process ID” and the first column in the Applicable Requirements table is labeled “Unit/Group/Process ID/Type”. “PRO” is identified as a ‘type’ under that first column on the Applicable Requirements table. The description for PRO above has been included in the SOB for FOP O1440.

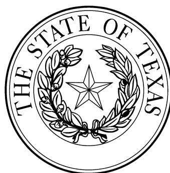
2. The ED acknowledges that the Appendix B attachments were difficult to navigate and has modified the appendix and its attachments to properly paginate the PSD documents into the FOP.

3. The ED acknowledges that Table 1 is hard to read because it was a scanned document and because of its small size. The table has been replaced with one which was re-created in Word format and thus should be more readable. The ED also acknowledges that Table 1 was previously incorrect in that it identified 66FL4 unit type as both a “Flare” and a “Scrubber”. The correct unit type for 66FL4 is “Flare”; the Table 1 lines associated with 66FL4 as a “Scrubber” are incorrect and were deleted.

Respectfully submitted,

Jesse E. Chacon, P.E., Manager
Operating Permits Section
Air Permits Division

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

MR SPARSH KHANDESHI
ENVIRONMENTAL INTEGRITY PROJECT
1303 SAN ANTONIO STREET, SUITE 200
AUSTIN TX 78701

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment
Significant Revision
Permit Number: O1440
ConocoPhillips Company
Borger Refinery
Borger, Hutchinson County
Regulated Entity Number: RN102495884
Customer Reference Number: CN601674351
Account Number: HW-0018-P

Dear Mr. Khandeshi:

The Texas Commission on Environmental Quality (TCEQ) Executive Director's proposed final action is to submit a proposed federal operating permit (FOP) to the U.S. Environmental Protection Agency (EPA) for review. Prior to taking this action, all timely public comments have been considered and are addressed in the enclosed TCEQ Executive Director's Response to Public Comment (RTC). The executive director's RTC also includes resulting modifications to the FOP, if applicable.

As of August 17, 2010 the proposed permit is subject to an EPA review for 45 days, ending on October 1, 2010.

If the EPA does not file an objection to the proposed FOP, or the objection is resolved, the TCEQ will issue the FOP. If you are affected by the decision of the Executive Director (even if you are the applicant) you may petition the EPA within 60 days of the expiration of the EPA's 45-day review period in accordance with Texas Clean Air Act § 382.0563, as codified in the Texas Health and Safety Code and the rules [Title 30 Texas Administrative Code Chapter 122 (30 TAC Chapter 122)] adopted under that act. This paragraph explains the steps to submit a petition to the EPA for further consideration. The petition shall be based only on objections to the permit raised with reasonable specificity during the public comment period, unless you demonstrate that it was impracticable to raise such objections within the public comment period, or the grounds for such objections arose after the public comment period. The EPA may only

object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of 30 TAC Chapter 122. The 60-day public petition period begins on October 2, 2010 and ends on November 30, 2010. Public petitions should be submitted during the petition period to the TCEQ, the EPA, and the applicant at the following addresses:

Texas Commission on Environmental Quality
Office of Permitting & Registration
Air Permits Division
Technical Program Support Section, MC-163
P.O. Box 13087
Austin, Texas 78711-3087

U.S. Environmental Protection Agency (EPA)
Attn: Air Permit Section Chief (6PD-R)
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

U.S. Environmental Protection Agency
Administrator Mike O. Leavitt
Ariel Rios Building (AR 1101A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Mr Brian K. Lever
Manager, Borger Refinery
ConocoPhillips Company
Po Box 271
Borger TX 79008-0271

Thank you for your cooperation in this matter. If you have questions concerning the processing of this permit application, please contact Mr. Chuck Lowary, P.E. at (512) 239-1263.

Sincerely,

Jesse E. Chacon, P.E., Manager
Operating Permits Section
Air Permits Division
Texas Commission on Environmental Quality

JEC/EL

cc: Mr. Quarshie Awuah Okyere, Environmental Representative, ConocoPhillips Company,

Air Section Manager, Region 1 - Amarillo
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas
(Electronic copy)

Enclosures: Executive Director's Response to Public Comment
Proposed Permit
Modifications Made from the Draft to the Proposed Permit

Project Number: 14832

bcc: Mr. Brad Patterson, TCEQ Office of Public Assistance, MC-108, Austin
Ms. Deanna Avalos, Final Documents Team, TCEQ Office of the Chief Clerk, MC-105, Austin
Attorney name - xxxx, TCEQ Environmental Law Division (MC-173), Austin
File Copy

Modifications Made from the Draft to the Proposed Permit

1.

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Texas Commission on Environmental Quality (TCEQ) Executive Director provides this Response to Public Comment and the executive director's preliminary decision on the Conocophillips Company, Federal Operating Permit (FOP) application. As required by Title 30 Texas Administrative Code § 122.345 (30 TAC § 122.345) the executive director prepares a notice of proposed final action, which includes a response to all timely comments. These comments are summarized in this response. The Office of Chief Clerk (OCC) timely received comment letters from the following persons: Sparsh Khandeshi, Adam Engelman, Ilan Levin

BACKGROUND

Procedural Background

The Texas Operating Permit Program requires that owners and operators of sites subject to 30 TAC Chapter 122 obtain a FOP that contains all applicable requirements in order to facilitate compliance and improve enforcement. The FOP does not authorize construction or modifications to facilities, nor does the FOP authorize emission increases. In order to construct or modify a facility, the facility 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 in order to operate. Conocophillips Company applied to the TCEQ for a FOP for a Petroleum Refining plant located in Borger, Hutchinson County on February 24, 2010, and notice was published on June 15, 2010. The public comment period ended on July 15, 2010.

Description of Site

Conocophillips Company has applied to the TCEQ for an FOP Significant Revision that would authorize the applicant to operate the Borger Refinery. The facility is located From the N Circle SH 136, 152, and 207 in NW Borger, TX, take Spur in Borger, Hutchinson County, Texas 79007.

ConocoPhillips Company has applied to the TCEQ for an FOP significant revision that would authorize the applicant to update regulatory applicability for multiple units, both new and existing. The majority of changes were a result of the recent Gasoline Benzene Reduction Project authorized under PSDTX 102M7. The purpose of this project was primarily to reduce emissions in compliance with new EPA standards.

The facility is located

COMMENT 1: xxxxx

RESPONSE 1: yyyyyy

Respectfully submitted,

Jesse E. Chacon, P.E., Manager
Operating Permits Section
Air Permits Division