

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

October 30, 2020

MR WILLIAM H CHEEK  
PRESIDENT GULF COAST GROWTH VENTURES LLC  
EXXONMOBIL  
1735 HUGHES LANDING BLVD HLE 07 S185  
THE WOODLANDS TX 77380-1688

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment  
Initial Issuance  
Permit Number: O4169  
Gulf Coast Growth Ventures LLC  
Olefins, Derivative and Utilities  
Gregory, San Patricio County  
Regulated Entity Number: RN109753731  
Customer Reference Number: CN605632439

Dear Mr. Cheek:

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 Executive Director's Response to Public Comment (RTC). The executive director's RTC also includes resulting modifications to the FOP, if applicable.

Any changes made to the permit since commencement of the public notice period are documented in the RTC. Additionally, the statement of basis (SOB) has been updated to reflect changes made to the permit.

As of November 3, 2020, the proposed permit is subject to an EPA review for 45 days, ending on December 18, 2020.

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. Additional requirements for the content and formatting of petitions are specified in Title 40 Code of Federal Regulations Part 70 (40 CFR § 70.12). 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 December 19, 2020 and ends on February 16, 2021. Public petitions should be submitted to the TCEQ, the applicant and the EPA. Instructions on submitting a public petition to the EPA are available at the EPA website:

<https://www.epa.gov/title-v-operating-permits/title-v-petitions>

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Public petitions should be submitted during the petition period to the TCEQ and the applicant at the following addresses:

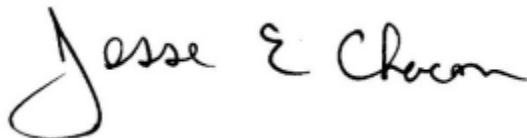
Texas Commission on Environmental Quality  
Office of Air  
Air Permits Division  
Operational Support Section, MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087

Mr. William H Cheek  
President Gulf Coast Growth Ventures LLC  
ExxonMobil  
1735 Hughes Landing Blvd HLE 07 S185  
The Woodlands TX 77380-1688

Copies of the RTC, Proposed Permit and SOB may be found at the TCEQ Regional Office, TCEQ's Central File Room (CFR) located in Building E, Room 103 at TCEQ's Campus in Austin, Texas, or at TCEQ Records Online website [https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ\\_SEARCH](https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_SEARCH). Guidance documents for conducting air permit related searches on TCEQ Records Online can be accessed at [https://www.tceq.texas.gov/permitting/air/nav/air\\_status\\_permits.html](https://www.tceq.texas.gov/permitting/air/nav/air_status_permits.html).

Thank you for your cooperation in this matter. If you have questions concerning the processing of this permit application, please contact Mr. Vasant V. Chaphekar, P.E. at (512) 239-1341.

Sincerely,



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

cc: Mr. Kashif Malik, Project Air Advisor, ExxonMobil, The Woodlands  
Air Section Manager, Region 14 - Corpus Christi  
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas (Electronic copy)

Enclosure: Executive Director's Response to Public Comment  
Proposed Permit  
Statement of Basis  
Modifications Made from the Draft to the Proposed Permit

Project Number: 29423

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

October 30, 2020

MR GABRIEL CLARK-LEACH  
ATTORNEY  
ENVIRONMENTAL INTEGRITY PROJECT  
1206 SAN ANTONIO ST  
AUSTIN TX 78701

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment  
Initial Issuance  
Permit Number: O4169  
Gulf Coast Growth Ventures LLC  
Olefins, Derivative and Utilities  
Gregory, San Patricio County  
Regulated Entity Number: RN109753731  
Customer Reference Number: CN605632439

Dear Mr. Clark-Leach:

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 Executive Director's Response to Public Comment (RTC). The executive director's RTC also includes resulting modifications to the FOP, if applicable.

Any changes made to the permit since commencement of the public notice period are documented in the RTC. Additionally, the statement of basis (SOB) has been updated to reflect changes made to the permit.

As of November 3, 2020, the proposed permit is subject to an EPA review for 45 days, ending on December 18, 2020.

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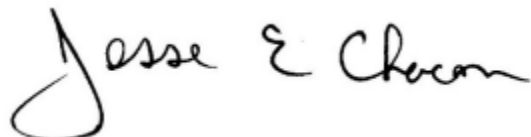
Texas Commission on Environmental Quality  
Office of Air  
Air Permits Division  
Technical Program Support Section, MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087

Mr. William H Cheek  
President Gulf Coast Growth Ventures LLC  
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1735 Hughes Landing Blvd HLE 07 S185  
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Sincerely,



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

cc: Mr. Kashif Malik, Project Air Advisor, ExxonMobil, The Woodlands  
Air Section Manager, Region 14 - Corpus Christi  
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas (Electronic copy)

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

Project Number: 29423

bcc: Mr. David Greer, Public Education Program, MC-118, Austin  
Work Leader, Final Documents Team, TCEQ Office of the Chief Clerk, MC-105, Austin  
Sierra Redding, TCEQ Environmental Law Division (MC-173), Austin  
File Copy



## Modifications Made from the Draft to the Proposed Permit

1. In the Applicable Requirements Summary (ARS) table, 40 CFR Part 63, Subpart FFFF high level requirements for units C\_FUG, E\_FUG, U\_FUG were replaced with more specific requirements (pages 57 through 141).
2. In the ARS table, 40 CFR Part 63, Subpart EEEE high level requirements for unit GLYUNLOAD, MEOHUNLOAD, SLOPUNLOAD, WASHUNLOAD was replaced with more specific requirements (pages 72 through 147).
3. In the ARS table, 40 CFR Part 63, Subpart YY high level requirements for unit GRPFURNACE, GRPHFOTANK, O\_FUG, U\_FUG, UCCT01 and ZTTK04 were replaced with more specific requirements (pages 91 through 126).
4. In the ARS table, 40 CFR Part 63, Subpart DDDDD high level requirements for unit GRPBOILER was replaced with more specific requirements (pages 74 through 75).
5. In the ARS table, Textual Description for flare units UFFLARE01 and UFFLARE02 subject to 30 TAC 111, Visible Emissions is revised as follows: "Visible emissions from a process gas flare shall not be permitted for more than five minutes in any two-hour period. Non-excessive upset events are subject to the provisions under §101.222(b)".
6. In the Major NSR Summary Table of the Proposed Permit, the issuance date of the following NSR/PSD permit number is revised: 146425/PSDTX1518 issuance date 06/26/2020.
7. In the Additional Monitoring Requirements section (page 10), special term and condition 19 was added to list Compliance Assurance Monitoring (CAM) requirements.
8. In the New Source Review Authorization References by Emissions Unit table (pages 220 through 230), reference to NSR/PSD permit GHGPSDTX170 was added for the following units C\_FUG, E\_FUG, G\_FUG, O\_FUG, U\_FUG, PE-REGEN, O\_FAF01, O\_FBF01, O\_FCF01, O\_FDF01, O\_FEF01, O\_FFF01, O\_FGF01, O\_FHF01, UFF01A, UFF01B, UFFLARE01, UFFLARE02, UFFLARE01, UFFLARE02, O-REGEN, GFFLARE01, GBX02, USSG01A, USSG01B, USSG01C, UFF01A, UFF01B, UKDGEN01, UKDGEN02, GUDGEN01, ADMINGEN, ZFP02B, and ZFP02C.

## EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (RTC or Response) on the application for a Federal Operating Permit (FOP) Permit No. O4169 filed by Gulf Coast Growth Ventures LLC (GCGV or Applicant).

As required by Title 30 Texas Administrative Code (TAC) § 122.345 the ED shall send a notice of the proposed final action, which includes a response to any comments submitted during the comment period, to any person who commented during the public comment period, the applicant, and to EPA. The Office of Chief Clerk (OCC) received comment letters dated April 20, 2020 from Mr. Gabriel Clark-Leach on behalf of Coastal Alliance to Protect our Environment (CAPE), Texas Campaign for the Environment, Sierra Club and the Environmental Integrity Project (EIP)(Commenters). These comments are summarized in this response. If you need more information about this permit application or the permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our Web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

### 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. Gulf Coast Growth Ventures LLC applied to the TCEQ for an initial issuance of FOP for an All Other Basic Organic Chemical Manufacturing plant located in Gregory, San Patricio County on August 21, 2019, and notice was published on March 15, 2020. The public comment period ended on April 18, 2020. Comments were received from Mr. Gabriel Clark-Leach. The Draft Permit was available for review and comment during the public comment period. Upon submittal of the notice of proposed final action to the Commenters, the Applicant, and EPA, the version of the FOP is referenced as the Proposed Permit.

#### Description of Site

Gulf Coast Growth Ventures LLC has applied to the TCEQ for an FOP Initial Issuance that would authorize the applicant to operate the Olefins, Derivative And Utilities site. The site is located 6414 County Road 1612 in Gregory, San Patricio County, Texas 78359.

Gulf Coast Growth Ventures LLC's Gulf Coast Growth Ventures site is an Organic Chemical Manufacturing facility and a major source of emissions.

It is a greenfield olefin and derivatives manufacturing complex located near Gregory in San Patricio County, which includes a process unit that will convert market pipeline ethane to olefins ("the Olefins unit") and multiple derivative units which will receive the ethylene, produced in the Olefins unit, as feed. The derivative units include two polyethylene units and a Mono-Ethylene Glycol (MEG) Unit. The utilities and infrastructure on-site support facilities include steam, rail, cooling water, liquid transport, and wastewater treatment.

#### **COMMENT 1: The Executive Director may not issue GCGV's Title V permit, because public participation requirements have not yet been satisfied.**

The Executive Director may not issue GCGV's Title V permit until "the requirements of this chapter for public notice, affected state review, notice and comment hearing, and EPA review have been satisfied." 30 Tex. Admin. Code § 122.201(a)(3).



30 Tex. Admin. Code § 122.320(b)(6) requires a Title V permit applicant to publish public notice that identifies the location and availability of the complete permit application, the draft permit, the statement of basis, and all other relevant supporting materials in the public files of the agency.

30 Tex. Admin. Code § 122.320(g) provides that the Executive Director “shall make available for public inspection the draft permit and the complete application throughout the comment period during business hours at the commission’s central office and at the commission’s regional office where the site is located.”

According to the TCEQ’s Commissioners Integrated Database, GCGV published notice of the Draft Permit on March 19, 2020. (Attachment A), CID Entry for Initial Issuance of GCGV’s Title V permit. The public notice language approved for publication indicates that 122.320(b)(6) materials are available for viewing at the TCEQ’s main office in Austin, Texas, the TCEQ’s Corpus Christi Regional Office, and the Bell Whittington Public Library. (Attachment B), Notice of Draft Federal Operating Permit, Draft Permit No. O4169.<sup>1</sup>

The TCEQ’s main office in Austin, Texas and its regional office in Corpus Christi, Texas have been closed since March 23, 2020.<sup>2</sup> According to its Facebook page, the Bell/Whittington Public Library closed on March 18, 2020—one day *before* GCGV published public notice of the Draft Permit—in response to the Covid19 outbreak. (Attachment C), Bell/Whittington Library Closure Announcement. The library has remained closed through the entirety of the public comment period. (Attachment D), Bell/Whittington Library Home Page on April 19, 2020 (indicating that the library is “Closed Until Further Notice”).

Accordingly, the materials Texas’s Title V regulations require to be available for viewing and copying during the public comment period have not been available. Thus, the Title V public participation requirements established by the TCEQ’s Title V regulations have not been satisfied. As a matter of black letter law, the Executive Director may not issue GCGV’s Title V permit until those requirements are satisfied. 30 Tex. Admin. Code § 122.201(a)(3).

**RESPONSE TO COMMENT 1:** The ED notes that Texas Governor Abbott declared a State of Disaster in Texas due to COVID-19 on March 13, 2020 (see <https://gov.texas.gov/news/post/governor-abbott-declares-state-of-disaster-in-texas-due-to-covid-19>). In response to the Governor’s declaration, many public places including government entities, schools and libraries were closed effective the same day.

Although the timing of the public notice requirements for the Draft Permit coincided with the declaration of the COVID-19 pandemic emergency, applicant and TCEQ made sure that all public notice related information including the complete application, Draft Permit and statement of basis (SOB) was available to the public online for the duration of the comment period.

Public participation requirements and all requirements under 30 TAC 122.320 were met by the following actions taken by the applicant and TCEQ. The public comment period began on March 15, 2020 with the publication of the public notice in the Tejano y Gruperio News followed by the publication in English on March 19, 2020; however, by March 13, 2020, the applicant had already posted the notice signs at the GCGV site and provided the Bell/Whittington Library with both hard copies and electronic versions of the complete application, draft permit, and statement of basis. Applicant recognized that after the public comment period began, the City of Portland Mayor issued a Declaration of Local Disaster and Public Health Emergency and gave the City Manager the authority to close the Bell/Whittington Public Library to help prevent the spread and impact of COVID-19 in Portland, Texas. The Bell/Whittington Public Library was the public place to view the Title V application and was listed on the newspaper notice.

Applicant made a copy of the application, Draft Permit, and SOB available for review and copying at a public place in the county, and the applicant also worked with the Bell/Whittington Public Library Director on March 20, 2020 to post a sign at the library entrance, and the library website at <https://www.portlandtx.com/181/Library> was updated to include information for the public to have access

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1 The notice provides an electronic link to the Draft Permit and Statement of Basis. The other 122.320(b)(6) materials are not accessible using the provided link.

2 TCEQ Building Closures notice, available electronically at: <https://www.tceq.texas.gov/response/covid-19/potential-impacts-customer-service>

to view the complete application, SOB, and the Draft Permit electronically or by contacting the applicant's representative by phone or email.

Further, in addition to hard copies of the permit materials being available at TCEQ's main office in Austin and the Corpus Christi Regional Office, as well as through the Office of the Chief Clerk by telephone request, the public also had online access to the Draft Permit and SOB on TCEQ's "Current Public Notices, Operating Permits" website, located at:  
[https://www.tceq.texas.gov/assets/public/permitting/air/Title\\_V/announcements/prwebprpt.htm](https://www.tceq.texas.gov/assets/public/permitting/air/Title_V/announcements/prwebprpt.htm).

Finally, beginning in early April and continuing to this day, TCEQ has been posting on its web site a list of Pending Permit Applications During the COVID-19 Disaster for public access at  
<https://www.tceq.texas.gov/response/covid-19/pending-permit-applications-during-covid-19-disaster>.

**COMMENT 2: The Draft Permit fails to include and assure compliance with all applicable requirements:**

**(1) Specific Grounds for Objection, Including Citation to Permit Term.**

Draft Permit, Special Condition No. 20 incorporates New Source Review ("NSR") authorizations referenced in the New Source Review Authorization References table by reference as applicable requirements.

The Draft Permit's New Source Review Authorization References table lists Permit Nos. GHGPSDTX170, PSDTX1518, and 146425 as incorporated permits. Draft Permit at 208. Permit Nos. PSDTX1518 and 146425 refer to the same permit, which is included as part of Appendix B to the Draft Permit.

Permit No. PSDTX1518/146425 contains the following special conditions:

25. Emissions from tanks shall be calculated using the methods were used to determine the MAERT limits in the permit application (Form PI-1 dated April 19, 2017, as revised). Sample calculations from the application shall be retained at the plant site and made available upon request to authorized representatives of TCEQ.

36(K). Emission rates of total particulate [from cooling tower EPN UCCT01] shall be calculated using the measured TDS, the design drift rate, the calculation methodology specified in the permit application (form PI-1 dated April 19, 2017), and the daily maximum and average actual cooling water circulation rate for the short term and annual average rates. Alternately, the design maximum circulation rate may be used for all calculations.

40(A)(4). Wastewater treatment plant emission shall be estimated every month using the following procedure. .... Calculations shall be as specified in permit application, PI-1 dated April 19, 2017, as updated.

40(B). The permit holder shall calculate short term loading rate in terms of lb/hr and rolling 12-month loading rate in terms of tpy for each air contaminant. The measured concentrations of each speciated air contaminant shall be converted into an equivalent mass emission rate based upon the flow rates during the sample collection period using the calculation methods and assumptions in the permit application, PI-1 dated April 19, 2017, as updated.

40(C). All air contaminants ascertained by the analytical methods shall be evaluated. For any tentatively identified air contaminant that can be confirmed as present and that would have a calculated air contaminant mass emission rate more than 0.04 pound per hour (lb/hr) above that represented in the permit application (PI-1 dated April 19, 2017, as updated), the total emissions of that compound must satisfy the following [requirements].

48. This permit authorizes the planned maintenance, startup, and shutdown (MSS) activities summarized in the MSS Activity Summary (Special Condition 49. C) attached to this permit.

Special condition 49. A identifies the inherently low emitting MSS activities that may be performed at the plant. Emissions from activities identified in Special Condition 49.A shall be considered to be equal to the potential to emit represented in the permit application....Routine maintenance activities, as identified in Special Condition 49.B may be tracked through the work orders or equivalent. Emissions from activities identified in Special Condition 49.B shall be calculated using the number of work orders or equivalent that month and the emissions associated with that activity identified in the permit application.

The performance of each planned MSS activity not identified in Paragraphs A and B of Special Condition 49 and the emissions associated with it shall be recorded and include at least the following information: .... [T]he estimated quantity of each air contaminant, or mixture of air contaminants, emitted with the data and methods used to determine it. The emissions shall be estimated using the methods identified in the permit application, consistent with good engineering practice.

The TCEQ's permit engineer for the initial issuance of Permit No. PSDTX1518/146425 testified in a sworn deposition that these special conditions reference emission calculations in GCGV's permit application and that all such emission calculations have been designated "confidential" by the TCEQ and are inaccessible to members of the public. (Attachment E), *Closing Brief of Texas Campaign for the Environment and the Sierra Club*, TCEQ Docket Nos. 2018-0899-AIR and 2018-0900-AIR at 21-23.

The Executive Director has taken the position that he is obligated under Texas state law to withhold GCGV's emissions calculations and other information necessary to determine compliance with requirements in PSDTX1518/146425 because the applicant marked it "confidential." (Attachment F), Executive Director's Reply to Closing Arguments, TCEQ Docket Nos. 2018-0899-AIR and 2018-0900-AIR at 4. According to the Executive Director, the inaccessibility of confidential information necessary to determine compliance with permit requirements is not a problem because:

[t]he general public is not expected to be able to determine compliance with each individual source in a complex facility. Rather, members of the public should refer any concerns regarding compliance to the TCEQ regional office or other government agency with authority to investigate those concerns.

The publicly available portion of GCGV's initial application is included as (Attachment G).<sup>3</sup> Section 4 of the initial application contains a general description of how emission limits in the permit were calculated, but indicates that the detailed emission calculation methodologies and inputs, which are incorporated by the above-listed special conditions, were marked "confidential."

The TCEQ's federally approved preconstruction permitting rules provide that application representations regarding construction plans and operation procedures are enforceable conditions of a preconstruction permit. 30 Tex. Admin. Code § 116.116(a); see also 79 Fed. Reg. 8368, 8385 (February 12, 2014) ("the permit application, and all representations in it, is part of the permit when it is issued and as such is enforceable.").

**RESPONSE TO COMMENT 2:** The ED disagrees with the commenter's claim that the Draft Permit is deficient because it does not contain emission calculations and other information needed to review the draft. Texas has a two-permit system for air quality permits: (FCAA Title I) preconstruction (new source review) permits and (Title V) federal operating permits.

The EPA has approved Texas' preconstruction (PSD, NNSR, and minor NSR) requirements as part of the SIP. See 40 C.F.R. § 52.2270(c) (identifying EPA-approved regulations in the Texas SIP). Texas' major and minor preconstruction provisions, as incorporated into Texas's EPA-approved SIP, are contained in portions of 30 TAC Chapters 116 and 106. NSR Permit 146425, PSDTX1518, which is one of the permits that is incorporated by reference (IBR) into FOP O4169, was issued by a state with an approved

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<sup>3</sup> As explained below, GCGV submitted at least 15 separate application updates. The publicly available portions of these updates are included as Attachments L-Z of these public comments.

preconstruction permitting program and was included as part of a set of related preconstruction permits issued pursuant to procedures approved by the EPA. Therefore, all preconstruction permits issued in accordance with EPA approved programs establish NSR-related “applicable requirements” that must be incorporated into the Title V permit. As EPA has stated in a recent challenge to a TCEQ-issued Title V permit:

“[Congress passed Title V of the FCAA to organize] existing requirements, including terms of existing preconstruction permits, into comprehensive documents with clear monitoring, recordkeeping and reporting requirements. Congress did not direct EPA to second-guess state-issued Title I preconstruction permits. The balance between federal and state power originally established by Congress is better served by allowing states to issue preconstruction permits in accordance with federally approved plans, without federal reexamination of each individual state-issued preconstruction permit, and without allowing third parties ....to pursue belated and collateral challenges to state-issued Title I preconstruction permits during the Title V process.” Brief of Respondents U.S. EPA, Environmental Integrity Project, Sierra Club v. EPA, Case No. 18-60385, 5<sup>th</sup> Circuit Court of Appeals, p. 21

Therefore, the task of TCEQ in issuing or modifying the Title V permit is to incorporate the terms and conditions of the underlying NSR permits (including NSR Permit No. 146425, PSDTX1518), and to ensure that the Title V permit contains adequate monitoring, recordkeeping, and reporting requirements to assure compliance with those terms and conditions. See also PacifiCorp-Hunter Order at 8, 13–18; Big River Steel Order at 8–9, 14–20. It is not a correct statement that federal regulations and the EPA-approved state rules *require* emission calculations as part of the application or that omission of these calculations deems the draft permit deficient. Operating permit application requirements are listed in 30 TAC § 122.132 and track 40 CFR section 70.5(c). What is required is information for each emission unit at the site that is sufficient to determine the basis for each applicability determination. As stated above, applications must list the NSR permits that apply to emission units at the site and thus the applicability determination for preconstruction requirements has been met.

After going through extensive review, including a public comment period and a contested case hearing, NSR Permit No. 146425, PSDTX1518 was initially issued on June 12, 2019. A revised version of the NSR Permit No. 146425, PSDTX1518 was issued on November 27, 2019, which has been incorporated by reference in the Draft Permit. The ED disagrees with the commenter’s assertion that it must have information in the application or draft permit so that previously issued preconstruction permit reviews may be scrutinized at the Title V issuance stage.

As stated earlier, any challenges to the validity of an NSR permit, such as asserted deficiencies in NSR Permit 146425, PSDTX1518 including whether it is federally enforceable, has missing emission calculations or emission factors, use of confidential business information or any other comment regarding the completeness or content of the NSR permit; should have been raised or should be raised through the appropriate NSR permit process. It is not appropriate for Commenters to attempt to challenge these issues in a Title V permit action. The ED notes such issues regarding NSR permits were not properly presented before the TCEQ in processing this Title V application and thus it is not appropriate for Commenters to attempt to challenge these issues in a Title V permit action. See ExxonMobil Baytown Olefins Plant Order at 11, 14.

Furthermore, the ED notes that EPA denied a similar claim on an ExxonMobil petition stating “So long as a permit specifies all binding emissions and operating limits, as well as all other conditions necessary to assure compliance with such limits (either on the face of the NSR permit or in the non-confidential portion of the application); these permits will generally not conflict with the EPA’s title V requirements” (ExxonMobil Baytown Refinery Order for FOP O1229, Section IV, pages 8 and 9.). The ExxonMobil claim maintains that the underlying final NSR permit was not properly issued. As stated above, the opportunity to challenge the NSR application has passed. The commenter has not demonstrated that the confidential information in the underlying NSR application makes the draft Title V permit deficient.

However, to improve clarity regarding use of confidential information in its application representations, the applicant voluntarily submitted an NSR alteration request application for Permit No. 146425/PSDTX1518 to TCEQ on June 3, 2020. The alteration request application removed reference to confidential business

information (CBI) for emissions calculations submitted in the NSR application for Permit No. 146425/PSDTX1518. TCEQ issued the alteration to Permit No. 146425/PSDTX1518 on June 26, 2020. The Proposed Permit is revised to incorporate by reference Permit No. 146425/PSDTX1518 issued 06/26/2020.

Through the alteration to NSR Permit No. 146425/PSDTX1518 issued 06/26/2020, emission calculation methods and other application representations expressly incorporated by Permit No. 146425, PSDTX1518, Special Condition Nos. 25, 36(K), 40(A)(4), 40(B), 40(C), and 48 are now part of TCEQ's non-confidential file and are publicly accessible.

**COMMENT 3: The Draft Permit fails to include and assure compliance with all applicable requirements:**

**(2) Applicable Requirement of Part 70 Requirement Not Met.**

42 U.S.C. § 7661c(a) and 40 C.F.R. § 70.6(a) require each Title V permit to include all applicable requirements and conditions necessary to assure compliance with those requirements.

40 C.F.R. § 70.2 provides that Title V applicable requirements include “[a]ny term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including Parts C or D, of the Act.”

40 C.F.R. § 70.6(b)(1) provides that “[a]ll terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator *and citizens* under the Act.” (emphasis added).

42 U.S.C. § 7661b(e) provides that “[t]he contents of a [Title V] permit shall not be entitled to protection [as confidential information] under section 7414(c) of [the Clean Air Act.]”

Emissions data is public information as a matter of law. 40 C.F.R. § 2.301(f). EPA's regulations define “emissions data” to include:

(A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;

(B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under the applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source[.]

40 C.F.R. § 2.301(a)(2)(i).

**RESPONSE TO COMMENT 3:** The Proposed Permit is revised to incorporate by reference Permit No. 146425/PSDTX1518 issued 06/26/2020. Emission calculation methods and other application representations expressly incorporated by Permit No. 146425, PSDTX1518, Special Condition Nos. 25, 36(K), 40(A)(4), 40(B), 40(C), and 48 are now part of TCEQ's non-confidential file and are publicly accessible. Please refer to Response 2 for additional detail.

**COMMENT 4: The Draft Permit fails to include and assure compliance with all applicable requirements:**

**(3) Inadequacy of the Permit Term.**

**(a) The Draft Permit improperly incorporates confidential permit terms.**

The emission calculation methods, operating requirements, and other application representations referenced by the above-listed special conditions are enforceable permit terms that are applicable requirements for the Draft Permit. This is so, because Permit No. PSDTX1518/146425 says so, and because 30 Tex. Admin. Code § 116.116(a) makes representations in GCGV's PSD permit application enforceable conditions of the issued permit.

The Draft Permit is deficient, because many of the application representations and methodologies expressly incorporated by the special conditions of Permit No. PSDTX1518/146425 and other application representations that are enforceable conditions of Permit No. PSDTX1518/146425 per 30 Tex. Admin. Code § 116.111(a) are found in confidential portions of GCGV's permit application file. These confidential materials are not accessible to members of the public. Tex. Health & Safety Code § 382.041. This violates 42 U.S.C. § 7661b(e), which provides that Title V permit terms may not be confidential.

The Draft Permit is also deficient, because it renders emission limits subject to the mandated confidential emission calculation methods and applicable requirements established by confidential application representations unenforceable. 42 U.S.C. 40 C.F.R. § 7661c(a) and 40 C.F.R. § 70.6(a) are clear that applicable requirements must be enforceable and that permits must include conditions that assure compliance with applicable requirements. 40 C.F.R. § 70.6(b)(1) clarifies that “[a]ll terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator *and citizens* under the Act.” (emphasis added). Because citizens are unable to access the calculation methods GCGV must use to calculate emissions to determine compliance with emission limits established by Permit No. PSDTX1518/146425 and other confidential application representations that establish applicable requirements, they are also unable to independently determine and enforce non-compliance with those limits and requirements. Accordingly, the Draft Permit is deficient because its terms are not enforceable and because it fails to include conditions necessary to assure compliance with applicable requirements.

As described above, the TCEQ acknowledged that members of the public would be unable to enforce various requirements established by GCGV's PSD permit, because key information had been designated “confidential.” According to the TCEQ, that was not a problem the agency needed to address under its preconstruction permitting rules, because Texas law requires the agency to keep application materials marked “confidential” from the public and because:

[t]he general public is not expected to be able to determine compliance with each individual source in a complex facility. Rather, members of the public should refer any concerns regarding compliance to the TCEQ regional office or other government agency with authority to investigate those concerns.

Executive Director's Reply to Closing Arguments at 4.

TCEQ's position is clearly contrary to Title V of the Act. EPA already explained this to the TCEQ in its objection to the proposed permit for ExxonMobil's Baytown Chemical Plant:

The TCEQ asserts that according to the Texas Health & Safety Code § 382.041 that as an agent of the commission they “may not disclose information to the commission relating to secret processes or methods of manufacture or production that is identified as confidential when submitted.” *The Texas Health & Safety Code § 382.041 cannot override 503(e) of the CAA. The CAA states that permit terms of the title V permit cannot be withheld from the public.*

(Attachment H), EPA Objection to Proposed Permit No. O2269 (“ExxonMobil Objection”) at 4 (emphasis added); see also *In the Matter of Dow Chemical Company, Dow Salt Dome Operations*, Order on Petition No. VI-2015-12 (February 18, 2020) (objecting to Texas Title V permit's incorporation of confidential requirements).<sup>4</sup>

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4 Available electronically at: [https://www.epa.gov/sites/production/files/2020-02/documents/dow\\_salt\\_dome\\_response2015.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/dow_salt_dome_response2015.pdf)

The ExxonMobil Objection also clarifies that designating emission calculations in GCGV's permit application "confidential" is improper for another reason: Such emission calculations are "emissions data," which is public information as a matter of law. ExxonMobil Objection at 4 (citing 40 C.F.R. § 2.301(a)(2)(i)(B)).

The TCEQ's reliance on Tex. Health & Safety Code § 382.041 cannot remedy these deficiencies at the Title V permitting stage. This is so, because the TCEQ has the authority and the obligation to require applicants to re-file information improperly designated as "confidential" as public information. 42 U.S.C. §§ 7661a(b)(6), 7661b(e). While the TCEQ has claimed that it lacks discretion to take any action regarding an applicant's decision to designate application information confidential without direction from the Texas Attorney General, this does not appear to be true. In fact, the TCEQ routinely requires applicants to refile as public preconstruction permit application marked confidential that designate the specific names and amounts of air contaminant emitted from a facility. See, e.g., (Attachment I), Email from Isaac Vela, TCEQ to Natalie Rocha, Celanese, Re: Bishop Facility Information Request (August 4, 2014); (Attachment J), Technical Review: Air Permit by Rule, Permit No. 129373, Project No. 226091; (Attachment K), Email from James Nolan, TCEQ to Katie Jeziorski, Trinity Consultants, Re: TCEQ PBR Revision for IFS Coatings, Gainesville (August 14, 2017).<sup>5</sup>

Many of the inputs to the calculation methods improperly marked as confidential are themselves enforceable requirements that must be included in the Draft Permit and may not be treated as confidential information under the Clean Air Act. For example, representations regarding the plant's design—including, but not limited to maximum heat input rates used to establish emission limits for combustion units, tank capacity, maximum throughput rates, fugitive component counts, maximum represented potential emissions for each maintenance activity authorized by the permit—and operation—including, but not limited to, limitations on unit operating time used to calculate annual emission rates, maximum tank turnovers per year, restrictions on the number of units that may operate at one time used to calculate hourly and annual emission limits—are all enforceable permit representations pursuant to 30 Tex. Admin. Code § 116.116(a) that are incorporated into the Draft Permit and may not be designated confidential. 42 U.S.C. § 7661b(e). The Draft Permit is deficient because it makes all these applicable requirements, and others, confidential.

**RESPONSE TO COMMENT 4:** The Proposed Permit is revised to incorporate by reference Permit No. 146425/PSD TX1518 issued 06/26/2020. Emission calculation methods and other application representations expressly incorporated by Permit No. 146425, PSD TX1518, Special Condition Nos. 25, 36(K), 40(A)(4), 40(B), 40(C), and 48 are now part of TCEQ's non-confidential file and are publicly accessible. Please refer to Response 2 for additional detail.

**COMMENT 5: The Draft Permit fails to include and assure compliance with all applicable requirements:**

**(3) Inadequacy of the Permit Term.**

**(b) The Draft Permit's incorporation by reference of application representations fails to assure compliance with incorporated requirements.**

The special conditions incorporating application representations and methodologies in Permit No. PSD TX1518/146425 listed above fail to assure compliance with applicable requirements because they do not provide enough information to allow interested parties to identify the incorporated applicable requirements.

The practice of incorporating applicable requirements by reference into Title V permits is only permissible if it is "used in a way that fosters public participation and results in a title V permit that assures compliance with the Act[.]" *In the Matter of United States Steel—Granite City Works*, Order on Petition No V-2009-03 at 43 (January 31, 2011).<sup>6</sup> To meet this standard, "referenced documents [must] be specifically

<sup>5</sup> See also, TCEQ webpage indicating that certain preconstruction permit application materials may not be kept confidential: <https://www.tceq.texas.gov/permitting/air/confidential.html>.

<sup>6</sup> Available electronically at: <https://www.epa.gov/sites/production/files/2015->

identified[,] ... descriptive information such as the title or number of the document and the date of the document [must] be included so that there is no ambiguity as to which version of a document is being referenced[,] ... and citations, cross references, and incorporations by reference are detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation.” *Id.*

Permit No. PSDTX1518/146425, Special Condition Nos. 25, 36(K), 40(A)(4), 40(B), and 40(C), which are incorporated by reference into the Draft Permit, in turn incorporate information “in the permit application, PI-1 dated April 19, 2017, as updated.” (emphasis added). This brisk citation is not sufficient to pin down the incorporated information in the April 19, 2017 application, which is nearly two hundred pages long. Making matters worse, GCGV has filed at least 15 *separate updates* to the original application for the initial issuance of Permit No. PSDTX1518/146425:

Attachment No. Date Update Filed

Attachment No.	Date Update Filed
Attachment L	May 8, 2017
Attachment M	July 14, 2017
Attachment N	July 14, 2017
Attachment O	September 15, 2017
Attachment P	October 2, 2017
Attachment Q	October 6, 2017
Attachment R	November 11, 2017
Attachment S	December 22, 2017
Attachment T	February 8, 2018
Attachment U	February 14, 2018
Attachment V	February 23, 2018
Attachment W	March 7, 2018
Attachment X	March 26, 2018
Attachment Y	April 2, 2018
Attachment Z	April 6, 2018

There may be additional application updates that were designated “confidential” in their entirety. Given the massive amount of application information relevant to the issuance of Permit No. PSDTX1518/146425, the number of application updates, and the fact that much of the relevant information has been marked confidential, it is impossible—on the basis of the language in Permit No. PSDTX1518/146425—to identify which application materials establish the relevant representations. The incorporation of application representations made by Permit No. PSDTX1518/146425, Special Condition No. 48 is deficient for the same reasons. This special condition is even less specific than the others, stating only that it incorporates information “in the permit application” without providing any indication which application contains the relevant information.

**RESPONSE TO COMMENT 5:** The Proposed Permit is revised to incorporate by reference Permit No. 146425/PSDTX1518 issued 06/26/2020. Emission calculation methods and other application representations expressly incorporated by Permit No. 146425, PSDTX1518, Special Condition Nos. 25, 36(K), 40(A)(4), 40(B), 40(C), and 48 are now part of TCEQ’s non-confidential file and are publicly accessible. Please refer to Response 2 for additional detail.

**COMMENT 6: The Draft Permit fails to include and assure compliance with all applicable requirements:**

**(4) Public Participation Procedure Not Provided.**

[08/documents/uss\\_response2009.pdf](08/documents/uss_response2009.pdf)



As described above, GCGV's application and the Draft Permit violate Title V's prohibition on confidential permit terms. 42 U.S.C. § 7661b(e). The Executive Director's (1) failure to require GCGV to re-file Permit No. PSDTX1518/146425 application representations expressly incorporated into the permit by its special conditions or pursuant to 116.116(a) as part of the publicly available Title V permit application file; and (2) his issuance of a draft permit that incorporates confidential permit terms renders the public notice for the Draft Permit defective. Members of the public have not had a meaningful opportunity to review and comment on the sufficiency of the Draft Permit, because the publicly-available application and Draft Permit materials available during the public comment period were incomplete. Key requirements and compliance conditions incorporated by the Draft Permit remain inaccessible to the public. Thus, materials Texas's Title V program regulations require to be available during the public comment period have not been made available. 30 Tex. Admin. Code § 122.320. The TCEQ may not approve the Draft Permit until it provides an opportunity for members of the public to review and submit comments on the complete application file and Draft Permit. 30 Tex. Admin. Code § 122.201(a).

**RESPONSE TO COMMENT 6:** As noted in Response to Comment 1, public participation requirements and all requirements under 30 TAC 122.320 were met by the following actions taken by the applicant and TCEQ. The public comment period began on March 15, 2020 with the publication of the public notice in the *Tejano y Gruperio News*; by March 13, 2020, applicant had already posted the notice signs at the GCGV site and provided the Bell/Whittington Library with both hard copies and electronic versions of the complete application, draft permit, and statement of basis.

Applicant made a copy of the application, Draft Permit, and SOB available for review and copying at a public place in the county, and the applicant also worked with the Bell/Whittington Public Library Director on March 20, 2020 to post a sign at the library entrance, and the library website at <https://www.portlandtx.com/181/Library> was updated to include information for the public to have access to view the complete application, SOB, and the Draft Permit electronically or by contacting the applicant's representative by phone or email.

Further, in addition to hard copies of the permit materials being available at TCEQ's main office in Austin and the Corpus Christi Regional Office, as well as through the Office of the Chief Clerk by telephone request, the public also had online access to the Draft Permit and SOB on TCEQ's "Current Public Notices, Operating Permits" website, located at: [https://www.tceq.texas.gov/assets/public/permitting/air/Title\\_V/announcements/prwebprpt.htm](https://www.tceq.texas.gov/assets/public/permitting/air/Title_V/announcements/prwebprpt.htm).

Finally, beginning in early April and continuing to this day, TCEQ has been posting on its web site a list of Pending Permit Applications During COVID-19 Disaster for public access at <https://www.tceq.texas.gov/response/covid-19/pending-permit-applications-during-covid-19-disaster>.

#### **COMMENT 7: The Draft Permit incorporates unenforceable emission limits:**

##### **(1) Specific Grounds for Objection, Including Citation to Permit Term.**

Draft Permit, Special Condition No. 20 incorporates New Source Review ("NSR") authorizations referenced in the New Source Review Authorization References table by reference as applicable requirements.

The Draft Permit's New Source Review Authorization References table lists Permit No. PSDTX1518/146425 as an incorporated permit. Draft Permit at 208.

Permit No. PSDTX1518/146425 includes a Maximum Allowable Emission Rate Table ("MAERT") the lists hourly and annual emission limits for units and groups of units at the plant. The MAERT establishes the following emission limits for fugitive emissions from the plant:

Emission Point No.	Source Name	Air Contaminant Name	Emission Rate (lbs/hr)	Emission Rate (TPY)
O_FUG	Olefins Unit Fugitives (5)	VOC	12.74	55.81
		NH3	2.00	8.76
		CO	0.04	0.16
		H2SO4	< 0.01	0.02
		H2S	< 0.01	0.01
		NaOH	< 0.01	< 0.01
G_FUG	Glycol Unit Fugitives (5)	VOC	2.22	9.73
		CO	<0.01	0.03
U_FUG	Utility Fugitives (5)	VOC	0.95	4.18
		NH3	0.22	0.96
		CO	<0.01	0.02
		H2SO4	<0.01	<0.01
E_FUG, C_FUG	EPE and CPE Fugitives (5)	VOC	4.38	19.17
		CO	0.07	0.32

Footnote 5 of the MAERT, which applies to each of the entries establishing emission limits for plant fugitives, provides that the “[e]mission rate is an estimate and is enforceable through compliance with the applicable special condition(s) and permit application representations.”

None of the special conditions in Permit No. PSDTX1518/146425 explain how emissions from fugitives should be calculated or require GCGV to determine how much pollution is emitted from fugitive components to demonstrate compliance with limits specified by the MAERT.

All of the specific application representations used to estimate fugitive emissions listed in the MAERT, including the method of calculation and the specific design inputs and component counts, are contained in portions of the permit application marked “confidential.”

Texas’s regulation at 30 Tex. Admin. Code § 116.10 defines a permit’s MAERT as “[a] table included with a preconstruction permit issued under this chapter that contains the allowable emission rates established by the permit for a facility.”

## (2) Applicable Requirement or Part 70 Requirement Not Met

42 U.S.C. § 7661c(a) and 40 C.F.R. § 70.6(a) require each Title V permit to include all applicable requirements and conditions necessary to assure compliance with those requirements.

40 C.F.R. § 70.6(c)(1) provides that all Title V permits shall contain “compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.”

40 C.F.R. § 70.6(b)(1) provides that “[a]ll terms and conditions in a part 70 permit, including any provisions designed to limit a source’s potential to emit, are enforceable by the Administrator *and citizens* under the Act.” (emphasis added).

42 U.S.C. § 7661b(e) provides that “[t]he contents of a [Title V] permit shall not be entitled to protection [as confidential information] under section 7414(c) of [the Clean Air Act.]”

Emissions data is public information as a matter of law. 40 C.F.R. § 2.301(f). EPA’s regulations define “emissions data” to include:

- (A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;
- (B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under the applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source[.]

40 C.F.R. § 2.301(a)(2)(i).

**(3) Inadequacy of the Permit Term.**

The maximum allowable emission rate table of Permit No. PSDTX1518/146425 contains footnote 5 states that lb/hour and TPY emission limits listed for plant fugitives are “estimate[s] and ... [are] enforceable through compliance with the applicable special condition(s) and permit application representations.” This footnote improperly suggests that lb/hr and TPY fugitive emission limits listed in the MAERT are not directly enforceable applicable requirements.<sup>7</sup> This suggestion conflicts with the TCEQ’s own definition of MAERT limits at 30 Tex. Admin. Code § 116.10(8), which provides that MAERT limits are the maximum allowable emission rates for the listed units. It also undermines the TCEQ’s previous determination that emissions from GCGV’s plant are protective of public health and the environment, because modeling to determine the plant’s impacts relied on worst-case emissions scenarios presumes that maximum emission rates authorized by the permit are enforceable.

The Executive Director has explained that, while the MAERT emission rate may be an estimate, “the permit application representations and special conditions, which are what enforceability is based on, are not.” Executive Director Closing Arguments at 10. Specifically, the Executive Director explained that enforceable representations include “the number of components, such as pumps, valves, flanges.” *Id.* All of these enforceable application representations, however, have been improperly designated as confidential. So, even if the TCEQ were correct that MAERT limits need not be directly enforceable, the compliance regime expressly established by footnote 5 also fails to assure compliance with applicable requirements, because crucial elements of the process mandated by the permit for determining compliance with the fugitive limits are confidential. 42 U.S.C. § 7661b(e); 40 C.F.R 70.6(b)(1).

**RESPONSE TO COMMENT 7:** The Proposed Permit is revised to incorporate by reference Permit No. 146425/PSDTX1518 issued 06/26/2020. Emission calculation methods and other application representations expressly incorporated by Permit No. 146425, PSDTX1518, Special Condition Nos. 25, 36(K), 40(A)(4), 40(B), 40(C), and 48 are now part of TCEQ’s non-confidential file and are publicly accessible. Please refer Response to Comment 2 for additional detail.

**COMMENT 8: The Draft Permit Fails to Include Specific Enforceable Terms and Conditions for Applicable NESHAP and NSPS Requirements.**

**(1) Specific Grounds for Objection, Including Citation to Permit Term.**

The Draft Permit’s Applicable Requirements Summary table contains the following language incorporating applicable requirements in NESHAP Subparts FFFF, EEEE, YY and NSPS Subpart Dc:

Units	Emission Limitation,	Textual Description	Monitoring And Testing	Recordkeeping Requirements	Reporting Requirements
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<sup>7</sup> The Executive Director’s permit engineer testified that footnote 5 was intended to render fugitive emission rates listed in the MAERT not directly enforceable. See, *Closing Brief of Texas Campaign for the Environment and the Sierra Club*, TCEQ Docket Nos. 2018-0899-AIR and 2018-0900-AIR at 20 (citing permit engineer testimony).

	<b>Standard or Equipment Specification Citation</b>		<b>Requirements</b>	<b>(30 TAC § 122.144)</b>	<b>(30 TAC § 122.145)</b>
C_FUG, E_FUG, U_FUG	§ 63.2480(a) The permit holder shall comply with the applicable limitation, standard and/or equipment specification requirements of 40 CFR Part 63, Subpart FFFF	The permit holder shall comply with the applicable requirements of 40 CFR Part 63, Subpart FFFF	The permit holder shall comply with the applicable monitoring and testing requirements of 40 CFR Part 63, Subpart FFFF	The permit holder shall comply with the applicable recordkeeping requirements of 40 CFR Part 63, Subpart FFFF	The permit holder shall comply with the applicable reporting requirements of 40 CFR Part 63, Subpart FFFF
GLYUNLOAD, MEOHUNLOAD, SLOPUNLOAD, WASHUNLOAD	§ 63.2338(b) The permit holder shall comply with the applicable limitation, standard and/or equipment specification requirements of 40 CFR Part 63, Subpart EEEE	The permit holder shall comply with the applicable requirements of 40 CFR Part 63, Subpart EEEE	The permit holder shall comply with the applicable monitoring and testing requirements of 40 CFR Part 63, Subpart EEEE	The permit holder shall comply with the applicable recordkeeping requirements of 40 CFR Part 63, Subpart EEEE	The permit holder shall comply with the applicable reporting requirements of 40 CFR Part 63, Subpart EEEE
GRPFURNACE, FRPHFOTANK, O_FUG, U_FUG, UCCT01	§ 63.1100 [or 1103] The permit holder shall comply with the applicable limitation, standard and/or equipment specification requirements of 40 CFR Part 63, Subpart YY	The permit holder shall comply with the applicable requirements of 40 CFR Part 63, Subpart YY	The permit holder shall comply with the applicable monitoring and testing requirements of 40 CFR Part 63, Subpart YY	The permit holder shall comply with the applicable recordkeeping requirements of 40 CFR Part 63, Subpart YY	The permit holder shall comply with the applicable reporting requirements of 40 CFR Part 63, Subpart YY
GRPBOILER	§ 60.40b(a)	This subpart applies to each steam generating unit constructed,	None	[G]§ 60.49b(d) § 60.49b(o)	§ 60.49b(a) § 60.49b(a)(1) § 60.49b(a)(3)

		modified, or reconstructed after 6/19/84, and that has a heat input capacity from fuels combusted in the unit > 29 MW (100 MMBtu/hr)			
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Draft Permit at 56, 62, 78, 79, 98, 101, 105, 111, 119, 131, 134, 135, and 138.

**(2) Applicable Requirement or Part 70 Requirement Not Met.**

30 Tex. Admin. Code § 122.142(b)(2)(B) requires Title V permits to include the specific regulatory citations in each applicable requirement ... identifying the emission limitations and standards; and ... the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards ... sufficient to ensure compliance with the permit.”

40 C.F.R. § 70.6(a)(1) provides that “[e]ach permit issued under this part shall include ... [e]missions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.”

**(3) Inadequacy of the Permit Term.**

The Draft Permit’s failure to specify the detailed applicability determinations for applicable NESHAP and NSPS Subparts is inconsistent with black-letter requirements in Texas’s federally-approved regulations. 30 Tex. Admin. Code § 122.142(b)(2)(B) (requiring Title V permits to include detailed applicability determinations and citations for emission limits, standards, equipment specifications, monitoring, testing, and recordkeeping requirements). Specifically, the Draft Permit fails to identify which of the many potentially-applicable Subpart provisions establish applicable emission limitations, standards and/or equipment specifications.

In addition to violating the black letter requirements established by 30 Tex. Admin. Code § 122.142(b)(2)(B), the Draft Permit’s high-level citations to complicated regulatory subparts undermines the enforceability of applicable requirements and violates 40 C.F.R. § 70.6(a). As EPA has explained: ...it is impossible to determine how the regulation applies to the facility by referring to the section-level citations that are currently provided in the permit. This ambiguity and the applicability questions it creates render the Permit unenforceable as a practical matter. In addition, the lack of detail detracts from the usefulness of the Permit as a compliance tool for the facility.

*In the Matter of Tesoro Refining and Marketing Co.*, Order on Petition No. IX-2004-6 at 9 (March 15, 2005).<sup>8</sup>

**RESPONSE TO COMMENT 8:** TCEQ lists high level applicable requirements in the Title V permit’s Applicable Requirement Summary (ARS) table when the TCEQ has not developed the Decision Support System (DSS) for certain state and federal applicable requirements. The applicable requirements summary table in the Draft Permit, which is developed in accordance with Texas’ EPA approved Title V operating program<sup>9</sup>, lists applicable high-level citations for units subject to 40 C.F.R. Part 63, Subparts FFFF, EEEE, YY and Part 60, Subpart Dc. Even with the high-level applicable requirements, the permit

<sup>8</sup> Available electronically at: [https://www.epa.gov/sites/production/files/2015-08/documents/tesoro\\_decision2004.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/tesoro_decision2004.pdf)

<sup>9</sup> 66 Fed. Reg. 63318 (December 6, 2001) (full approval effective November 30, 2001). This program is codified in 30 TAC Chapter 122.

holder is always required to keep appropriate records of monitoring/testing and other requirements to certify compliance and report deviations with the regulations addressed by the high-level applicable requirements.

High level requirements are enforceable as the records will indicate the compliance options and monitoring data that were used to certify compliance with the emission limitations and standards.

At the Applicant's request, to improve clarity, the Proposed Permit was revised to replace the high level requirements with more specific requirements for 40 C.F.R. Part 63, Subparts FFFF, EEEE, YY and Part 60, Subpart Dc regulations for units subject to these regulations in the applicable requirements summary (ARS) table (Proposed Permit at pages 51 through 154).

**COMMENT 9: The Executive Director must revise the Draft Permit to remove improper exemptions to Texas State Implementation Plan ("SIP") opacity requirements:**

**(1) Specific Grounds for Objection, Including Citation to Permit Term**

The Draft Permit's Applicable Requirements Summary includes the following entries for GCGV's flares:

Unit Group Process ID No.	State Rule or Federal Regulation Name	Emission Limitation, Standard or Equipment Specification Citation	Textual Description (See Special Term and Condition 1.B.)
UFFFLARE01	30 TAC Chapter 111, Visible Emissions	§ 111.111(a)(4)(A)	Visible emissions from a process gas flare shall not be permitted for more than five minutes in any two-hour period, except for upset emissions as provided in §101.222(b).
UFFFLARE02	30 TAC Chapter 111, Visible Emissions	§ 111.111(a)(4)(A)	Visible emissions from a process gas flare shall not be permitted for more than five minutes in any two-hour period, except for upset emissions as provided in §101.222(b).

Draft Permit at 136.

30 Tex. Admin. Code § 111.111(a)(4)(A) provides that:

30 Tex. Admin. Code § 111.111(a)(4)(A) provides that:

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). Process gas flares are those used in routine or scheduled facility operations. Acid gas flares, as defined in § 101.1 of this title (relating to Definitions), are subject only to the provisions of paragraph (1) of this subsection. Beginning September 1, 1993, compliance with this subparagraph for process gas flares shall be determined:

- (i) any time there is an operational change in the flare that requires a permit amendment under TACB Regulation VI. Compliance shall be determined using Reference Method 22 (40 CFR 60, Appendix A), Reference Method 9 (40 CFR 60, Appendix A), or an alternative test

method approved by the executive director and the United States Environmental Protection Agency (EPA). The observation period for this compliance demonstration 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 any observed smoking; and

- (ii) by 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. For flares operated less frequently than daily, the observation will be made for each operation. The flare operator shall record at least 98% of these required observations. 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).

30 Tex. Admin. Code § 101.222(b) provides that:

Upset events that are determined not to be excessive emissions events are subject to an affirmative defense to all claims in enforcement actions brought for these events, other than claims for administrative technical orders and actions for injunctive relief, for which the owner or operator proves all of the following:

- (1) the owner or operator complies with the requirements of §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements). In the event the owner or operator fails to report as required by §101.201(a)(2) or (3), (b), or (e) of this title, the commission will initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply when there are minor omissions or inaccuracies that do not impair the commission's ability to review the event according to this rule, unless the owner or operator knowingly or intentionally falsified the information in the report;
- (2) the unauthorized emissions were caused by a sudden, unavoidable breakdown of equipment or process, beyond the control of the owner or operator;
- (3) the unauthorized emissions did not stem from any activity or event that could have been foreseen and avoided or planned for, and could not have been avoided by better operation and maintenance practices or technically feasible design consistent with good engineering practice;
- (4) the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions and reducing the number of emissions events;
- (5) prompt action was taken to achieve compliance once the operator knew or should have known that applicable emission limitations were being exceeded, and any necessary repairs were made as expeditiously as practicable;
- (6) the amount and duration of the unauthorized emissions and any bypass of pollution control equipment were minimized and all possible steps were taken to minimize the impact of the unauthorized emissions on ambient air quality;
- (7) all emission monitoring systems were kept in operation if possible;
- (8) the owner or operator actions in response to the unauthorized emissions were documented by contemporaneous operation logs or other relevant evidence;
- (9) the unauthorized emissions were not part of a frequent or recurring pattern indicative of inadequate design, operation, or maintenance;

(10)the percentage of a facility's total annual operating hours during which unauthorized emissions occurred was not unreasonably high; and

(11)the unauthorized emissions did not cause or contribute to an exceedance of the national ambient air quality standards (NAAQS), prevention of significant deterioration (PSD) increments, or to a condition of air pollution.

## **(2) Applicable Requirement or Part 70 Requirement Not Met**

42 U.S.C. § 7661(a) and 40 C.F.R. § 70.6(a) require each Title V permit to include all applicable requirements and conditions necessary to assure compliance with applicable requirements.

42 U.S.C. § 7410(i) prohibits states from issuing orders, including Title V permits, that modify SIP requirements with respect to any stationary source.

## **(3) Inadequacy of the Permit Term.**

The Draft Permit's Applicable Requirements Summary incorporates by reference the limitation on visible emissions from process flares at 30 Tex. Admin. Code § 111.111(a)(4)(A), which is incorporated into the Texas SIP. Draft Permit at 136. According to 111.111(a)(4)(A), "[v]isible 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)." The exemption at § 101.11(a) has been removed from Texas's rules. The Commission was clear when it repealed 101.11, "[t]here is no automatic exemption from compliance with emissions and opacity limits." Texas Commission on Environmental Quality, Chapter 101, Rule Log No. 2003-038-101-AI at 2.<sup>10</sup> Thus, the process flare emission limit at 111.111(a)(4)(A) references a rule that has been repealed and, due to that repeal, no longer contains an exemption.

In place of the repealed exemption at § 101.11, the TCEQ adopted a limited affirmative defense to "claims in enforcement actions brought for [non-excessive emission events] ... *other than claims for administrative technical orders and actions for injunctive relief* " if the operator makes various demonstrations specified by the rule. 30 Tex. Admin. Code § 101.222(b) (emphasis added). This affirmative defense to penalties is not a shield from liability, nor is it an exemption from otherwise applicable requirements. The affirmative defense, in short, does not permit any unauthorized emissions. The affirmative defense, moreover, is not incorporated by reference as an exemption to the visible emission requirements for process flares established by § 111.111(a)(4).

The Draft Permit is deficient, because it misapplies Texas's limited affirmative defense for upset events, which is not part of the applicable visible emissions requirements, as an exemption to those requirements. Specifically, the Draft Permit provides that "[v]isible emissions from a process flare shall not be permitted for more than five minutes in any two-hour period, *except for upset emissions as provided in § 101.222(b).*" Draft Permit at 206, 209, 211, 212 (emphasis added). The rule at §101.222(b) does not "permit" noncompliance with applicable visible emissions requirements, so this language must be removed from the Draft Permit to assure compliance with applicable requirements. 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.6(a). Incorporation of the misleading information amounts to an impermissible modification of SIP obligations with respect to a stationary source. 42 U.S.C. § 7410(i).

**RESPONSE TO COMMENT 9:** Special Term and Condition No. 1.B of the Draft Permit states "The textual description in the column titled 'Textual Description' in the Applicable Requirements Summary attachment is not enforceable and is not deemed as a substitute for the actual regulatory language. The Textual Description is provided for information purposes only." Since the Textual Description is provided for information purposes only, subjective comments regarding the Textual Description are stylistic rather than substantive.

10 Available electronically at:

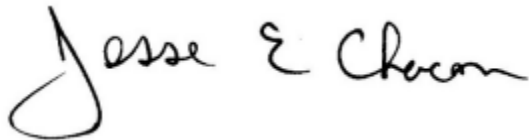
[https://www.tceq.texas.gov/assets/public/legal/rules/hist\\_rules/Complete.03s/03038101/03038101\\_pro.pdf](https://www.tceq.texas.gov/assets/public/legal/rules/hist_rules/Complete.03s/03038101/03038101_pro.pdf)



The Draft Permit identifies all applicable requirements under 30 TAC 111, Visible Emissions that are applicable to the flare units UFFLARE01 and UFFLARE02. Under the Federal Clean Air Act (FCAA), Title V permits must include requirements so that the permit's terms are enforceable. The FCAA does not mandate that the text of each applicable requirement be copied into the text of the Title V permit. Applicant's use of the ARS table in the Draft Permit to identify the applicable requirements from 30 TAC 111 for the flare units complies with the FCAA and is sufficient to assure compliance.

However, to improve clarity, the Textual Description for flare units UFFLARE01 and UFFLARE02 subject to 30 TAC 111, Visible Emissions is revised in the Proposed Permit as follows: "Visible emissions from a process gas flare shall not be permitted for more than five minutes in any two-hour period. Non-excessive upset events are subject to the provisions under §101.222(b)".

Respectfully submitted,

A handwritten signature in black ink that reads "Jesse E Chacon". The signature is written in a cursive style with a large initial "J" and "C".

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