TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 16, 2024

MR LON BRENNER
VP AND GENERAL MANAGER
VALERO REFINING-TEXAS LP
9701 MANCHESTER ST
HOUSTON TX 77012-2408

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment
Renewal
Permit Number: O3784
Valero Energy Partners LP
Valero Partners Houston
Houston, Harris County
Regulated Entity Number: RN109290692
Customer Reference Number: CN604780486

Dear Mr. Brenner:

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 August 20, 2024, the proposed permit is subject to an EPA review for 45 days, ending on October 4, 2024.

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 October 5, 2024 and ends on December 3, 2024. 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

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, MC-163
P.O. Box 13087
Austin, Texas 78711-3087

Mr. Lon Brenner
VP and General Manager
Valero Refining-Texas LP
9701 Manchester St
Houston TX 77012-2408

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. 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.

Thank you for your cooperation in this matter. If you have questions concerning the processing of this permit application, please contact Mr. Tusar Swami, P.E. at (512) 239-1581.

Sincerely,

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

cc: Mr. Mike Jasek, Manager Environmental Engineering, Valero Energy Partners LP, Houston
Senior Project Manager, Houston Department of Health and Human Services, Bureau of Pollution Control & Prevention, Houston
Director, Harris County, Pollution Control Services, Pasadena
Air Section Manager, Region 12 - Houston
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: 31654

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 16, 2024

COMMENTER/INTERESTED PERSON

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment
Renewal
Permit Number: O3784
Valero Energy Partners LP
Valero Partners Houston
Houston, Harris County
Regulated Entity Number: RN109290692
Customer Reference Number: CN604780486

Dear Commenter/Interested Person:

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.

Changes unrelated to comments have been 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 August 20, 2024, the proposed permit is subject to an EPA review for 45 days, ending on October 4, 2024.

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 October 5, 2024 and ends on December 3, 2024. 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

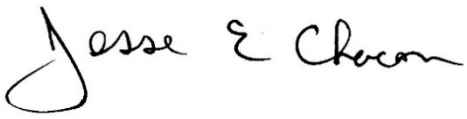
Texas Commission on Environmental Quality
Office of Air
Air Permits Division, MC-163
P.O. Box 13087
Austin, Texas 78711-3087

Mr. Lon Brenner
VP and General Manager
Valero Refining-Texas LP
9701 Manchester St
Houston TX 77012-2408

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. 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.

Thank you for your cooperation in this matter. If you have questions concerning the processing of this permit application, please contact Mr. Tusar Swami, P.E. at (512) 239-1581.

Sincerely,



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

Enclosure: Executive Director's Response to Public Comment

Project Number: 31654

Modifications Made from the Draft to the Proposed Permit

1. Special Term and Condition 9 is revised to include benzene fence line monitoring requirements under 40 CFR Part 63, Subpart CC, § 63.658(a) - (k).
2. Special Term and Condition 10 is revised as follows: “Permit holder shall comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including permits, permits by rule (including the terms, conditions, monitoring, recordkeeping, and reporting identified in registered PBRs and permits by rule identified in the PBR Supplemental Tables dated November 29, 2021 for project 31654), standard permits, flexible permits, special permits, permits for existing facilities including Voluntary Emissions Reduction Permits and Electric Generating Facility Permits issued under 30 TAC Chapter 116, Subchapter I, or special exemptions referenced in the New Source Review Authorization References attachment.”.

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. O3784 filed by Valero Energy Partners LP (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) timely received comment letters from several Commenters listed in Appendix A. 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.

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. Valero Energy Partners LP applied to the TCEQ for a renewal of FOP for a Petroleum Refineries plant located in Houston, Harris County on December 22, 2020, and notice was published on May 21, 2022. Public comments and a public hearing request were received by TCEQ on 06/17/2022. A public hearing was held in Houston on 12/12/2022. The public comment period ended on December 12, 2022. During the time period starting 06/17/2022 and ending 12/12/2022, comments were received from several Commenters listed in Appendix A. 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

Valero Energy Partners LP has applied to the TCEQ for an FOP Renewal that would authorize the applicant to operate the Valero Partners Houston plant. The plant is located 9701 Manchester Street in Houston, Harris County, Texas 77012-2408.
Significant emission sources at Valero Partners Houston primarily include storage tanks and fugitive equipment, which are subject to State and/or Federal regulations. The crude oil processed at the refinery is received from off-site via marine facilities, pipeline and/or transport vessels. The refinery contains several key operation units. The storage vessels purchased by Valero Energy Partners LP are part of the Product Storage and Handling unit and serve the following operating units: Crude Combo Unit, Fluidized Catalytic Cracking Unit, Unifiners, Alkylation Unit, and Ultra Low Sulfur Diesel (ULSD) Unit.

COMMENTS AND RESPONSES

All comments received by TCEQ are listed below in chronological order and in their original, unedited format (except footnotes and figures have been omitted). An in-line comment-response format is used in this document. This format assigns a number to each actual comment received followed by a corresponding TCEQ response.

Comments have been jointly filed by Texas Environmental Justice Advocacy Services (t.e.j.a.s.), Lone Star Chapter Sierra Club, Caring for Pasadena Communities, Lone Star Legal Aid, Environmental Integrity Project (EIP) and Earthjustice. Comment filed by Jennifer M. Hadayia are on behalf of Air Alliance Houston (AAH). All other comments filed are on behalf of individuals.

COMMENTS FILED ON 06/17/2022 BY TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICES ("T.E.J.A.S"), SIERA CLUB'S LONE STAR CHAPTER, CARING FOR PASADENA COMMUNITIES, ENVIRONMENTAL INTEGRITY PROJECT ("EIP"), AND EARTHJUSTICE ET AL.

COMMENT 1: (T.E.J.A.S) TCEQ must withdraw the draft permit from EPA review.

Before considering public comments on the Draft Permit, TCEQ submitted it to EPA for concurrent processing. The Clean Air Act, however, requires TCEQ to revise the Draft Permit and permit record to address public comments before submitting it to EPA for review. 40 C.F.R. § 70.8(a)(1)(ii). Due to the comments and public hearing request filed here, TCEQ must withdraw the Draft Permit for EPA review and revise the Draft Permit and permit record.

EPA's Title V regulations make clear that EPA's 45-day review period cannot run concurrently with the public comment period when, as here, significant comments are submitted on a Draft Permit as part of the public participation process:

> If the permitting authority receives significant comment on the draft permit during the public participation process, but after the submission of the proposed permit to the Administrator, the Administrator will no longer consider the submitted proposed permit as a permit proposed to be issued under section 505 of the Act. In such instances, the permitting authority must make any revisions to the permit and permit record necessary to address such public comments, including preparation of a written response to comments (which must include a written response to all significant comments raised during the public participation process on the draft permit and recorded under 70.7(h)(5) of this part), and must submit the proposed permit and the supporting material required under 70.8(a)(1)(i) of this part [which include the response to comments] . . . to the Administrator after the public comment period has closed. This later submitted permit will then be considered as a permit proposed to be issued under section 505 of the Act, and the Administrator's review period for the proposed permit will not begin until all required materials have been received by the EPA.

40 C.F.R. § 70.8(a)(1)(ii) (emphasis added). Thus, where a public hearing is requested pursuant to the public participation provision of § 70.7(h), or significant comments are provided in writing, TCEQ may not submit the permit to EPA for review without first addressing the written comments and comments from the hearing. "The EPA expects that the permitting authority would withdraw the initial permit submission if significant comments are received during the public participation process on a Draft Permit that has been submitted for concurrent review. If EPA later finds that a significant comment was received and the initial permit submission is not withdrawn, the permit submission will no longer be considered a proposed permit.

TCEQ must withdraw the initial permit submission from EPA review, consider these comments and any comments it receives during the public comment period or hearing, prepare a response to comments, and revise the permit to correct problems identified in submitted comments. Only then can TCEQ resubmit the Draft Permit to EPA for review. The comments below are significant and go to the core of the applicable Clean Air Act and Title V requirements. *See* 85 Fed. Reg. 6431, 6436 (Feb. 5, 2020) ("Significant comments. . . include, but are not limited to, comments that concern whether the title V permit includes terms and conditions addressing federal applicable requirements . . . ."). Additionally, Commenters anticipate submitting supplemental, significant comments during the public hearing, once it is scheduled. If TCEQ fails to withdraw the Draft Permit from EPA's review process, it will be in violation of the Title V regulations. At the Executive Director's earliest convenience, we respectfully request written confirmation from TCEQ that it has withdrawn the permit from EPA review and intends to consider comments.

RESPONSE TO COMMENT 1: The ED respectfully notes that the public notice comment period for Permit O3784/Project 31654 started on 05/21/2022. Concurrent review by EPA was stopped in response to a public comment received on 06/17/2022. During the time period starting 06/17/2022

and ending 12/12/2022 (at the conclusion of the public hearing), comments were received from several Commenters listed in Appendix A. An in-line comment-response for each comment is included in this document.

COMMENT 2: (T.E.J.A.S) Health Effects and Environmental Justice Concerns

The Commission must complete required steps in the Title V permitting process and strengthen Valero's Draft Permit before authorizing renewal. The Commission has violated federal permitting procedural requirements by failing to provide notice to people who asked to be added to the Valero Houston Refinery mailing list. The Draft Permit does not assure Valero's compliance with all applicable Clean Air Act requirements in several major ways. First, the Draft Permit does not include the monitoring, recordkeeping, and reporting needed to assure compliance with applicable requirements. Second, the Draft Permit does not ensure that federally enforceable emission limits are not relaxed or weakened during maintenance, startup, and shutdown periods. Third, the Draft Permit does not include detailed terms and conditions that assure compliance with all applicable requirements, including National Emission Standards for Hazardous Air Pollutants and Permit by Rule requirements. Mere incorporation by reference provisions are insufficient to satisfy Title V. Fourth, the Draft Permit does not demonstrate that a compliance schedule is not necessary in light of significant noncompliance causing 2017 tank releases.

I. *Legal and Factual Background*

A. The Clean Air Act Title V Permitting Process

The CAA aims to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1). The Act's "primary goal" is "pollution prevention." *Id.* § 7401(c); *id.* § 7401(b)(2)-(4) (emphasizing prevention).

Title V goes to the heart of the CAA. 42 U.S.C. §§ 7661–7661f. Title V makes it unlawful to operate any major source of air pollution without "a comprehensive operating permit." *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 309 (2014); *see* 42 U.S.C. § 7661a(a). It also directs that the permitting process include and encourage public participation, including "an opportunity for public comment and a hearing." 42 U.S.C. § 7661a(b)(6).

Congress enacted Title V as part of the 1990 CAA Amendments to strengthen federal protections for clean air and public health, through increasing compliance and enforcement. 42 U.S.C. § 7661c(a)-(c).

> Before 1990, regulators and industry were left to wander through this regulatory maze in search of the emission limits and monitoring requirements that might apply to a particular source. Congress addressed this confusion in the 1990 Amendments by adding Title V of the Act, which created a national permit program that requires [major] stationary sources of air pollution to obtain permits that include relevant emission limits and monitoring requirements.

Sierra Club v. EPA, 536 F.3d 673, 674 (D.C. Cir. 2008). To end that confusion, the Title V permit is supposed to be "a source-specific bible for Clean Air Act compliance," that the facility, a regulator, or any member of the public can consult and understand, in order to be able to assess and assure compliance with clean air requirements. *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996); 57 Fed. Reg. 32,250, 32,251 (July 21, 1992).

To do so effectively, the Act directs that each permit must include enforceable emissions limitations and standards "and such other conditions as are necessary to assure compliance with applicable requirements," including all monitoring, reporting, and recordkeeping requirements. 42 U.S.C. § 7661c(a). The term "applicable requirement" includes all "requirements that have been

promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates." 40 C.F.R. § 70.2; 30 Tex. Admin. Code § 122.10(2). In addition, where necessary, the permitting agency must supplement direct requirements with additional monitoring, reporting, or recordkeeping "to assure compliance with the permit terms and conditions." 42 U.S.C. § 7661c(c).

EPA sets minimum federal regulations to implement Title V, which all state permitting agencies must follow: 40 C.F.R. §§ 70.2-70.11. Texas has an approved state air permit program and accompanying state regulations which it must follow in issuing Title V permits: 30 Tex. Admin. Code §§ 122.10-122.606. Under the Texas Clean Air Act, the Commission must act to "safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and maintenance of adequate visibility." Tex. Health & Safety Code § 382.002(a); Tex. Health & Safety Code Ch. 382 & § 382.011 (requiring TCEQ to administer and protect clean air in the state); *see also* Tex. Health & Safety Code §§ 382.051, 382.0513 (requiring TCEQ to issue permits and enforce permit conditions); 30 Tex. Admin. Code § 116.115.

These comments cite and rely on these requirements, as well as state air quality regulations issued to implement the federal and state Clean Air Acts. *See, e.g.*, 30 Tex. Admin. Code Ch. 101, 106, 111, 112, 113, 115, 116, 117, 122.

B. The Valero Houston Refinery

Valero is an international corporation based in Texas, which owns 15 petroleum refineries in the United States, Canada and the United Kingdom, with a total combined throughput capacity of approximately 3.1 million barrels per day. The Valero Houston Refinery (the "Refinery") is located at 9701 Manchester Street in about 250 acres of the Houston Ship Channel. Valero took over the Houston refinery in 1997. The Refinery operates pursuant to multiple Title V operating permits, including operating permit O3784, which primarily addresses tanks and related equipment. The Refinery has a self-reported total throughput capacity of approximately 250,000 barrels per day. The company's website states that the Refinery "processes sweet crude and intermediate oils into gasoline, jet fuel, and diesel."

Valero Energy Partners LP is a limited partnership formed by Valero Energy Corporation to own, operate, develop and acquire crude oil and refined petroleum products. Valero Energy Partners LP merged with Valero Energy Corporation in 2019.

C. *This Permit Proceeding*

The Valero Houston Refinery last received a Title V permit for tanks and related equipment (Permit No. O1381) on June 30, 2016, and that permit expired on June 30, 2021. In December 2020, Valero submitted an application to renew its Title V permit. In April 2022, the Commission authorized Valero to publish notice of a draft renewal Title V permit (the Draft Permit) and a Statement of Basis, subject to a thirty-day public comment period.

TCEQ did not send notice of the proposed renewal to t.e.j.a.s., Sierra Club, Earthjustice, and EIP even though these organizations are on a mailing list for permitting for the Valero Houston Refinery.

Valero published its notice in an English-language newspaper on May 21 and in a Spanish-language newspaper on May 22. *See* Exs. 1, 2. Comments are due "30 days after the notice of the public comment period is published." 30 Tex. Admin. Code § 122.320(i)-(j) (deadline for comments or public hearing request); *id.* § 122.322 (Bilingual Public Notice). Commission guidance directs that this means the public comment period "extends to the end of the second publication." Because Spanish language notice was published on May 22, the public comment deadline is therefore thirty days later, on June 21.

D. *Affected Houston Communities and Commenters*

Commenters t.e.j.a.s., Caring for Pasadena Communities, Sierra Club's Lone Star Chapter, and Environmental Integrity Project submit these comments on behalf of their members and constituents who live and work in neighborhoods near the Refinery.

T.ej.a.s. is a non-profit group whose mission is to create sustainable, healthy communities in the Houston Ship Channel. Founded in 2006, t.e.j.a.s. promotes environmental protection through policy development, community awareness, and legal action where possible and appropriate. T.e.j.a.s. also educates the public on the environmental and health impacts of toxic air pollution from and chemical disasters at industrial facilities in Texas, particularly refineries and petrochemical facilities in the Houston Ship Channel.

Caring for Pasadena Communities is a community-based nonprofit 501(c)(3) organization committed to raising awareness of environmental issues affecting residents of Pasadena and nearby communities along the Houston Ship Channel. Caring for Pasadena Communities advocates for fenceline communities, educates the public on environmental issues, and works to ensure equal treatment of low-income residents in environmental matters. Caring for Pasadena Communities regularly advocates for environmental justice in public participation hearings for permitting agencies. Its members live in the neighborhoods, including Manchester and Pasadena, directly impacted by the Valero Houston Refinery.

Sierra Club's mission is to explore, enjoy, and protect the wild places of the earth, to practice and promote the responsible use of the earth's ecosystems and resources, to educate and enlist humanity to protect and restore the quality of the natural and human environment, and to use all lawful means to carry out these objectives. To achieve this mission, it focuses in part on ways to prevent and reduce harmful air pollution, including from petroleum refineries like Valero, and ensuring the full implementation and enforcement of national and local refinery standards in permits like the pending Draft Permit. Sierra Club's Lone Star Chapter has members who live around the Houston Ship Channel.

The Environmental Integrity Project is a nonpartisan, nonprofit watchdog organization that advocates for effective enforcement of environmental laws. Comprised of former EPA enforcement attorneys, public interest lawyers, analysts, investigators, and community organizers, EIP has three goals: (1) To illustrate through objective facts and figures how the failure to enforce or implement environmental laws increases pollution and harms public health; (2) to hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws; and (3) to help local communities obtain the protections of environmental laws.

Together, Commenters have a strong interest in ensuring that the Commission follows all federal and state requirements in regard to Valero and does not authorize Valero to avoid Title V monitoring, reporting, or recordkeeping other requirements.

E. *Health Impacts from the Valero Houston Refinery's Emissions*

Commenters are concerned about this facility's major emissions of particulate matter ("$PM_{2.5}$" and "PM_{10}"), sulfur dioxide ("SO_2"), nitrogen oxides ("NOx"), volatile organic compounds ("VOCs"), hazardous air pollutants, carbon monoxide ("CO"), and ozone formed from atmospheric chemical reactions due to Valero's emissions.

Harris County, which includes Houston and the Valero Houston Refinery, is currently designated serious nonattainment for the 2008 ozone National Ambient Air Quality Standard ("NAAQS") and marginal nonattainment for the 2015 ozone NAAQS. Previously, the county was designated as severe nonattainment for the 1997 ozone NAAQS, but in late 2016, the county was redesignated as attainment for the 1997 standard. On April 13, 2022, EPA proposed the anticipated regulations that will change the classification level of the Houston-Galveston-Brazoria ("HGB") Ozone

Nonattainment Area based on its failure to meet attainment deadlines in the summer of 2021 (with compliance determined by monitoring data from 2018-2020). Once finalized, the HGB area will be reclassified from "serious" to "severe" for the 2008 eight-hour ozone standard and will be changing from "marginal" to "moderate" for the 2015 eight-hour ozone standard. The comment period on these regulations closed June 13, 2022.

The redesignation to severe ozone nonattainment will reduce the major source threshold for the Title V Operating Permits Program to 25 tons per year of VOC or NO_X.

As to the effect of these designation changes, existing sites like Valero Houston Refinery in the HGB area will be required to obtain a Title V permit within one year of the final rule. In addition, Section 182(b)(2) of the CAA requires the state implementation program ("SIP") for ozone nonattainment areas classified as moderate and worse to include requirements for existing major sources of ozone precursor pollutants (VOC and NO_X for ozone nonattainment areas) to apply Reasonably Available Control Technology. Based on these anticipated redesignations, once finalized, the Valero Houston Refinery will have to make additional permit changes to comply with these new requirements. Valero's emissions of hundreds of tons per year of ozone-precursors including NOx and VOCs contribute to the unhealthy levels of ozone in the county.

Emissions of hazardous air pollutants and other VOCs significantly harm human health and increase the risk of cancer, non-cancer chronic health problems, and acute health problems. The Texas Department of State Health Services found that, for census tracts analyzed in East Harris County, "the number of other leukemia among all ages was statistically significantly higher than expected," and that for adults, the numbers of brain and cervical cancers overall were also "statistically significantly higher than expected," and the same was true in some individual census tracts for additional kinds of cancer.[17] Pregnant women and children are particularly susceptible to the health impacts of toxic air pollution. For example, a recent scientific report, supported by Project TENDR, highlighted how reducing children's exposure to combustion-related air pollution would also protect them from avoidable neurodevelopmental harm.

TCEQ guidance has also made clear that tank emissions can be quite significant and affect air quality. A December 5, 2006 TCEQ memo from Dan Eden titled "Air Emissions During Tank Floating Roof Landings" explained the following regarding tank floating roof landings: "If the liquid level in [a tank with a floating roof] is lowered to below the level of the floating roof support legs, the roof will rest (land) on the legs, or supports, rather than on the liquid, severely limiting the control efficiency of the floating roof. Air emissions from tanks are greater while the tank roof is landed and remain so until the tank is either completely emptied and purged of organics or the tank is refilled, and the roof is again floating." That same memo also emphasizes that underreporting emissions from roof landings is "of particular importance" in the Houston region because "it may play a role in demonstrating attainment." *Id.*

Valero's spikes in emissions in the wake of Hurricane Harvey have caused increased concern about health impacts for community residents. Valero contributed to a "second storm" of air pollution that local neighborhoods experienced during and after Hurricane Harvey due to inadequate toxic release prevention measures from storm impacts.[20] The *Houston Chronicle* reported that the Commission cited Valero for benzene and other air pollution releases and brought an enforcement action for at least one Harvey-related incident.[21] EIP found that the Valero Houston Refinery is one of the "plants that released the most storm-related pollution in the Houston area" and provided specific recommendations, consistent with the guidance from the U.S. Chemical Safety Board that TCEQ should implement.

Natural disasters like Hurricane Harvey will only become more extreme, leading to potentially more devastating spikes in emissions. To be precise, in the wake of Hurricane Harvey, industry self-reported to TCEQ 15 floating roof storage tanks that failed during the record-setting storm, allowing a combined 3.1 million pounds of volatile chemicals to spew into the air across the region. This series of failures, along with the breakdown of drainage systems designed to funnel water off the roofs, exposed the vulnerabilities of floating roof tanks even as climatologists warn that future storms will carry more rain as global temperatures rise and ocean waters warm. These roof failures, like the ones during Harvey, could expose nearby residents to high levels of harmful emissions. A floating roof

tank can manage about 10 inches of rain. Harvey brought over 50 inches in some areas.

Valero's toxic air pollution disproportionately impacts people of color and low-income people. For example, as EPA's EJSCREEN ACS Community Report (2011-2015) shows, 98% of the people living in Manchester are people of color. EPA found, based on 2010 U.S. Census and American Community Survey data, that 92,012 people live within a three-mile radius of the Valero Houston Refinery—of whom 93% are people of color, 32% are minors under the age of 17, 8% are seniors over the age of 65 and 55,643 live below the poverty level. There are multi-family subsidized housing communities (Nueva Vida 2950 Broadway, Houston, TX; Las Villas De Magnolia, Houston, TX), and other places where community members congregate within a three- mile radius of the Valero Houston Refinery. Commenters are aware of twenty-eight schools, and over two dozen public parks, within a three-mile radius of the Valero Houston Refinery where residents visit, engage in recreation, and children play outside. For example, J.R. Harris Elementary School—a public school where 63% of students are English Language Learners, 88% are economically disadvantaged, and 98% are African American and/or Latino—is within one mile of the Valero Houston Refinery, and within close proximity to a chemical manufacturer, and a hazardous waste facility.

Valero is part of larger environmental injustice that plagues the Houston Ship Channel. In Texas, the percentage of Black population and median household income are positively associated with excess emissions, and excess emissions are more likely to occur in facilities that are located in communities with higher percentages of a Hispanic population. In Harris County, an estimated 44.4% of the population speaks a language other than English at home, 15.6% live below the poverty line, and 63.7% is Black or Latino. Several Harris County neighborhoods, such as Manchester, score high on multiple environmental justice indexes. Manchester scores above the 80th percentile for 11 different environmental justice indexes, including the National Air Toxics Assessment Air Toxics Cancer Risk index, the National Air Toxics Assessment Respiratory Hazard index, the $PM_{2.5}$ index, and the Risk Management Plan Proximity index.

Communities surrounding the Valero Houston Refinery face the cumulative impacts of toxic air pollution from multiple facilities. Commenters, however, are not aware of any instance when the Commission has actually evaluated the cumulative impacts of Valero's and other polluting sources' toxic air emissions into local neighborhoods and the surrounding communities. The Houston Ship Channel has one of the largest concentrations of oil refineries in the world. These communities are part of a 52-mile-long stretch of refineries and petrochemical plants. Communities who are particularly exposed to emissions from Valero in several areas around the Houston Ship Channel include: Manchester, which is adjacent to the Valero Houston Refinery; Pasadena which is near Valero and also near Shell's Deer Park facility and Chevron U.S.A.'s facility; as well as Galena Park and Milby Park which are exposed to emissions and safety threats from Valero and multiple refineries. The ITC Terminal Facility in Deer Park which had a serious tank fire in April 2019 is located near these communities as well. The Arkema Houston Plant is also within only a few miles from Galena Park (about 3 miles) and Pasadena (about 6 miles). People in these areas face additional chemical exposure due to the combined impacts of these facilities and the Valero Houston Refinery.

EPA has already acknowledged significant environmental justice concerns for communities near the Valero Houston Refinery. In the Texas Environmental Justice Collaborative Action Plan in 2016, EPA recognized the need to "work with proper authorities to investigate and address problematic permitted facilities," and identified Manchester, Galena Park, Pasadena, and nearby communities as requiring particular attention due to environmental justice concerns. In fall 2021, Administrator Michael Regan visited the Houston Ship Channel and recognized the environmental injustice of the cumulative harm of toxic air pollution in this area as part of the "Journey to Justice."

RESPONSE TO COMMENT 2: At the heart of TCEQ's mission is the goal of protecting public health for all Texans. To accomplish this goal, TCEQ strives to ensure that all Texans can participate meaningfully in TCEQ programs and activities. TCEQ aims to work with communities to provide access to decision-making processes and to ensure a healthy environment in which to live, learn, and work.

TCEQ does not allow discrimination on the basis of race, color, national origin, sex, disability, age, sexual orientation, or veteran status, consistent with state and federal law.

In TCEQ's permitting process, the agency follows all federal and state laws and rules to address environmental equity [also known as environmental justice (EJ)]. Permits issued by TCEQ are protective of human health and the environment and are reviewed without reference to the socioeconomic or racial status of the surrounding communities.

The agency maintains a Title VI Compliance page on its public website, found at https://www.tceq.texas.gov/agency/decisions/participation/title-vi-compliance. Here you can find all the agency's past and ongoing efforts to fully comply with Title VI, including TCEQ's Disability Nondiscrimination Plan, Public Participation Plan, and Language Access Plan; information about public participation in the TCEQ permitting process; and grievance procedures.

The ED respectfully notes that the State of Texas has two Air permitting programs, a New Source Review (NSR) program that issues NSR permits under 30 TAC Chapters 116 and 106 and Title V Federal Operating Permits (FOP) program that issues operating permits under 30 TAC Chapter 122. The Proposed Permit (PP) which is issued under 30 TAC Chapter 122 does not authorize emissions or emissions increases. As such, many of the concerns in this comment are in the purview of NSR permitting, including emissions, health impacts, and cumulative impacts.

The NSR permits issued under 30 TAC Chapters 116 and 106, including permits by rule (PBRs), Standard Exemptions (SEs), and standard permits, authorize emissions and emissions increases. Emissions related information for PBRs, SEs, and standard permits can be found in the appropriate NSR permit/project file.

The ED respectfully notes that the New Source Review Authorization References table in the FOP specifies all NSR authorizations that apply at the permit area are covered by the Proposed Permit (page 81). Individual NSR permitting files are located in the TCEQ Central File Room (TCEQ Main Campus located at 12100 Park 35 Circle, Austin, Texas, 78753, Building E, Room 103). The records can also be obtained electronically from TCEQ's Central File Room Online (https://www.tceq.texas.gov/goto/cfr-online).

Guidance documents that describe how to search electronic records, including Permits by Rule (PBRs) or NSR permits incorporated by reference into a FOP, archived in the Central File Room server are available at https://www.tceq.texas.gov/permitting/air/nav/air_status_permits.html. Additional guidance on conducting NSR permit searches may be found at: https://www.tceq.texas.gov/assets/public/permitting/air/Guidance/Title_V/titlev-nsr-guide6433.pdf.

With regard to comments related to excessive emissions in the wake of accidents or natural disasters like Hurricane Harvey or winter storm Uri, TCEQ takes your health and environmental concerns seriously. The proposed permit meets all federal and state regulatory requirements and is protective of human health and the environment. TCEQ's Office of Compliance and Enforcement (OCE) enforces compliance with state's environmental laws to address any non-compliance and enforcement issues. In the event of an emergency, the Local Emergency Planning Committee and the regulated entity have the primary responsibility of notifying potentially impacted parties regarding the situation. In addition, as set forth in 30 TAC § 101.201(a), regulated entities are required to notify the TCEQ regional office within 24 hours of the discovery of releases into the air and in advance of maintenance activities that could or have resulted in excess emissions.

COMMENT 3: (T.E.J.A.S) The Commission has violated public participation requirements.

> The Commission has a responsibility to provide an opportunity for meaningful public participation on the Draft Permit. *See, e.g.*, 42 U.S.C. § 7661a(b)(6); 30 Tex. Admin. Code §§ 122.201(a), 122.320, 122.243(a)(3). In violation of Title V, the Commission failed to provide adequate notice to the affected Commenters about the opportunity to comment on the Draft Title V Permit via a mailing list.
>
> TCEQ must provide notice of a public comment period on a draft Title V permit "to persons on a mailing list developed by the permitting authority using generally accepted methods (e.g., hyperlink

sign-up function or radio button on an agency Web site, sign-up sheet at a public hearing, etc.) that enable interested parties to subscribe to the mailing list." 40 C.F.R. § 70.7(h)(1). The Commission did not fulfill this requirement and is therefore in violation of federal public participation requirements.

TCEQ did not provide notice to certain Commenters, even though Commenters t.e.j.a.s., Sierra Club, and Earthjustice all requested to be added to a "mailing list" for the Valero Houston Refinery facility. On April 10, 2018, commenters t.e.j.a.s. and Sierra Club submitted comments on a Valero Houston Refinery permit amendment and "request[ed] to be added to the mailing list for this permit amendment and future permit actions for this Valero facility." Yet, the Commission did not send notice of this Draft Title V Permit to these commenters.

Furthermore, community residents have expressed concerns about air pollution from this facility to TCEQ for several years. Yet the Commission did not contact Commenters to notify them of this proceeding, simply relying on Valero to publish newspaper notice.

Without this advance notice, Commenters lost time they needed to review and prepare to comment on this draft and to seek additional information from the Commission to be able to meaningfully comment. As courts have explained, such public notice defects are objectionable without the need to show any harm, because notice is a core requirement in Title V's protections for public participation. *See N.Y. Pub. Interest Resrch. Grp. v. Williams*, 321 F.3d 316, 332-33 (2d Cir. 2003); *Sierra Club v. Johnson*, 436 F.3d 1269, 1275, 1279-80 (11th Cir. 2006).

RESPONSE TO COMMENT 3: The ED respectfully disagrees with the Commenter's assertion that TCEQ failed to provide notice to the public through a mailing list for the current draft of the Title V permit.

Public participation requirements under 40 CFR Part 70.7(h) to notify interested parties (IP) applies to FOP projects that are subject to public "notice" requirements that include initial, renewal, significant revision projects. Public notice information for all initial, renewal, significant revision projects (including Project 31654) is posted on TCEQ's web site at tceq.texas.gov/assets/public/permitting/air/Title_V/announcements/pnwebrpt.htm. The posted list of projects is publicly accessible 24x7 and searchable by a specific permit number, project number or company name.

All Title V permits issued by TCEQ under 30 TAC Chapter 122 are in compliance with the public participation requirements listed under 40 C.F.R. § 70.7(h)(1). To encourage public participation in the permitting process, any interested person can place their name on a mailing list that is maintained for a specific applicant name and permit number or for a specific county as described on TCEQ's website Overview: Public Participation in Environmental Permitting--for Applications Filed on or after Sept. 1, 2015 - Texas Commission on Environmental Quality - www.tceq.texas.gov. To get on either of these additional mailing lists, one must send a request to the chief clerk. While submitting your request, specify the mailing list or lists you want to be on, and include your name and address. Interested persons may check or verify status of their mailing list sign up request with the Chief Clerks Office at TCEQ.

In addition, to further encourage public participation in the permitting process, any member of the public may Sign Up for Email Updates from the Air Permits Division - Texas Commission on Environmental Quality - www.tceq.texas.gov to receive email notifications about Air Permitting meetings, regulatory changes, and other important information.

In reference to providing the permit number to sign up on the IP mailing list, the ED respectfully notes that the State of Texas has two Air permitting programs, a New Source Review (NSR) program that issues NSR permits under 30 TAC Chapters 116 and 106 and Title V Federal Operating Permits (FOP) program that issues operating permits under 30 TAC Chapter 122. TCEQ does not maintain lists for facilities, such as a Valero Houston Refinery mailing list, however interested parties can follow permitting actions for each permit or be added to a county wide mailing list. As such, the interested party will only receive information pertinent to the permit they have signed up for.

Individual FOP permitting files for completed projects are located in the TCEQ Central File Room (TCEQ Main Campus located at 12100 Park 35 Circle, Austin, Texas, 78753, Building E, Room 103). As stated

above, for pending projects, public notice information for all initial, renewal, significant revision projects (including Project 31654) is posted on TCEQ's web site at tceq.texas.gov/assets/public/permitting/air/Title_V/announcements/pnwebrpt.htm. The posted list of pending projects that are available for public comments during the public comment period is publicly accessible and searchable by a specific permit number, project number or company name.

In regard to mailout of information pertinent to a specific FOP, the ED respectfully notes that The Office of the Chief Clerk (OCC) sends permit specific relevant information to an interested party for the specific permit number they (the interested party) have signed up for. As stated earlier, if an interested party does not apparently receive permit specific relevant information, they may check or verify status of their mailing list sign up request with the Chief Clerks Office at TCEQ.

Proof of mailout of the documentation to the IP list by OCC is accessible at CFR Online upon project completion. As an example, for FOP O3784, the ED respectfully notes that permit related information was mailed out to the interested parties list (see WCC content 6571468, pages 19-22 of 141) by the Chief Clerk's Office for the initial issuance project 22612. Similar proof of mailout of the permit related information to the interested parties list by the Chief Clerk's Office would be accessible at CFR Online upon completion of project 31654.

COMMENT 4: (T.E.J.A.S) Insufficient monitoring to ensure compliance with emission limits for tanks permitted under NSR Permit 129444.

The Draft Permit does not include monitoring, recordkeeping, and reporting needed to assure compliance with applicable Clean Air Act requirements. The Draft Permit does not include adequate monitoring, reporting, recordkeeping, or emission calculation requirements to ensure compliance with (A) hourly and annual Maximum Allowable Emission Rate Table ("MAERT") emission limits for tanks from New Source Review Permit 129444 or (B) VOC emission limits. Additionally, (C) the permit must require more frequent and more reliable monitoring for stationary vents. Each of these failures to assure compliance with applicable Clean Air Act requirements violates 42 U.S.C. §§ 7661c(a) and (c), and 40 C.F.R. §§ 70.6(a)(3)(i)(A) and (c)(1). Compliance is particularly imperative given the tank releases that occurred in the wake of Hurricane Harvey.

The CAA provides that Title V permits must include monitoring and reporting requirements sufficient to assure compliance with all applicable emission limits and standards and with the permit terms and conditions. Specifically, permits "shall include . . . a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan." 42 U.S.C. § 7661c(a). Permits must contain "[a]ll monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including part 64 of this chapter and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act." 40 C.F.R. § 70.6(a)(3)(i)(A). Additionally, Title V permits "shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1) (Title V permits must contain "compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit."). A "monitoring requirement insufficient 'to assure compliance' with emission limits has no place in a permit unless and until it is supplemented by more rigorous standards." *Sierra Club v. EPA*, 536 F.3d 673, 677 (D.C. Cir. 2008).

A. *The Draft Permit does not include adequate monitoring, reporting, recordkeeping, or emission calculation requirements to ensure compliance with hourly and annual MAERT emission limits for tanks from NSR Permit 129444.*

The Draft Permit does not include adequate monitoring, reporting, recordkeeping, or emission

calculation requirements to ensure compliance with hourly and annual limits for VOCs, hydrogen sulfide, benzene, and ammonia from the tanks covered by NSR Permit 129444's MAERT, for either "routine" emissions or emissions during planned "MSS" (maintenance, startup, and shutdown) periods. Additionally, the Draft Permit cannot ensure compliance with hourly and annual limits for VOCs, NOx, SO2, CO, hydrogen sulfide, benzene, particulate matter, and ammonia released during "Thermal Oxidizer Controlled MSS Activities" at the tanks. The failure of the Draft Permit to assure compliance with these limits violates 40 C.F.R. § 70.6(c)(1), and 42 U.S.C. §§ 7661c(a) and 7661c(c). Compliance is particularly imperative given the tank releases that occurred in the wake of Hurricane Harvey.

The tanks at issue are all listed in Permit 129444's MAERT and are Storage Tanks 90FB005, 90FB001, 90FB006, 91FB917, 90FB230, 90FB205, 90FB226, 90FB228A, 90FB505, 90FB506, 90FB507, 91FB918, 91FB920, 91FB921, 90FB215, 90FB216, 90FB233, 90FB232, 90FB224, 91FB909, 91FB912, 91FB913, 90FB234, 90FB511, 90FB210, 90FB211, and 90FB212.

For ease of reference, Permit 129444 is attached to these comments, and the MAERT is located at the end of that permit. *See* Ex. 6. The hourly VOC limits for routine emissions from these tanks are listed in Permit 129444's MAERT and range from 0.49 lbs/hour to 4.76 lbs/hour, and the annual VOC limits for these tanks are also listed in the MAERT and range from 0.12 tons/year to 23.98 tons/year (as a cap for three different storage tanks). Permit 129444 MAERT; Draft Permit's "New Source Review Authorization References" at p. 81 (incorporating 129444 into the Title V permit); Draft Permit Special Condition 10 (generally incorporating applicable NSR authorizations by reference). The MAERT also lists hourly and annual hydrogen sulfide limits for routine emissions from several of the tanks, ranging from less than 0.01 lbs/hour to 0.02 lbs/hour for the hourly limits and from less than 0.01 tons/year to 0.06 tons/year (as a cap for three different tanks) for the annual limits. The MAERT additionally lists hourly and annual benzene limits for routine emissions from several of the tanks, ranging from 0.01 lbs/hour to 0.20 lbs/hour for the hourly limits and from 0.01 tons/year to 1.13 tons/year (as a cap for three different tanks) for the annual limits. And, for tank 90FB506, the MAERT lists routine emission limits for ammonia of less than 0.01 lbs/hour and less than 0.01 tons/year. Further, the MAERT lists extremely high hourly limits for "Tank MSS Activities" of 529.27 lbs/hour VOCs and 8.07 lbs/hour benzene.[39] The Draft Permit and Permit 129444 cannot ensure compliance with any of these VOC, hydrogen sulfide, benzene, or ammonia limits for routine emissions or MSS periods.

In addition, Permit 129444's MAERT lists the following limits for "Thermal Oxidizer Controlled MSS Activities" at the tanks (also referred to as "TO-MSS" in the permit—*see* MAERT, Att. A to Permit 129444 ("MSS Activity Summary")): 5.21 lbs/hour and 2.42 tons/year VOCs; 6.12 lbs/hr and 0.25 tons/year NOx; 0.01 lbs/hour and less than 0.01 tons/year SO2; 5.14 lbs/hour and 0.22 tons/year CO; 0.04 lbs/hour and 0.02 tons/year benzene; and 0.01 lbs/hour and less than 0.01 tons/year for PM2.5, PM10, hydrogen sulfide, and ammonia. The Draft Permit and Permit 129444 also cannot ensure compliance with any of these NOx, SO2, CO, hydrogen sulfide, benzene, particulate matter, and ammonia limits for "Thermal Oxidizer Controlled MSS Activities" at the tanks.

The CAA provides that Title V permits must include monitoring and reporting requirements sufficient to assure compliance with all applicable emission limits and standards. 42 U.S.C. § 7661c(c), 7661c(a); 40 C.F.R. § 70.6(a)(3)(i)(A). If applicable requirements themselves contain no periodic monitoring, EPA's regulations require permitting authorities to add "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R. § 70.6(a)(3)(i)(B); 30 Tex. Admin. Code § 122.142(c); *see In the Matter of Mettiki Coal, LLC*, Order on Pet. No. III-2013-1 (Sept. 26, 2014)("*Mettiki* Order") at 7. The D.C. Circuit has also acknowledged that the mere existence of periodic monitoring requirements may not be sufficient. *Sierra Club*, 536 F.3d at 676–77. For example, the court noted that annual testing is unlikely to assure compliance with a daily emission limit. *Id.* at 675. In other words, the frequency of monitoring methods must bear a relationship to the averaging time used to determine compliance. 40 C.F.R. § 70.6(c)(1) of EPA's regulations acts as a "gap filler" and requires that permit writers must supplement a periodic monitoring requirement inadequate to the task of assuring compliance. *Sierra Club*, 536 F.3d at 675. In addition to including permit terms sufficient to satisfy EPA's Title V monitoring requirements, permitting authorities must include a rationale for the

monitoring requirements selected that is clear and documented in the permit record. *Mettiki* Order at 7–8 (citing 40 C.F.R. § 70.7(a)(5)).

EPA has objected to Title V permits for failing to assure compliance with applicable emission limits where the relevant Title V permit does not clearly identify the calculation methods used to comply with those limits and instead only refers to calculation methods from some unspecified permit application. *See, e.g.*, *In the Matter of Gulf Coast Growth Ventures, LLC*, Order on Petition No. VI-2021-3 (May 12, 2022) ("*Gulf Coast* Order") at 15–20. "Questions concerning whether a title V permit contains sufficient monitoring—or, more precisely, whether monitoring or emission calculation methodologies contained in another document (*e.g.*, a permit application) are properly incorporated by reference into a title V permit—are core title V issues." *Id.* at 18.

EPA has explained:

> Information that would be . . . incorporated by reference into the issued permit must first be currently applicable and available to the permitting authority and public. . . . Referenced documents must also be specifically 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 which document is being referenced. Citations, cross references, and incorporations by reference must be detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation. Where only a portion of the referenced document applies, applications and permits must specify the relevant section of the document. Any information cited, cross referenced, or incorporated by reference must be accompanied by a description or identification of the current activities, requirements, or equipment for which the information is referenced.

Id. (quoting *White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program*, 37 (Mar. 5, 1996)); *see White Paper Number 2* at 36–41 (explaining how incorporation by reference can satisfy the requirements of CAA Section 504).

Adequate monitoring for these tanks is especially important given Harris County's nonattainment status for ozone (for which VOCs are a precursor)[41] and because, as shown by Permit 129444's extremely high hourly VOC and benzene limits for "Tank MSS Activities," tank emissions at the tank farm can rapidly spike to levels that would negatively affect air quality.

TCEQ guidance has also made clear that tank emissions can be quite significant and affect air quality. A December 5, 2006 TCEQ memo from Dan Eden titled "Air Emissions During Tank Floating Roof Landings" explained the following regarding tank floating roof landings: "If the liquid level in [a tank with a floating roof] is lowered to below the level of the floating roof support legs, the roof will rest (land) on the legs, or supports, rather than on the liquid, severely limiting the control efficiency of the floating roof. Air emissions from tanks are greater while the tank roof is landed and remain so until the tank is either completely emptied and purged of organics or the tank is refilled, and the roof is again floating." That same memo also emphasizes that underreporting emissions from roof landings is "of particular importance" in the Houston region because "it may play a role in demonstrating attainment."[43]

Here, the Draft Permit itself contains no monitoring or emission calculation provisions for the tank MAERT limits from Permit 129444. Permit 129444 provides that, for purposes of complying with the MAERT VOC, hydrogen sulfide, benzene, and ammonia limits for the various tanks, Valero is to: (1) "calculate[]" at least routine emissions "using the methods that were used to determine the MAERT limits in the permit application," Special Condition 10.F;[44] (2) "estimate[]" MSS emissions "using the methods identified in the permit application, consistent with good engineering practice," Special Condition 11.E; (3) "calculate[]" emissions from roof landings "using the methods described in Section 7.1.3.2 of AP-42 'Compilation of Air Pollution Emission Factors, Chapter 7 - Storage of Organic Liquids' dated November 2006 and the permit application," Special Condition 12.F.4; and (4) apparently for at least annual MSS emissions, "perform[] monthly calculations as required in Special

Condition No. 12.F," MAERT Footnote 5. The Draft Permit and Permit 129444 apparently rely on the above MSS and roof-landing provisions for calculation of NOx, SO2, CO, hydrogen sulfide, benzene, particulate matter, and ammonia emissions during "Thermal Oxidizer Controlled MSS Activities" at the tanks, since neither the Draft Permit nor Permit 129444 discusses how to calculate emissions during such activities.

These provisions cannot ensure compliance with the tanks' hourly and annual VOC, hydrogen sulfide, benzene, and ammonia limits from Permit 129444's MAERT—for either routine or MSS emissions—or the NOx, SO2, CO, hydrogen sulfide, benzene, particulate matter, and ammonia limits for "Thermal Oxidizer Controlled MSS Activities" for the following reasons:

First, the Draft Permit and Permit 129444 fail to sufficiently identify the relevant emission calculation and monitoring methods. For both routine emissions and MSS emissions, Permit 129444 (at Special Conditions 10.F and 11.E) merely mentions calculation methods from unspecified "permit applications." Permit 129444 does not identify the calculation methods from the "permit applications" or identify which "permit applications" contains the calculation methods. Special Condition 10.F adds: "Sample calculations from the application shall be attached to a copy of this permit at the plant site." Such vague references to "permit applications" cannot ensure compliance with the tanks' hourly and annual VOC, hydrogen sulfide, benzene, and ammonia limits from Permit 129444's MAERT— or the hourly and annual NOx, SO2, CO, hydrogen sulfide, benzene, particulate matter, and ammonia limits for "Thermal Oxidizer Controlled MSS Activities." *See In the Matter of Gulf Coast Growth Ventures* at 19-20. These references to unspecified permit applications are especially insufficient because the tanks listed in Permit 129444 were previously covered by five different NSR permits, all with presumably at least one associated application. Permit 129444's MAERT lists limits for 27 tanks, and applications for those various tanks could list different emission calculation methods. Further, Valero routinely revises its NSR permits; permit revision applications could also list different relevant emission calculation methods. It is unreasonable and thwarts the purpose of Title V to require the public to comb through multiple permit applications to find the relevant calculation methods. These calculation methods can and should be specifically identified in the Title V Permit or Permit 129444.

Similarly, the Draft Permit cannot ensure compliance with the VOC and benzene MSS limits for the tanks for the additional reason that Permit 129444 identifies multiple, possibly conflicting methods to calculate MSS emissions. Permit 129444 (at Special Conditions 11.E and 12.F.4) mentions using unspecified calculation methods from unidentified permit applications and, for roof landings, both the "methods described in Section 7.1.3.2 of AP-42 'Compilation of Air Pollution Emission Factors, Chapter 7 - Storage of Organic Liquids' dated November 2006 and the permit application" (emphasis added). Thus, for roof landings, it is entirely unclear whether AP-42 methods or the permit application methods are to be used. And, to make matters worse, footnote 5 to the MAERT provides that, for at least annual MSS emissions, Valero is to "perform[] monthly calculations as required in Special Condition No. 12.F"—the same condition that mentions both AP-42 and permit application methods. Thus, to calculate non-roof-landing MSS emissions from the tanks, it is also entirely unclear whether Valero is to use calculation methods from some mystery permit applications or AP-42 methods.

In sum, it is impossible for the public or regulators to determine how emissions are to be calculated under the varying circumstances of tank operations. *See In the Matter of Shell Chemical LP and Shell Oil Co., Deer Park Chemical Plant and Refinery*, Order on Petition Nos. IV-2014- 04 and IV-2014-05 (Sept. 24, 2015) ("*Deer Park* Order"), ("[T]he Petitioners demonstrated that the record, including the permit and the [response to comments, does not explain what monitoring methods assure compliance with VOC emission limits for storage tanks").

Second, to the extent Valero is actually expected to use it to calculate short-term MSS emissions, "Section 7.1.3.2 of AP-42 'Compilation of Air Pollution Emission Factors, Chapter 7 - Storage of Organic Liquids' dated November 2006"—which is listed as a potential method for calculating MSS emissions during roof landings and other MSS periods (Permit 129444 Special Condition 12.F.4, MAERT Footnote 5)—cannot ensure compliance with the hourly tank MSS limits or annual limits (covering both MSS and routine emissions) because that 2006 version of AP-42 does

not include any method for calculating short-term emissions from tanks; it only includes methods for calculating annual emissions. *See* Ex. 8, Oct. 2019 Decl. of Dr. Ranajit Sahu at ¶21. EPA recently proposed changes to AP-42 to account for short-term emissions from tanks for the first time, but the 2006 version of AP-42 does not include these proposed changes. *Id.* Of course, the 2006 methods for determining annual tank emissions simply cannot accurately determine emissions during short-term MSS periods, when emissions can rapidly spike. *Id.*

In particular, the MSS limit for VOCs (529.27 lbs/hr, *see* Permit 129444 MAERT at "Tank MSS Activities") shows that the tanks currently listed in permit 129444's MAERT can emit at a rate over 100 times more than the highest hourly limit for an individual tank's "routine" emissions listed in the MAERT (4.76 lbs/hour)—and more than 1,000 times the lowest such limit (0.49 lbs/hour). Put another way, Permit 129444's highest annual limit for VOCs from an individual tank is 16.13 tons/year. If that tank emitted at the MSS rate of 529.27 lbs/hour for just 61 hours, it would exceed its annual limit. Further, one of the tanks listed in 129444's MAERT has an annual VOC limit of 0.12 tons/year (or 240 lbs/year). For this tank, operating at the MSS rate for just half an hour would result in an exceedance of its annual limit. Thus, emissions from the tanks could easily vary by a degree that would cause an exceedance of the applicable limits and that variability should be accounted for in any method of calculating the tank emissions here. *See* Ex. 8, Oct. 2019 Sahu Decl. ¶¶ 22-23. The 2006 version of AP-42, however, cannot account for this short-term variability since the 2006 calculation methods do not estimate any short-term or MSS emissions. *See id.* ¶ 23.

Third, the permits' calculation methods for estimating tank emissions are wholly inadequate because Permit 129444 only requires Valero to inspect floating roof tank components annually or less frequently, with the exception of occasions on which tanks are emptied or degassed (*see* Permit 129444 Special Condition 10.B, requiring inspections and seal gap measurements in keeping with 40 C.F.R. 60.113b), and such inspections are not frequent enough to assure that each tank seal is properly maintained. *See* Ex. 8, Oct. 2019 Sahu Decl. ¶ 25.[47] A typical floating roof tank has numerous seals, including rim seals (primary and secondary) and seals at each roof penetration. Ensuring that each of these seals is functioning properly is not a trivial task. Unspecified and vague requirements to inspect tanks annually, with no accompanying and detailed checklist (tailored for each tank) provides no assurance at all that each potential seal will be inspected. Even small gaps in seals—such as due to distortion of the tank itself or the floating roof, which can happen with age, geological settling, product expansion, precipitation accumulation on the roof pan, and expansion due to variations in ambient conditions such as temperature, high winds, hurricanes and the like—can result in large fugitive emissions. Thus, the permit's vague inspection requirement does nothing to assure good maintenance of each location where fugitive emissions can escape from the tanks. Compounding this problem, § 60.113b only generally requires that problems with seals and other maintenance issues be addressed within 45 days of discovery (and even allows for a 30-day extension on top of that). 40 C.F.R. §60.113b(a)(2), (b)(4). Failing to address these problems for 45 or 75 days can lead to very large quantities of fugitive VOC emissions. *Id.*

In addition, visual inspections are simply inadequate to detect the small gaps in seals that can lead to large tank emissions. Ex. 8, Oct. 2019 Sahu Decl. ¶26. Optical imaging (such as FLIR cameras) is necessary to detect these small gaps in tank seals. *Id.* Thus, Valero should be required to use FLIR or similar optical imaging on a periodic basis, no less than quarterly, to detect leaks in the tanks. *Id.*

To remedy the above problems and ensure compliance with the hourly and annual limits for the tanks from permit 2501A's MAERT, TCEQ should revise the Draft Permit and/or Permit 129444 to:

- make the emission calculation methods used for calculating the tanks' emissions clear in the permit and available for comment for both routine and MSS emissions.

- require (at least) use of the methodology proposed in the revisions to the 2006 AP-42 methods for short-term emissions from the tanks if Valero is currently required to use 2006 AP-42 emission calculation methods.

- require inspections of tank seals using FLIR or similar optical imaging methods at least quarterly and require any gaps in seals to be remedied within three days.

Additional permit changes are likely needed. For example, the Draft Permit likely must require collection of data to confirm each parameter that is an input or assumption for Valero's calculation method(s), as well as direct verification of emissions through methods such as DIAL so that any AP-42-based methods can be verified/calibrated. Because the Draft Permit does not clearly state which monitoring requirements and methods are required to calculate tank emissions, Commenters cannot determine whether these additional changes are definitely needed. Thus, TCEQ should make the emission calculation and monitoring methods that Valero is required to use available for public comment and revise the permit in response to comments on those methods.

The 2017 tank releases in the wake of Hurricane Harvey showed the consequences of inadequate monitoring and lack of compliance. In order to avoid similar disasters from occurring again, the Draft Permit must include adequate monitoring to ensure compliance with VOC emission limits. The release started on August 27, 2017, and continued for over 440 hours, more than 18 days.[48] Floating tank roofs at Valero and other facilities collapsed, which led to the release of huge amounts of toxic chemicals directly into the air. During and after Hurricane Harvey, Valero was one of the top 10 "plants that released the most storm-related pollution in [the] Houston area." Such emissions were likely underreported due to the lack of air monitoring during the storm and reliance primarily on facility reporting.

Indeed, the investigation report from the Commission showed substantial emissions: a total release of 240,050.93 pounds of VOCs, including a number of toxic air pollutants, and an additional 92,266 lbs of unspeciated VOCs (which also contribute to ozone formation). The investigation showed that benzene and methylcyclopentane emissions exceeded the state's health reference values, or "short-term health-based air monitoring comparison values (AMCV)." This investigation report also showed that "this incident is considered a high priority violation (HPV)." Investigators concluded that better inspections and "the performance of startup, shutdown, or maintenance activities could have prevented this incident," and found that "[i]ssues identified during the various inspections . . . are part of the pattern of poor maintenance activities concerning the Tank T-003." During the toxic release, some of Commenters' members and constituents breathed air that had odors and experienced irritation of the eyes, nose, throat, and skin.

Valero Energy Partners and TCEQ referred Enforcement Case 55902 to the Texas Attorney General. In January 2020, the State of Texas initiated a civil suit against Valero Energy Partners, LP to enforce the Texas Clean Air Act for unauthorized emissions events that occurred at the Valero Houston Refinery. *See* Ex. 10, Original Petition by State of Texas against Valero Energy Partners, LP, No. D-1-GN-20-000516 in the 459th Judicial District of Travis County, Texas. Specifically, the petition complains of the "poor operating condition" of Tank 3, used to store crude oil delivered to the Valero Houston Refinery, which Valero operates under PBR registration 106017. *See* Ex. 10 at 6. The petition further alleges that there had been no internal operating inspection of Tank 3 in over 20 years in violation of American Petroleum Institute 653 standards. *See* Ex. 10 at 6. The petition then details the specific conditions that contributed to Tank 3's failures during Hurricane Harvey, releasing 315 barrels of crude oil into a secondary containment area between August 26-27, 2017. *See* Ex. 9 at 6-8. Valero self-reported 240,050 pounds of VOCs emitted from Tank 3 during this emissions event which lasted from August 27, 2017 to September 14, 2017 (a duration of 440 hours and 30 minutes, or 19 days). *See* Ex. 10 at 8. In late 2020, Texas requested entry of an agreed judgment to resolve the civil suit, assessing a penalty of $245,000. As the petition details, the serious release from Tank 3 during Hurricane Harvey demonstrates the need for TCEQ to add tank monitoring in this Draft Permit, including requirements for internal inspections pursuant to American Petroleum Institute 653 standards, to assure compliance with emission limits and to prevent future unauthorized releases of pollution due to poor tank maintenance. 42 U.S.C. § 7661c(a), (c).

The monitoring provisions should incorporate EPA's findings on effective tank monitoring methods. EPA concluded that lower explosive limit ("LEL") monitoring can both reduce hazardous air pollutant and other VOC emissions from gasoline storage tanks and assure compliance with emission standards. EPA has found that LEL monitoring "enhance[s] . . .inspections and more

readily identif[ies] malfunctioning floating roofs." Gasoline storage tanks that use internal floating roofs appear to be similar to the tanks covered by the Draft Permit. The Commission should consider requiring the use of LEL monitoring, along with other monitoring, at the tanks in this Draft Permit to ensure the permit complies with Title V.

RESPONSE TO COMMENT 4: The ED respectfully notes under the two-permit system in Texas, only new source review (NSR) permits authorize air emissions under 30 TAC Chapter 116. The Proposed Permit issued under 30 TAC Chapter 122 (or Title V program) does not authorize any emission limits or changes to emission limits for various emission sources.

Tank Units

The ED respectfully disagrees with the Commenters assertion that Title V permit O3784 and NSR permit 129444 do not include adequate monitoring, reporting, recordkeeping, or emission calculation requirements to ensure compliance with hourly and annual limits for VOCs and other pollutants from the tanks covered by permit 129444, for either routine emissions or emissions during planned 'MSS' for the following reasons.

As documented in the applicable requirements summary (ARS) table (see proposed permit at pages 21-64), the proposed permit includes extensive monitoring, reporting, recordkeeping and testing (MRRT) requirements for the tank units subject to requirements under 30 TAC Chapter 115, Storage of VOCs, 40 CFR Part 60, Subpart Kb, 40 CFR Part 63, Subpart CC. The MRRT requirements listed in the ARS are sufficient to demonstrate compliance with applicable state and federal regulations for VOC emissions.

Some tank units, e.g., 91FB919 that are listed in the ARS and that have been authorized under a permit by rule, e.g., 106.472 (please see the New Source Review Authorization References by Emissions Unit table in the proposed permit at pages 85-86), include adequate monitoring, reporting, recordkeeping, or emission calculation requirements to ensure compliance with hourly and annual limits for VOCs and other pollutants from the tanks in Table D of the OP-PBRSUP table dated November 29, 2021. In addition, the tank units like 91FB919 are also subject to MRRT requirements under 30 TAC Chapter 115, Storage of VOCs, and 40 CFR Part 63, Subpart CC.

Some tank units, e.g., 90FB002, 90FB004, 91FB915 and others that are listed in the ARS and that have been authorized under a registered PBR, e.g., 106017, 94967, 86878, 107049 and others (please see the New Source Review Authorization References by Emissions Unit table in the proposed permit at pages 85-86), include adequate monitoring, reporting, recordkeeping, or emission calculation requirements to ensure compliance with hourly and annual limits for VOCs and other pollutants from the tanks in OP-PBRSUP form dated November 29, 2021and in the application representation information for the registered PBR.

Some tank units, e.g., 90FB006 have no applicable requirements under NSPS K or Kb federal regulations and have been granted a permit shield from applicability under 40 CFR Part 60, Subpart K or Kb based on application representation information.

The monitoring for the tank units is also stated in the NSR permit 129444 that is incorporated by reference in the proposed permit. Specifically, special conditions 3, 6, 7, 8, 9, 10.A through 10.F, 12.A through 12.F, 14, and 20, lists the MRRT requirements and other conditions for the tanks that are sufficient to demonstrate compliance with the applicable requirements. Attachment A of the NSR permit 129444 summarizes MSS activity for the tanks. The ED respectfully notes that MSS activities were authorized under NSR permit 129444, which was initially issued on 02/17/2015 (project 22750).

As noted in NSR permit 129444, Special Condition 10.E, the permit holder is required to keep records of storage tank parameters for all tanks such as identification number, control method used, tank capacity in gallons, name of the material stored, VOC molecular weight of material, VOC monthly average temperature in degrees Fahrenheit, VOC vapor pressure of material at the monthly

average material temperature in psia, VOC material flow throughput for the previous month and year-to-date.

Application representation for NSR permit 129444 (see WCC content ID 5407761), documents the monitoring requirements and short-term and annual emissions calculation methodology for the tanks. Short term (hourly) and annual emission rates and calculations for VOC and other pollutants emissions are documented in special condition 10.F of NSR permit 129444. The annual emission rates are based on monthly totals that are summed on a rolling 12-month basis. Monitoring for the tanks include calculating the average temperature, average material vapor pressure and throughput that are recorded on a monthly basis. As described in the application representation for NSR permit 129444, tank emission calculations are calculated using (a) AP-42 Compilation of Air Pollutant Emission Factors, Chapter 7 - Liquid Storage Tanks" and (b) the guidance contained on the webpage entitled, "NSR Guidance for Storage Tanks," located at https://www.tceq.texas.gov/permitting/air/guidance/newsourcere view/tanks/nsr_fac_tanks.html."

Fugitive Units

In regard to inclusion of sufficient MRRT requirements for fugitive units to demonstrate compliance with applicable VOC emissions, the ED respectfully disagrees with the Commenters assertion that Draft Permit's Monitoring Requirements Cannot Ensure Compliance with Hourly and Annual VOC Limits for Fugitive Emissions for the following reasons.

As documented in the applicable requirements summary (ARS) table (see proposed permit at pages 64-79), the proposed permit includes extensive monitoring, reporting, recordkeeping and testing (MRRT) requirements for fugitive units subject to requirements under 30 TAC Chapter 115 Subchapter D for petroleum refining and Subchapter H for HRVOC's, and 40 CFR Part 63, Subpart CC. The MRRT requirements listed in the ARS are sufficient to demonstrate compliance with applicable state and federal regulations for VOC emissions.

The ED also notes that monitoring requirements for fugitive units are also stated in NSR Permit 129444, which is incorporated by reference in the Proposed Permit. Specifically, special conditions 19.A through 19.L lists the MRRT requirements for the fugitive emissions that are sufficient to demonstrate compliance with the applicable requirements.

Monitoring for fugitive units authorized under PBR registration number 162210 is also documented in the OP-PBRSUP dated November 29, 2021.

Short term (hourly) emission rates for VOC are based on component count, correlation equations, and EPA industry-appropriate emission factors as represented in the NSR permit application. The sum of the calculated hourly emission rate is used to calculate monthly emission rate and the annual emission rates are based on monthly totals that are summed on a rolling 12-month basis.

Emission rates for VOCs are calculated/determined using the methodology summarized in the NSR permit application representation including using stack testing data, manufacturer's specifications, applicable work practice standard, engineering estimates, mass balances, TCEQ guidance, and EPA's Compilation of Air Emission Factors (AP-42). These approaches and emission factors were determined to be correct and applicable by TCEQ staff during the technical review based on standard industry air permitting practices for processing NSR permit 129444 and PBR registrations (listed above) projects (and not during Title V permit review). The Applicant represented the appropriate methodologies to control and minimize emissions and utilized corresponding control efficiencies when calculating the emission rates. As provided in 30 TAC § 116.116(a), the Applicant is bound by this representation, including the represented performance characteristics of the control equipment. In addition, the permit holder must operate within the limits of the permit, including the emission limits as listed in the MAERT.

With regard to the Commenter's assertion about insufficiency of quarterly monitoring frequency for fugitives, the regulation that stipulates the leak definition typically also prescribe the monitoring frequency. The monitoring requirements according to the 28VHP LDAR programs have been demonstrated to meet BACT based on the monitoring frequency and leak definitions that are

specified for this LDAR program. Hourly leak inspections are not required for this LDAR program, which has been approved as BACT for numerous sites within Texas. In regard to the Commenter's assertion about using optical gas imaging (OGI) technology, the ED respectfully notes that this requirement is not supported as a BACT or by any applicable state or federal regulation to demonstrate compliance.

Validation and stability of emission factors used in the emission calculations may be ascertained by the public by various methods such as use of MRRT (which assists in controlling the performance and reducing variances of the manufacturing process), analyzing PCC deviation reports for the unit over a time period of interest, conducting stack testing per EPA approved procedures, analyzing emissions inventory reports submitted by the site and determining impact (if any) of recent NSR amendment projects that may affect the units performance. TCEQ is not aware of any facts that would require any other additional monitoring to further validate flare unit related emission factors beyond that which has consistently been required under federal law and Texas permits.

The ED respectfully notes that emission calculation methodologies represented by the applicant in an NSR permit application must be consistent with the emission calculation methodologies used by the applicant to report emissions inventory data to TCEQ. Chapter 4 of the TCEQ's 2022 emissions inventory guidelines document describes the acceptable emissions determination methodologies.

TCEQ's Office of Compliance and Enforcement (OCE) enforces compliance with state's environmental laws to address any non-compliance and enforcement issues. In addition to providing online access to air permit records, TCEQ's CFR Online website also provides online 24/7 access to the public for all compliance and enforcement (OCE) records pertaining to a site (e.g., Valero Refining having Regulated Entity Number: RN109290692) by selecting OCE/Air Compliance Record Series to search for the OCE records that may include (but not limited to) the following report categories: incident, investigation, audit, compliance, enforcement, certification, deviation, notification, stack test, semi-annual and annual, and others.

The Title V permit holder is required to file a permit compliance certification (PCC) report annually to certify compliance with the applicable requirements listed in the FOP O3784 including emission limitations and standards. In addition, EPA requires permit holders to electronically file reports and emissions data for the fugitive units required under 40 CFR Part 63, Subpart CC, via Electronic Reporting of Air Emissions, Compliance and Emissions Data Reporting Interface (CEDRI).

Finally, as described above, emission rates for VOCs (and other pollutants) listed in MAERT are calculated/determined using the methodology summarized in the NSR permit application representation including using stack testing data, manufacturer's specifications, applicable work practice standard, engineering estimates, mass balances, TCEQ guidance, and EPA's Compilation of Air Emission Factors (AP-42). These approaches and emission factors were determined to be correct and applicable by TCEQ staff during the technical review based on standard industry air permitting practices for processing NSR permit 129444 projects (and not during Title V permit review). The Applicant represented the appropriate methodologies to control and minimize emissions and utilized corresponding control efficiencies when calculating the emission rates. As provided in 30 TAC § 116.116(a), the Applicant is bound by this representation, including the represented performance characteristics of the control equipment. In addition, the permit holder must operate within the limits of the permit, including the emission limits as listed in the MAERT.

Validation and stability of emission factors used in the emission calculations may be ascertained by the public by various methods such as use of MRRT (which assists in controlling the performance and reducing variances of the manufacturing process), analyzing PCC deviation reports for the unit over a time period of interest, conducting stack testing per EPA approved procedures, analyzing emissions inventory reports submitted by the site and determining impact (if any) of recent NSR amendment projects that may affect the units performance. TCEQ is not aware of any facts that would require any other additional monitoring beyond that which has consistently been required under federal law and Texas permits.

The ED respectfully notes that emission calculation methodologies represented by the applicant in an NSR permit application must be consistent with the emission calculation methodologies used by the applicant to report emissions inventory data to TCEQ. Chapter 4 of the TCEQ's 2022 emissions inventory guidelines document describes the acceptable emissions determination methodologies.

TCEQ's Office of Compliance and Enforcement (OCE) enforces compliance with state's environmental laws to address any non-compliance and enforcement issues. In addition to providing online access to air permit records, TCEQ's CFR Online website also provides online 24x7 access to the public for all compliance and enforcement (OCE) records pertaining to a site (e.g., Valero Refining having Regulated Entity Number: RN109290692) by selecting OCE/Air Compliance Record Series to search for the OCE records that may include (but not limited to) the following report categories: incident, investigation, audit, compliance, enforcement, certification, deviation, notification, stack test, semi-annual and annual, and others.

The Title V permit holder is required to file a permit compliance certification (PCC) report annually to certify compliance with the applicable requirements listed in the FOP O3784 including emission limitations and standards. In addition, EPA requires permit holders to electronically file reports and emissions data for some of the tank units required under 40 CFR Part 63, Subpart CC, via Electronic Reporting of Air Emissions, Compliance and Emissions Data Reporting Interface (CEDRI).

COMMENT 5: (T.E.J.A.S) Insufficient monitoring to ensure compliance with emission limits for stationary vents permitted under NSR Permit 129444.

B. *The Draft Permit must require more frequent and more reliable monitoring for stationary vents.*

To assure compliance with "all applicable requirements" of the Clean Air Act, the Draft Permit must include more frequent and more reliable monitoring for stationary vents. Its failure to do so violates 40 C.F.R. § 70.6(c)(1) and 42 U.S.C. §§ 7661c(a), and 7661c(c). If applicable requirements themselves contain no periodic monitoring, EPA's regulations require permitting authorities to add "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R.§ 70.6(a)(3)(i)(B); 30 Tex. Admin. Code § 122.142(c); *see Mettiki* Order at 7–8. TCEQ must supplement the Draft Permit with required monitoring, reporting, recordkeeping requirements under 40 C.F.R. § 70.6(c)(1); *see, e.g.*, *Sierra Club*, 536 F.3d at 677.

The D.C. Circuit has acknowledged that the mere existence of periodic monitoring requirements may not be sufficient. *Sierra Club*, 536 F.3d at 676-77. For example, the court noted that annual testing is unlikely to assure compliance with a daily emission limit. *Id.* at 675. In other words, the frequency of monitoring methods must bear a relationship to the averaging time used to determine compliance. 40 C.F.R. § 70.6(c)(1) of EPA's regulations acts as a "gap filler" and requires that permit writers must supplement a periodic monitoring requirement inadequate to the task of assuring compliance. *Sierra Club*, 536 F.3d at 675. In addition to including permit terms sufficient to satisfy EPA's Title V monitoring requirements, permitting authorities must include a rationale for the monitoring requirements selected that is clear and documented in the permit record. *Mettiki* Order at 78 (citing 40 C.F.R. § 70.7(a)(5)).

The Draft Permit fails to include sufficient monitoring to assure compliance with the standard applicable to stationary vents. The Draft Permit requires only: "An observation of stationary vents from emission units in operation shall be conducted at least once during each calendar quarter unless the emission unit is not operating for the entire quarter." Special Condition 3.A.iv.1. Such monitoring is too infrequent to assure compliance with six-minute opacity limits in 30 Texas Admin. Code §§ 111.111(a)(1)(B), (a)(1)(F)(ii), (iii), or (iv) (which are incorporated into Special Condition 3.A). This frequency of monitoring does not bear a relationship to the averaging time used to determine compliance vents. *See Sierra Club*, 536 F.3d at 675–77. TCEQ additionally did not meet its burden of providing a rational justification for the frequency of these monitoring requirements. *Mettiki* Order at

7–8 (citing 40 C.F.R. § 70.7(a)(5)).

TCEQ's statement regarding this infrequent monitoring fails to show the monitoring provisions satisfy Title V. The Statement of Basis states: "It was determined that continuous monitoring for these sources is not warranted as there would be very limited environmental benefit in continuously monitoring sources that have a low potential to produce visible emissions. Therefore, the TCEQ set the visible observation monitoring frequency for these sources to once per calendar quarter." Draft Permit O3784, Statement of Basis at 4. TCEQ provided no explanation or evidence to support this conclusion. Thus, TCEQ must add "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R. § 70.6(a)(3)(i)(B); 30 Tex. Admin. Code § 122.142(c).

In addition, the Draft Permit uses an outdated and less reliable method to monitor for opacity from vents. Special Condition 3.B (requiring the use of EPA Method 9). Method 9 is insufficient to monitor for opacity as it relies on a visual smoke observation of an individual person, creates no record, and cannot be checked or independently verified. Method 9 is an outdated approach that is subject to human error and potential bias. Further, Method 9 observations require ideal weather conditions, cannot be conducted at night, and cannot achieve accurate results on cloudy or rainy days—even though the opacity limit for the stationary vents applies at all times, including at night and during cloudy and raining conditions.

In Title V orders, EPA has found that infrequent Method 9 observations cannot assure compliance with continuous opacity limits. For example, EPA found that a Title V permit record failed to sufficiently support the use of weekly Method 9 observations to assure compliance with a continuous opacity limit. *In the Matter of EME Homer City Generation L.P. Indiana County, Pennsylvania*, Order on Petitions III-2012-06, III-2012-07, and III-2013-02 (June 30, 2014) at 44. Similarly, EPA found that quarterly and biannual Method 9 observations are inadequate to assure compliance with opacity limits. *See In the Matter of Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Order on Petition No. VIII-00-1 (Nov. 16, 2000) at 19 (quarterly observations); *In the Matter of Tennessee Valley Authority, Bull Run, Clinton, Tennessee*, Order on Petition IV-2015-14 (Nov. 10, 2016) ("*Bull Run* Order") at 11 (biannual observations). In the *Bull Run* Order, EPA found specifically that the permitting agency "did not explain how twice-yearly Method 9 observations assure compliance with an opacity limit of 20 percent averaged over a six-minute period except for one 6-minute period per 1 hour of not more than 40 percent." *Bull Run* Order at 11-12.

Digital Camera Opacity Technique ("DCOT"), on the other hand, achieves more reliable results and creates a record that can assist regulators, community members, and facilities in assuring compliance with opacity requirements and reducing emissions from opacity-creating processes. EPA has certified DCOT as a valid test method for opacity and approved its use in a federal air toxics rule for an industrial air pollution source category.[58] Using the camera creates a record in which "field data is electronically acquired where possible, images of the visible emission, as well as, their opacity readings are stored, along with the observers position relative to the visible emission, direction of view, distance from the source, weather, and the position of the sun at the date/time/place of the observation." Because DCOT does not require the deployment of trained observers—nor the need to train observers, to begin with—using DCOT to determine opacity can also save resources. Use of DCOT can also provide community members with valuable air quality information.

In the proposed permit, TCEQ should require the use of DCOT for opacity measurements. Additionally, to allow community members access to this valuable information, TCEQ should require opacity determinations to be documented on a form, such as DCOT's electronic form, and to be provided on the Internet in real time, for public review.

RESPONSE TO COMMENT 5: The ED respectfully disagrees with the Commenter's assertion that the Draft Permit fails to include sufficient monitoring to assure compliance with the standard applicable to stationary vents.

The TCEQ rules in 30 TAC Chapter 111 set forth the requirements for visible emissions and particulate

matter. As stated in the Statement of Basis (SOB) (which is part of the permit record), the site includes stationary vents constructed after January 31, 1972 and with a flowrate less than 100,000 actual cubic feet per minute (acfm) which are limited, over a six-minute average, to 20% opacity averaged over a six-minute period as required by 30 TAC § 111.111(a)(1)(B). As a site may have a large number of stationary vents that fall into this category, they are not required to be listed individually in the permit's Applicable Requirement Summary. This is consistent with EPA's White Paper for Streamlined Development of Part 70 Permit Applications, July 10, 1995, which states that requirements that apply identically to emission units at a site can be treated on a generic basis such as source-wide opacity limits.

Periodic monitoring is specified in Special Term and Condition 3 for stationary vents, which are subject to 30 TAC § 111.111(a)(1)(B) to verify compliance with the 20% opacity limit. These vents are not expected to produce visible emissions during normal operation. As for the frequency of visible emissions observations to demonstrate compliance with 30 TAC § 111.111(a)(1)(B), opacity requirements, the TCEQ evaluated the probability of these sources violating the opacity standards and determined that there is a very low potential that an opacity standard would be exceeded. It was determined by TCEQ that continuous monitoring for these sources is not warranted as there would be very limited environmental benefit in continuously monitoring sources that have a low potential to produce visible emissions. Therefore, the TCEQ set the visible observation monitoring frequency for these sources to once per calendar quarter.

In the event that visible emissions are detected, either through the quarterly observation by company personnel or other credible evidence, such as observations by the public, the permit holder shall either report a deviation or perform a Test Method 9 observation to determine the opacity consistent with the 6-minute averaging time specified in 30 TAC § 111.111(a)(1)(B). An additional provision is included to monitor combustion sources more frequently than quarterly if alternate fuels are burned for periods greater than 24 consecutive hours. This will address possible emissions that may arise when switching fuel types.

In regard to the use of Digital Camera Opacity Technique ("DCOT") to demonstrate compliance with opacity measurements, the ED respectfully notes that DCOT or similar other optical gas imaging (OGI) technology is not supported as a BACT or as an applicable requirement under any applicable state or federal regulation to demonstrate compliance with opacity standards that may apply to stationary vents.

COMMENT 6: (T.E.J.A.S) Unlawful relaxation of emission limits during MSS for tanks permitted under NSR Permit 129444.

II. *TCEQ must ensure that the Draft Permit does not unlawfully relax major new source review limits during startup, shutdown, and maintenance periods.*

To the extent the Draft Title V Permit incorporates provisions that have relaxed major New Source Review ("NSR") or Prevention of Significant Deterioration ("PSD") limits during startup, shutdown, and maintenance periods ("MSS") without meeting the requirements for revising those limits, the permit fails to ensure compliance with those limits, in violation of 40 C.F.R. §§ 70.1(b), 70.6(a)(1), 70.7(a)(1)(iv), and 42 U.S.C. § 7661c(a). More specifically, any major NSR/PSD limits that apply to the tanks at issue here are applicable requirements that Valero's Title V permit must assure compliance with. *See* 40 C.F.R. § 70.2 (defining "applicable requirement" to 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"). If the MSS provisions incorporated by the Draft Title V Permit relax major NSR or PSD limits and if TCEQ did not follow the proper procedures for revising these limits, then the Title V permit cannot ensure compliance with these applicable NSR/PSD requirements.

In addition, the CAA and EPA's Title V regulations require Title V permits to include "*enforceable* emission limitations and standards." 42 U.S.C. § 7661c(a). *See also* 40 C.F.R. § 70.6(b)(1) (except for those terms specifically marked as state-only, "[a]ll terms and conditions in a part 70 permit . . . are <u>enforceable</u> by [EPA] and citizens under the Act") (emphasis added)). If the MSS provisions here have unlawfully revised major NSR/PSD limits, then those provisions

impermissibly render unenforceable, during MSS periods, the limits normally applicable to the affected tanks.

The Draft Title V Permit incorporates Permit 129444, which is the tank farm's NSR permit. *See* Draft Permit, "New Source Review Authorization References" at 81. As discussed above in more detail in the section addressing the inadequate emission calculation methods for the tanks, Permit 129444's MAERT lists hourly and annual VOC limits for "normal" operations for 27 different tanks—and hourly and annual benzene limits for "normal" operations for eight of those tanks. Both TCEQ and Valero apparently maintain that all these hourly and annual VOC limits for normal operations are minor NSR—rather than PSD or major nonattainment NSR—limits. *See* Draft Permit O3784, Statement of Basis at 5; Form OP-REQ1 (from Valero's application for Title V renewal) at 87. Separately, Permit 129444's MAERT lists extremely high lbs/hour limits for VOCs and benzene from "Tank MSS Activities"—529.27 lbs/hour for VOCs and 8.07 lbs/hour for benzene. The allowed VOC emissions from the tanks during MSS periods are exponentially higher than Permit 129444's hourly VOC limits applicable during normal tank operations, which range from 0.49 to 4.76 lbs/hour. *See* MAERT. The allowed benzene MSS emissions are also exponentially higher than the hourly benzene limits applicable during normal tank operations (for those eight tanks that have benzene limits for normal operations), which range from 0.01 to 0.20 lbs/hour. *See id*. Although Permit 129444 does not actually require the use of thermal oxidizers to control tank emissions, the MAERT also contains an hourly VOC limit for "Thermal Oxidizer Controlled MSS Activities"—5.21 lbs/hour—that is higher than the hourly VOC limit applicable during normal operations for any of the tanks. And the MAERT contains an annual VOC limit for "Thermal Oxidizer Controlled MSS Activities"—2.42 tons/year—that is higher than the annual VOC limit applicable during normal operations for some of the tanks. The MAERT also contains hourly and annual benzene limits for "Thermal Oxidizer Controlled MSS Activities"—0.04 lbs/hour and 0.02 tons/year—that are higher than the benzene limits applicable during normal operations for some of the tanks.

For the 19 tanks with no MAERT limits for benzene emissions during periods of normal operation, the MSS provisions may be permitting benzene emissions for the first time. To make matters worse, the area surrounding the Refinery was previously on an Air Pollution Watch List for benzene, and TCEQ's Toxicology Division cautioned: "[I]n the absence of site-wide modeling for total emissions (e.g., MSS emissions plus normal emissions), we are unable to assess the [Valero Houston refinery's] overall impact on the surrounding community. Any future permitting actions involving benzene increases at this facility … should be minimal and will undergo a more detailed review." Ex. 12, Memo from TCEQ Toxicology Division at 1-2 (Dec. 21, 2011).

Footnote 5 to the MAERT provides that annual emissions of VOCs and benzene authorized by the tank MSS provisions are to be "accommodated as part of the annual allowable rate [presumably for "routine" emissions] of each of the storage tanks." The lower annual VOC and benzene limits for the tanks are of no comfort because, as discussed above in the section discussing monitoring and emission calculations methods for the tanks, the monitoring and emission calculation methods required by the Title V permit and Permit 129444 are wholly inadequate to ensure compliance with those limits.

In addition to the 27 tanks with limits listed in Permit 129444's MAERT, many other tanks at Valero's tank farm were permitted through permit by rule ("PBR"). *See* Permit 129444 Special Condition 20. It is unclear whether Permit 129444's MSS provisions are also intended to affect the limits applicable to the PBR-permitted tanks.

Although TCEQ and Valero apparently maintain that all of Permit 129444's hourly and annual VOC limits for normal tank operations are minor NSR limits, Commenters see no evidence that tanks covered by Permit 129444 have not triggered major nonattainment NSR or PSD requirements. Permit 129444's MAERT allows the covered tanks to combined annually emit nearly 140 tons of VOCs. Many of the tanks covered by the Draft Title V Permit were constructed or modified after July 23, 1984. During most or all of the time period from 1984 to the present, any tank construction or modification project with a net emissions increase exceeding 25 tons/year of VOCs would have triggered major nonattainment NSR requirements. Harris County, in which Valero's tank farm is located, is currently designated serious nonattainment for the 2008 ozone NAAQS and marginal

nonattainment for the 2015 ozone NAAQS. Previously, the county was designated as severe nonattainment for the 1997 ozone NAAQS. Prior to the 1997 standard, Harris County was also designated as severe nonattainment for ozone. Because Harris County has been designated serious and severe nonattainment for ozone, it would only take a tank construction or modification project with a net emissions increase exceeding 25 tons/year of VOCs to trigger major nonattainment NSR requirements. *See* 40 C.F.R. § 51.166(a)(1)(x)(B). Such projects would include new or modified tanks authorized by PBRs 106.261, 106.263, 106.264, or 106.472 with the physical potential to emit more than 25 tons/year of VOC, even if Valero certified new emission rates below 25 tons/year. This is so, because EPA has determined that the PBRs fail to include monitoring, testing, or recordkeeping requirements necessary to make these certified rates practically enforceable. Accordingly, these certified rates do not function to limit tank potential to emit. Moreover, as mentioned above, the EPA has noticed its plans to change the classification level of HGB area from "serious" to "severe" for the 2008 eight-hour ozone standard and from "marginal" to "moderate" for the 2015 eight-hour ozone standard. The redesignation to severe ozone nonattainment will continue the major source threshold of 25 tpy of VOC or NO_X for the HGB area.

If any construction or modification projects for the various tanks covered by Permit 129444 caused net emissions increases above 25 tons/year and thus triggered major NSR requirements, then the MSS provisions have unlawfully inflated these major NSR limits—unless TCEQ followed the proper procedures for revising the affected major NSR limits. EPA has "consistently" stated that major PSD/NSR limits must apply at all times and that PSD/NSR permits cannot contain blanket exemptions to those limits for periods of startup, shutdown and malfunction ("SSM"). *See In the Matter of Southwestern Electric Power Co., H.W. Pirkey Power Plant*, Order on Petition No. VI-2014-01 ("*Pirkey* Order") (Feb. 3, 2016) at 8 (citing to previous Title V orders and EPA Environmental Appeals Board decisions).[68] While EPA has stated that PSD/NSR permits may contain alternative limits that apply during startup and shutdown when the permitting authority determines that compliance with a primary PSD/NSR limit is infeasible during those periods, such alternative limits must be justified as Best Available Control Technology ("BACT")/Lowest Achievable Emission Rate ("LAER") for the startup/shutdown periods to which they apply. *Id.* at 8, 12 (citing previous Title V orders and Environmental Appeals Board decisions). *See also* 42 U.S.C. §§ 7475(a)(4), 7503(a)(2) (the CAA's BACT and LAER requirements, respectively). Importantly, EPA has stated that alternative BACT/LAER limits are not justifiable for periods of scheduled maintenance or malfunctions—and that maintenance activities should be scheduled "during process shutdown." *See, e.g.*, *Pirkey* Order at 12.

In at least one letter to TCEQ, EPA has made clear that states cannot replace or revise existing PSD/NSR limits without complying with the major PSD/NSR required procedures used to establish the original limits. *See also* 42 U.S.C. §§ 7475, 7503 (CAA requirements for PSD and major NSR permits, respectively). Thus, to revise any major PSD/NSR limits applicable to "routine" tank operations and create new alternate limits for periods of startup and shutdown, TCEQ would need to (among other things): analyze whether—and ensure that—the limits for these startup and shutdown periods meet BACT or LAER (LAER here, given the area's ozone nonattainment status); analyze air quality impacts resulting from the new, relaxed limits for startup and shutdown periods; ensure that the public participation requirements for establishing major PSD/NSR limits are complied with; and offset any emissions increases resulting from relaxing major NSR limits.

Here, we have seen no indication that TCEQ followed these requirements in establishing the MSS limits that replaced any original major NSR limits for planned MSS periods. Further, putting aside the issue of proper procedures for establishing alternate limits for startup and shutdown periods, any revisions by TCEQ to major NSR limits for periods of planned maintenance at the tanks would violate EPA's policy that alternate limits are never appropriate for maintenance periods.

As noted above, commenters have not seen evidence supporting TCEQ's apparent assertion that none of the tanks subject to the MSS provisions triggered major NSR requirements when those tanks were constructed or modified. Because of the complicated and byzantine permitting history for these tanks, however, it is impossible for us to determine whether any of the relevant construction or modification projects did indeed trigger major NSR. To begin with, the tanks from NSR Permit 129444 were previously covered by five different NSR permits—permits 2501A (which listed 19 of

the 27 tanks with MAERT limits in Permit 129444), 78281, 48982, 106909, and 80493. *See* Ex. 14, Feb. 2015 TCEQ Permit Alteration Source Analysis & Technical Review. Further, the construction of the tanks was apparently permitted over time through at least several different permitting actions. For example, around late 2011, Valero submitted an application to build tank 90FB507 through an amendment to NSR permit 2501A. *See* Ex. 15, Jan. 2012 TCEQ Permit Alteration Source Analysis & Technical Review. Tank 90FB507 is only one of 27 tanks listed in Permit 129444's MAERT, and (as noted above) permit 2501A was only one of five different NSR permits that previously covered the tanks now covered by Permit 129444. (And prior to 2015, when Valero requested that the tanks be transferred to Permit 129444, the tanks could have been permitted through still other NSR permits beyond permits 2501A, 78281, 48982, 106909, and 80493.) In addition to any permit actions to build or modify these tanks, Valero's NSR permits routinely undergo many different amendments and renewals, and each permit action typically involves several different files on the TCEQ Records Online website (assuming the relevant records are even available online—many are not). Finally, additional tanks (which may also be subject to the MSS provisions) were permitted through PBR, as mentioned above.

It is unreasonable and thwarts the purpose of Title V—to promote compliance and strengthen enforcement—to require the public to comb through large numbers of permit files related to many different permit actions to try to determine whether the construction or modification of any of the tanks affected by Permit 129444's MSS provisions triggered—or should have triggered—major NSR requirements (which in turn would likely mean that the MSS provisions are unlawful). For this same reason, the Draft Permit is unable to ensure compliance with the emission limits for the tanks' normal operations. Thus, to enable the public to evaluate the lawfulness of the MSS provisions and to ensure compliance with the tanks' emission limits, TCEQ must first make clear which specific tanks are affected by the MSS provisions and limits from Permit 129444, since it is unclear whether the MSS provisions and limits affect both the tanks listed in the MAERT and those tanks permitted through PBR. In addition, TCEQ must specify when and how Valero permitted the construction and/or modification of the various tanks affected by the MSS provisions and limits. In doing so, TCEQ should, for each relevant tank, specify: the tank/emission point number; the date(s) of the relevant permit action(s); the permit project number; whether the tank was permitted through major NSR, minor NSR (specifying whether the limits are "synthetic minor" NSR limits), or permit by rule; the net VOC emissions increase that TCEQ and Valero concluded would result from each tank construction or modification; the relevant NSR permit that originally authorized the construction or modification; and, if the tank was later moved to another NSR permit, the number of that other NSR permit. For any tank VOC limits from Permit 129444 that are major NSR limits, TCEQ must also specify whether and (if so) how it followed the requisite procedures discussed above for revising major NSR limits (such as establishing that alternate limits for startup and shutdown reflect LAER).

If any of the tank limits affected by Permit 129444's MSS provisions are major NSR limits and TCEQ did not follow the required process for revising those limits, TCEQ must make clear in the Title V permit that the MSS provisions—at least with respect to those major NSR limits—are not incorporated into the Title V permit. If TCEQ wishes to still incorporate the MSS limits and provisions into the Title V permit with respect to any major NSR limits, it must designate them as state-only, non-federally enforceable provisions under 40 C.F.R. § 70.6(b)(2). Even if TCEQ did follow the required procedures for revising any major NSR limits for MSS periods, TCEQ must still make clear that the MSS provisions do not apply during maintenance periods, for the reasons discussed above.

RESPONSE TO COMMENT 6: As previously stated, under the two-permit system in Texas, only new source review (NSR) permits authorize air emissions under 30 TAC Chapter 116. The Proposed Permit issued under 30 TAC Chapter 122 (or Title V program) does not authorize any emission limits or changes to emission limits for various emission sources. The ED respectfully notes that NSR permit 129444, which authorized several of the tanks listed by the Commenter, was initially issued on 02/17/2015 (project 22750). Included in the initial authorization were Planned Maintenance, Startup, and Shutdown (MSS) emissions from the activities listed in attachment A of the NSR permit.

Major NSR is applicable for new major sources and major modifications of existing major sources. If an owner or operator is modifying an existing facility, they must determine if the project is a "major modification." A major modification is any physical change in, or change in the method of operation of, a

major stationary source that causes a significant project emissions increase and a significant net emissions increase. See 30 TAC § 116.12(20)(A). To be subject to major NSR requirements, the project must result in both (1) a significant emission increase from the project and (2) a significant net emission increase at the stationary source, taking account of emission increases and emission decreases attributable to other projects undertaken at the stationary source within a specific time frame (contemporaneous netting). Netting is a summation of the emission increases from the current project plus all creditable emissions changes (both increases and decreases) within the contemporaneous period. The emission increase of the current project results from a comparison of the baseline actual emission rate to either the projected actual emission rate or the potential to emit (PTE) for modified or affected facilities, plus the PTE of any new facilities.

Since initial issuance, the Applicant has completed NSR projects 258387 (Emissions Transfer and Editorial Corrections project), and 309459 (no notice amendment project). If required by the project, the Applicant must conduct a netting analysis for each project. The permit reviewer reviewed the netting analysis requirement for each project and noted that these projects had no notice requirements and netting was not triggered. Permits by Rule (PBRs) must be included in a major NSR applicability analysis if they are related to the proposed project. No PBRs related to the projects listed above were required to be included in the evaluation.

Detailed emission source analysis and technical analysis summary for each NSR project is accessible via CFR Online as follows: NSR project 258387 (Emissions Transfer and Editorial Corrections project) – WCC content ID 4898088, and NSR project 309459 (no notice amendment project) – WCC content ID 5149014.

COMMENT 7: (T.E.J.A.S) Failure to resolve EPAs objections on assuring compliance with NSPS and NESHAP requirements.

III. *TCEQ must ensure that the Title V Permit includes detailed terms and conditions, beyond mere incorporation by reference provisions, that assure compliance with all applicable requirements.*

A. The Draft Permit fails to assure compliance with NESHAP requirements.

National Emission Standards for Hazardous Air Pollutants ("NESHAP") are stationary source standards for hazardous air pollutants. The Draft Permit is deficient because it fails to identify and include each applicable specific NESHAP and limit, and monitoring, reporting, and recordkeeping requirements for each relevant unit at the Houston Tank Facility, in violation of 42 U.S.C. § 7661c(a),(c), and 30 Tex. Admin. Code § 122.142(b)(2)(B). *See also* 40 C.F.R. §§ 70.1(b), 70.6(a)(1), 70.7(a)(1)(v). The Draft Permit fails to satisfy Title V and federal and state implementing regulations because it omits information and specific terms and conditions necessary for regulators and the affected public to determine: (1) the specific requirements of important federal requirements; (2) how those apply to emissions units at Valero; and (3) whether additional monitoring or other compliance requirements are needed to assure compliance with these terms. 42 U.S.C. § 7661c(a).

The permit must contain specific terms and conditions for each emission unit regarding the following:

> (A) the generally identified applicable requirements . . . (e.g., New Source Performance Standards, Subpart Kb);
>
> (B) the detailed applicability determinations, which include the following:
>
> (i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards; and

> (ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph sufficient to ensure compliance with the permit.

30 Tex. Admin. Code § 122.142(b)(2)(B); *see* 40 C.F.R. § 70.6(a)(3). 40 C.F.R. § 70.6(a)(1) requires inclusion of "emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." The permit must also "specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based." 40 C.F.R. § 70.6(a)(1)(i).

The Draft Permit incorporates NESHAP requirements only by reference in two ways. First, it states as follows:

> For sources subject to emission standards in 40 CFR Part 63, Subpart CC, the permit holder shall comply with the following requirements (Title 30 TAC Chapter 113, Subchapter C, § 113.340 incorporated by reference):
>
> Title 40 CFR § 63.640(l)(3) - (4) (relating to Applicability and Designation of Affected Source), for units and equipment added to an existing source
>
> Title 40 CFR § 63.640(m)(1) - (2) (relating to Applicability and Designation of Affected Source), for units and emission points changing from Group 2 to Group 1 status
>
> Title 40 CFR § 63.642(c) (relating to General Standards), for applicability of the General Provisions of Subpart A
>
> Title 40 CFR § 63.642(e) (relating to General Standards), for recordkeeping Title
>
> 40 CFR § 63.642(f) (relating to General Standards), for reporting

Special Condition 9. This term does not include or explain what the Subpart CC provisions require or how they translate into a term or condition for any or all of Valero's tanks that must comply with these requirements.

Second, the Draft Permit includes an Applicable Requirements Summary stating that 40 C.F.R. 63 Subpart CC applies to specific units. The summary includes only a reference to Subpart CC and provides no summary, explanation, or discussion of the actual requirements that Valero must follow to comply with these provisions or the permit. *Id.* at 21-79. For example, the Draft Permit states that for Unit Group Process ID No. 90FB001, SOP Index No. 63CC_KBIR3, a list of 8 regulations applies.[74] Draft Permit at 21. The "description" box states: "Floating roof storage vessels described in sec. 63.640(n)(1) are to comply with 40 part 60, subpart Kb, except as provided in sec. 63.640(n)(8)(i)-(vii)." *Id*. That description is merely an applicability determination. The Draft Permit provides no description or summary of the requirements for these tanks; it provides no term or condition based on the applicable regulations. To make matters worse, the applicable regulations are particularly confusing. For example, section 63.640(n)(8) states that "storage vessels described by paragraph (n)(1) of this section are to comply with 40 CFR part 60, subpart Kb, except as provided in paragraphs (n)(8)(i) through (iv) of this section." Those exceptions are quite detailed and intricate. The permit does not make clear if this vessel is "Group 1" or "Group 2," which are subject to different requirements. The permit also does not make clear which of the requirements definitively apply. Thus, the incorporation by reference alone does not make clear what this unit, or each of the other units subject to subpart CC, must actually do to comply. This term, and each term repeated verbatim from page 21 through page 76 of the Draft Permit, is therefore insufficient to satisfy Title V.

Similarly, the incorporation by reference of 40 C.F.R. § 60.112b does not satisfy Title V. Section 60.112b is a highly detailed regulation that states the following:

> (a) The owner or operator of each storage vessel either with a design

capacity greater than or equal to 151 m3 containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 5.2 kPa but less than 76.6 kPa or with a design capacity greater than or equal to 75 m3 but less than 151 m3 containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 27.6 kPa but less than 76.6 kPa, shall equip each storage vessel with one of the following:

(1) A fixed roof in combination with an internal floating roof meeting the following specifications:

(i) The internal floating roof shall rest or float on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel that has a fixed roof. The internal floating roof shall be floating on the liquid surface at all times, except during initial fill and during those intervals when the storage vessel is completely emptied or subsequently emptied and refilled. When the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible.

(ii) Each internal floating roof shall be equipped with one of the following closure devices between the wall of the storage vessel and the edge of the internal floating roof:

(A) A foam-or liquid-filled seal mounted in contact with the liquid (liquid-mounted seal). A liquid-mounted seal means a foam-or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the tank.

(B) Two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof. The lower seal may be vapor-mounted, but both must be continuous.

(C) A mechanical shoe seal. A mechanical shoe seal is a metal sheet held vertically against the wall of the storage vessel by springs or weighted levers

and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(iii) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(iv) Each opening in the internal floating roof except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains is to be equipped with a cover or lid which is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. The cover or lid shall be equipped with a gasket. Covers on each access hatch and automatic gauge float well shall be bolted except when they are in use.

(v) Automatic bleeder vents shall be equipped with a gasket and are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

(vi) Rim space vents shall be equipped with a gasket and are to be set to open only when the internal floating roof is not floating or at the manufacturer's recommended setting.

(vii) Each penetration of the internal floating roof for the purpose of sampling shall be a sample well. The sample well shall have a slit fabric cover that covers at least 90 percent of the opening.

(viii) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(ix) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(2) An external floating roof. An external floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a vessel with no fixed roof. Each external floating roof must meet the following specifications:

(i) Each external floating roof shall be equipped with a closure device between the wall of the storage vessel and the roof edge. The closure device is to consist of two seals, one above the other. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be either a mechanical shoe seal or a liquid-mounted seal. Except as provided in § 60.113b(b)(4), the seal shall completely cover the annular space between the edge of the floating roof and tank wall.

(B) The secondary seal shall completely cover the annular space between the external floating roof and the wall of the storage vessel in a continuous fashion except as allowed in § 60.113b(b)(4).

(ii) Except for automatic bleeder vents and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof is to be equipped with a gasketed cover, seal, or lid that is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. Automatic bleeder vents are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports. Rim vents are to be set to open when the roof is being floated off the roof legs supports or at the manufacturer's recommended setting. Automatic bleeder vents and rim space vents are to be gasketed. Each emergency roof drain is to be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(iii) The roof shall be floating on the liquid at all times (i.e., off the roof leg supports) except during initial fill until the roof is lifted off leg supports and when the tank is completely emptied and subsequently refilled. The process of filling, emptying, or refilling when the roof is resting on the leg supports shall be continuous and shall be accomplished as rapidly as possible.

(3) A closed vent system and control device meeting the following specifications:

(i) The closed vent system shall be designed to collect all VOC vapors and gases discharged from the storage vessel and operated with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined in part 60, subpart VV, § 60.485(b).

(ii) The control device shall be designed and operated to reduce inlet

VOC emissions by 95 percent or greater. If a flare is used as the control device, it shall meet the specifications described in the general control device requirements (§ 60.18) of the General Provisions.

(4) A system equivalent to those described in paragraphs (a)(1), (a)(2), or (a)(3) of this section as provided in § 60.114b of this subpart.

(b) The owner or operator of each storage vessel with a design capacity greater than or equal to 75 m3 which contains a VOL that, as stored, has a maximum true vapor pressure greater than or equal to 76.6 kPa shall equip each storage vessel with one of the following:

(1) A closed vent system and control device as specified in § 60.112b(a)(3).

(2) A system equivalent to that described in paragraph (b)(1) as provided in § 60.114b of this subpart.

(c) Site-specific standard for Merck & Co., Inc.'s Stonewall Plant in Elkton, Virginia. This paragraph applies only to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, in Elkton, Virginia ("site").

(1) For any storage vessel that otherwise would be subject to the control technology requirements of paragraphs (a) or (b) of this section, the site shall have the option of either complying directly with the requirements of this subpart, or reducing the site-wide total criteria pollutant emissions cap (total emissions cap) in accordance with the procedures set forth in a permit issued pursuant to 40 CFR 52.2454. If the site chooses the option of reducing the total emissions cap in accordance with the procedures set forth in such permit, the requirements of such permit shall apply in lieu of the otherwise applicable requirements of this subpart for such storage vessel.

(2) For any storage vessel at the site not subject to the requirements of 40 CFR 60.112b(a) or (b), the requirements of 40 CFR 60.116b(b) and (c) and the General Provisions (subpart A of this part) shall not apply.

None of this detail, nor any textual summary whatsoever of these requirements, appear in the Draft Permit for any of the tanks this permit covers. The Draft Permit therefore fails to satisfy Title V. This omission is of particular concern for Commenters because Valero Energy Partners has a history of serious tank releases. Assuring compliance with NESHAP with more specific permit terms and conditions will hopefully prevent future upsets and provide clear direction to Valero on how to improve maintenance of its tanks, which this agency determined were in "poor operating condition" as of 2017. *See* Ex. 10 at 6. Detailed incorporation of the terms and conditions and sufficient monitoring, recordkeeping, and reporting would assist to assure this compliance with the NESHAP. These references to Subpart CC fail to describe an actual limit or standard, leaving it unclear precisely how any of the listed units must comply with the listed regulations. Without the inclusion and description of these limits and standards, the permit does not satisfy the Act's obligations to incorporate and assure compliance with all applicable CAA requirements. *See* 40 C.F.R. §§ 70.1(b), 70.6(a)(1), 70.7(a)(1)(iv); 42 U.S.C. § 7661c(a). Further, the permit undermines the public information and compliance goals of Title V by making it difficult or impossible for the public to determine which standards apply to which emissions units and whether Valero is in fact in compliance with important federal regulations governing the Refinery's hazardous air emissions.

The Draft Permit also does not include the requisite level of specificity to apply each requirement within these detailed regulations to particular units. Citing merely the subpart or the Texas rule which incorporates that subpart by reference does not fulfill the requirement to include a term that will assure compliance with each relevant provision. The descriptive or narrative text in the Applicable Requirements Summary for some units does not sufficiently explain what the referenced

subparts require Valero to do, or any method of monitoring, reporting, or recordkeeping that must be used to assure compliance (including Valero's choices regarding the monitoring and other compliance options that are contained in the NESHAP regulations). As only some of the regulatory requirements apply to each unit, the broad reference to each subpart is confusing and

inaccurate and does not provide the guide that Title V requires the permitting agency to create for the facility, the regulators, or the public.

The provisions applicable to these tanks under the NESHAP and New Source Performance Standards (NSPS, as incorporated by the NESHAP), are crucial to protect the public from tank emissions at this facility. The Commission must not allow Valero Energy Partners to operate without assuring full compliance with all applicable Clean Air Act requirements for tanks.

Therefore, the Commission must add all of the emissions limits, monitoring, recordkeeping, reporting and other requirements listed in these regulations, with sufficient specificity, to the permit as terms and conditions to satisfy the Act and make the inclusion of all Applicable Requirements Summary detailed enough to show how they apply to units at this facility and what the facility must do to comply. *See* 40 C.F.R. § 70.6(a)(1), (3); 30 Tex. Admin. Code § 122.42(b)(2)(B).

RESPONSE TO COMMENT 7: The ED respectfully disagrees with the Commenters assertion "The Draft Permit fails to satisfy Title V and federal and state implementing regulations because it omits information and specific terms and conditions necessary for regulators and the affected public to determine: (1) the specific requirements of important federal requirements; (2) how those apply to emissions units at Valero; and (3) whether additional monitoring or other compliance requirements are needed to assure compliance with these terms. 42 U.S.C. § 7661c(a).

Regarding Commenters assertion about Special Condition 9 "This term does not include or explain what the Subpart CC provisions require or how they translate into a term or condition for any or all of Valero's tanks that must comply with these requirements", it appears that the Commenters may be confused about the contents of a federal operating permit (such as FOP O3784).

As described in FOP guidance document, the FOP includes special terms and conditions to document the site-wide state and federal regulatory requirements and an applicable requirements summary (ARS) table to document emission unit, state/federal regulation, and pollutant specific detailed MRRT requirements.

The TCEQ has designated certain applicable requirements as site-wide requirements. A site-wide requirement is a requirement that applies uniformly to the units or activities at the site. As an example, the TCEQ has designated specific requirements of 30 TAC Chapter 111, such as the opacity limits for stationary vents less than 100,000 acfm, as site-wide requirements. The 30 TAC Chapter 111 requirements were designated as site-wide, since many sites have numerous stationary vents, and each must comply with the appropriate opacity limit. Units with only site-wide requirements are addressed on Form OP-REQ1 form and are not required to be listed on a unit attribute (UA) form or Form OP-SUM form.

Some permits may contain units that may have both site-wide requirements and unit specific requirements. The site-wide applicability for the unit and specific unit information will then be addressed on Form OP-REQ1 and the appropriate UA form, respectively. Form OP-REQ1 will indicate which units may need to complete unit attribute information. It will also indicate the site-wide requirements for which additional unit attribute information in not necessary. Multiple permit applications may be submitted for a site, these site-wide requirements and their applicability then become specific to the application area. Applicability of these site-wide requirements is then done on an area-wide basis. When a single permit application is submitted for the entire site, these site-wide requirements and their applicability again become specific to the application area; that area is the entire site.

Based on the information provided by the Applicant in the OP-REQ1 form, TCEQ has evaluated applicability of the following NSPS and NESHAP provisions in the permit, Special Term and Condition 9:

A. Title 40 CFR § 63.640(l)(3) - (4) (relating to Applicability and Designation of Affected Source), for units and equipment added to an existing source

B. Title 40 CFR § 63.640(m)(1) - (2) (relating to Applicability and Designation of Affected Source), for units and emission points changing from Group 2 to Group 1 status

C. Title 40 CFR § 63.642(c) (relating to General Standards), for applicability of the General Provisions of Subpart A

D. Title 40 CFR § 63.642(e) (relating to General Standards), for recordkeeping

E. Title 40 CFR § 63.642(f) (relating to General Standards), for reporting.

As noted in Response to Comment 4, and as documented in the applicable requirements summary (ARS) table (see proposed permit at pages 21-79), the proposed permit includes extensive monitoring, reporting, recordkeeping and testing (MRRT) requirements for the tank units subject to requirements under state rules such as 30 TAC Chapter 115, Storage of VOCs, and federal rules such as 40 CFR Part 60, Subpart Kb, 40 CFR Part 63, Subpart CC. The MRRT requirements listed in the ARS are emission unit specific, regulation specific and pollutant specific that are detailed and sufficient to demonstrate compliance with applicable state and federal regulations for VOC emissions.

Regarding applicability of NESHAP regulations other than 40 CFR Part 63, Subparts CC, TCEQ has also evaluated applicability of other subparts of 40 CFR Part 63, and 40 CFR Part 61 and determined that there are no additional applicable requirements that need to be included in the proposed permit.

COMMENT 8: (T.E.J.A.S) Insufficient monitoring for permits by rule (PBRs)

B. *The Draft Permit fails to include Permit By Rule requirements and to include monitoring necessary to assure compliance with Permit By Rule requirements or limits.*

The Draft Permit is deficient because it fails to: (1) incorporate all applicable source- specific requirements in Valero's certified PBR registrations, and (2) include monitoring to assure compliance with emission limits in PBRs and Standard Exemptions claimed by Valero.

Incorporation by reference of PBR and Standard Exemption requirements into Title V permits is inconsistent with the Clean Air Act unless two conditions are met: (1) information incorporated by reference into a Title V permit is readily available to the public and regulators, and (2) Title V permits provide information that clearly and unambiguously explains how incorporated emission limits apply to emission units at the permitted source. *In the Matter of Citgo Refining and Chemicals, West Plant, Corpus Christi*, Order on Petition No. VI-2007-01 (May 28, 2009) ("*Citgo* Order") at 12 n.5; *Deer Park* Order at 10-11.

As EPA has recognized in multiple orders objecting to Texas Title V permits, the Commission's method of incorporating PBR requirements into Texas Title V permits without listing and incorporating source-specific certified PBR registrations is deficient because it omits applicable requirements and undermines the enforceability of certified PBR registrations. *In the Matter of Motiva Enterprises LLC, Port Arthur Refinery*, Order on Petition No. VI-2016-23 (May 31, 2018) ("*Motiva* Order") at 30 ("Petitioners have demonstrated that the title V permit contains no direct reference to certain source-specific requirements (e.g., certified emission limits) derived from registered PBRs, and, therefore, it is not clear whether the title V permit currently includes or incorporates all requirements that are applicable to the facility[.]"); *In the Matter of ExxonMobil, Baytown Refinery*, Order on Petition No. VI-2016-14 (Apr. 2, 2018) at 20-22.[75]

Here, the Draft Permit incorporates PBR requirements as follows: Valero must "comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including . . . permits by rule (including the permits by rule identified in the PBR Supplemental Tables in the application)." Special Condition 10. The Statement of Basis lists which PBR registrations apply to the Valero Houston Refinery and includes a link to TCEQ's Indexes to Air Permit by Rule. The Statement of Basis admits that not all PBRs or registrations are available online and that none of these are actually included in the permit itself, except by reference. Draft Permit O3784, Statement of Basis at 34-35. Part of this section of the Draft Permit also appears to attempt to incorporate information from a permit application that is not publicly available. *Id.* at 36.

The Draft Permit fails to comply with Title V because information and requirements incorporated by reference are not readily available to the public and regulators. *See Citgo* Order at 12, n.4; *Deer Park* Order at 10-11. Instead, the public and regulators must attempt to find the PBR Supplemental Tables in the application and search the Indexes to Air Permit By Rule or try to visit a file room located in Austin, Texas, an over three-hour drive from Houston. Even if they find the PBR registrations, "it is not clear whether the title V permit currently includes or incorporates all requirements that are applicable to the facility" because the permit "contains no direct reference to certain source-specific requirements (e.g., certified emission limits) derived from registered PBRs." *Motiva* Order at 30. The table at pages 82-83 of the Draft Permit appears to list PBR registrations for at least 38 emission units, without providing what those are, what they require, or how they apply to the units. The Draft Permit fails to satisfy Title V because it does not indicate how the emission limits in PBRs and Standard Exemptions claimed by Valero apply to units at the tanks facility, and which emission units are subject to requirements in each of the PBRs and Standard Exemptions.

Further Commenters' attempt to find the registrations appears to show that some are issued to a facility with a different Registration Number (RN). For example, 106017 and 107049 are issued to a different RN (RN109290692) than the Draft Permit (RN109290692). Commenters have been unable to locate multiple registrations, including 94967, 86875, 111267, 36390, 98526, 82694. The Draft Permit must reference and incorporate all applicable registrations. The Statement of Basis should clarify why and how PBRs issued for another RN apply to units covered by this TV permit.

Finally, the Draft Permit fails to include requirements for monitoring to assure compliance with the PBRs it incorporates. While Draft Permit, Special Condition No. 11 incorporates applicable requirements in the TCEQ's general PBR rules and Special Condition 12 requires Valero to "maintain records to demonstrate compliance with any emission limitation or standard that is specified in a permit by rule" and that such "records shall yield reliable data from the relevant time period that are representative of the emission unit's compliance with the PBR," EPA has determined that the language in these special conditions—on their own—fail to assure compliance with applicable PBR requirements and that they are inconsistent with Title V public participation requirements:

> It is TCEQ's responsibility, as the title V permitting authority, to ensure that the title V permit "set[s] forth" monitoring sufficient to assure compliance with all
>
> applicable requirements….Special Condition 11 incorporates the general requirements for PBRs found in 30 TAC Chapter 106, Subchapter A. These requirements do not specify any monitoring methods for demonstrating compliance with emission limits and standards set forth in PBRs … at issue. Likewise, Special Condition 12 does not specify any particular monitoring requirements and instead allows [the operator] … to select the monitoring, recordkeeping, or reporting it will use to assure compliance. Because neither [of] these generic permit terms nor the PBRs themselves require … [the operator] to follow a particular monitoring or recordkeeping methodology, the title V permit cannot said to "set forth" monitoring sufficient to assure compliance….Further, Special Condition 12 contains no assurance that the monitoring or recordkeeping selected by the source will, as a technical matter, be sufficient to ensure compliance. Because the Permit does not specify any particular monitoring or recordkeeping requirements selected by the source, neither the public nor EPA

> can ascertain from the Permit what monitoring or recordkeeping methodology the source has elected to use, or whether this methodology is sufficient to assure compliance with all applicable requirements. This effectively prevents both the public and EPA from exercising the participatory and oversight roles provided by the CAA. *See* 42 U.S.C. §§ 7661a(b)(6), 7661d(a), (b); *see also* 40 C.F.R. §§ 70.7(h), 70.8(a), (c), (d).[76]

The Draft Permit's failure to specify monitoring, testing, and recordkeeping methods that assure compliance with incorporated PBR requirements is not resolved by additional specific terms in the PBRs claimed by Valero, because—as EPA has already determined—that the PBRs at 106.261, 106.263, 106.264, and 106.472 incorporated into the Draft Permit fail to include *any* monitoring, testing, or recordkeeping requirements.[77] Further, none of the Periodic Monitoring or CAM Summaries in the Draft Permit address requirements in PBRs or Standard Exemptions claimed by Valero. *See* Draft Permit at 163-193. The Statement of Basis does not provide a reasoned justification for the Executive Director's determination that existing provisions in PBRs and Standard Exemptions claimed by Valero assure compliance with applicable emission limits and operating requirements.

Thus, the Draft Permit fails to fulfill one of the key purposes of the Title V program: to ensure that applicable requirements are practically enforceable. *See, e.g.*, *Motiva* Order at 24-25 (objecting to permit in case where "Petitioners have demonstrated that . . . [a] particular PBR does not contain any recordkeeping or monitoring requirements itself."); *see also In the Matter of Wheelabrator Baltimore, L.P*, Order on Petition No. 24-510-01886 (Apr. 14, 2010) ("*Wheelabrator* Order") at 10. As explained above, each Title V permit must contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1); *Wheelabrator* at 10. Emission limits and operating requirements in PBRs and Standard Exemptions incorporated by reference into the Draft Permit are applicable requirements. 40 C.F.R. § 70.2. The rationale for selected monitoring requirements must be clear and documented in the permit record. *Id*. § 70.7(a)(5); *In the Matter of United States Steel, Granite City Works*, Order on Petition No. V-2009-03 (Jan. 31, 2011) at 7-8.

The Commission must revise the Draft Permit to: (1) add all applicable PBRs as clear and understandable terms and conditions for all units to which they apply and (2) add monitoring to assure compliance with these PBRs.

RESPONSE TO COMMENT 8: The proposed permit (PP) and statement of basis (SOB) are revised as follows:

1. Consistent with the permits by rule (PBR) related programmatic changes made to Title V permits, the applicant has submitted a "PBR Supplemental Table" (OP-PBRSUP) dated November 29, 2021, in the application for project 31654 to list all PBRs applicable to the site, which include registered PBRs, claimed PBRs, and claimed PBRs for insignificant emission units. In addition, the PBR Supplemental table includes PBRs where applicability under 30 TAC Chapter 106 may be the only requirements applicable to an emission unit or an activity.
2. As shown in OP-PBRSUP Table, which is part of the permit record, the site lists registered PBRs in Table A, claimed but not registered PBRs in Table B, and PBRs for insignificant sources in Table C. Table D lists the monitoring requirements of PBRs listed in Tables A and B. In addition to monitoring information listed in Table D, the ED respectfully notes that detailed information about emission calculations, emission factors, etc., is accessible to the public as application representation for PBR registration numbers 36390 (WCC content ID 3951274), 82694 (WCC content ID 536644), 86875 (WCC content ID 1170500), 94967 (WCC content ID 1170471), 98526 (WCC content ID 1170546), 106017 (WCC content ID 1170602), 107049 (WCC content ID 1170656), 111267 (WCC content ID 1170665), 162210 (WCC content ID 5388498), and 164544 (WCC content ID 5616122).
3. Revised Special Term and Condition 10 in the proposed permit as follows: "Permit holder shall comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including permits, permits by rule (including the terms, conditions, monitoring, recordkeeping, and reporting identified in registered PBRs

and permits by rule identified in the PBR Supplemental Tables dated November 29, 2021 in the application for project 31654), standard permits, flexible permits, special permits, permits for existing facilities including Voluntary Emissions Reduction Permits and Electric Generating Facility Permits issued under 30 TAC Chapter 116, Subchapter I, or special exemptions referenced in the New Source Review Authorization References attachment."

4. New Source Review Authorization References by Emissions Unit table in the proposed permit (pages 85-86) has been updated to include the emission units listed in the OP-PBRSUP tables. PBR registration numbers 36390, 82694, 86875, 94967, 98526, 106017, 107049, 111267, 162210, 164544 are listed that authorize various units.
5. New Source Review Authorization References table (listed on page 84 of the Proposed Permit) lists NSR Permit Number 129444, issued 09/15/2020.
6. Revised the SOB to include a reference to the PBR Supplemental Table and Special Term and Condition 10. In addition, the Insignificant Activity list in the SOB has been expanded to include a link to the de minimis source list and references to PBRs that are not listed on the OP REQ1.

COMMENT 9: (T.E.J.A.S) Lack of a Compliance Schedule in the Draft Permit

C. *The Draft Permit neither incorporates a compliance schedule nor includes adequate provisions to address Valero's history of compliance problems if a compliance schedule is not necessary.*

The Draft Permit fails to address Valero's history of compliance problems, including the August 2017 toxic release that led to the Commission's enforcement case. While that case included a penalty, it is unclear whether Valero has come into compliance. TCEQ has the burden to demonstrate that past compliance problems have been resolved or to add a compliance schedule to bring the facility into compliance. The record fails to even acknowledge the toxic release that occurred in the wake of Hurricane Harvey, let alone address the failures that caused it. The investigation report on the toxic release explained that performance of MSS activities could have prevented the accident and that the issues identified during inspection were part of a pattern of poor maintenance activities. TCEQ must either demonstrate that past compliance problems have been resolved or add a compliance schedule to bring the facility into compliance. The Draft Permit does neither. Existing conditions in the Draft Permit are not sufficient to ensure compliance with applicable requirements, as mandated by 42 U.S.C. §§ 7661c(a) and (c), and 40 C.F.R. §§ 70.6(a)(3)(i)(A) and (c)(1).

As explained in Section III.B of this comment, investigators concluded that the August 2017 toxic release could have been prevented by "the performance of startup, shutdown, or maintenance activities" and that "[i]ssues identified during the various inspections . . . are part of the pattern of poor maintenance activities concerning the Tank T-003." These failures and "pattern[s] of poor maintenance activities" occurred under Operating Permit O3784. In the investigation report on this incident, the Commission found multiple "category A" violations. A "category A" violation is the most serious type of violation, which "require[s] automatic initiation of formal enforcement action when documented during an investigation." Based on these violations, the Attorney General brought a civil suit against Valero Houston Partners, which resulted in an agreed judgment assessing an administrative penalty of $245,000.

The Commission must demonstrate that Valero is now in compliance or ensure that the Draft Permit addresses any existing non-compliance at this site. In a similar instance, where an enforcement matter had been referred to the state Attorney General and compliance remained unclear, EPA granted a petition to object to a permit based on the lack of a compliance certification or schedule. *See In the Matter of Onyx Environmental Services*, Order Petition No. V-2005-1 (Feb. 1, 2006) at 6-7. In addition, "a facility that is operating in violation of an applicable requirement must be made subject to a compliance schedule even if a related enforcement action remains unresolved as of the date of permit issuance." Additionally, as the requirements in the Draft Permit apparently failed to prevent the pattern of poor maintenance that led to the failure of Tank T-003, the Commission must

include additional inspection, monitoring, and testing requirements to ensure proper upkeep of Valero's storage tanks and to prevent future noncompliance. 42 U.S.C.§ 7661c(a), (c).

Here, the Draft Permit and Statement of Basis do not address the compliance issues that caused this mass toxic release; the absence of inspection, monitoring, and testing requirements that contributed to the tank's failure; and they contain no compliance certification or compliance schedule. TCEQ's failure to assure compliance and prevent future releases contravenes Congress' clear intent for a Title V permit to serve as a vehicle for bringing sources into full CAA compliance and to prevent future noncompliance.

To properly implement Title V requirements, the Commission must review available compliance information and determine whether the source is currently in full compliance with CAA requirements. Specifically, the Commission must review relevant investigations, consent decrees, consent administrative orders, and any other commitments that Valero has made to remedy any prior or current non-compliance. Then, the Commission must evaluate and address whether any problems warrant additional permit conditions. If the Refinery is not in full compliance, then the Commission must either incorporate a compliance schedule into the permit for each applicable requirement that Valero is violating or explain why such a schedule is not necessary.

Based on Commenters' review, the evidence of non-compliance in the inspection report and Enforcement Matter 55902 supports additional inspection, monitoring, recordkeeping, and reporting requirements discussed in earlier sections of these comments. The Commission should ask its enforcement division and EPA's enforcement division for guidance on what additional terms and conditions are needed to prevent a future toxic release. Furthermore, the Commission should consider and discuss with affected members of the public what additional remedies they believe should be evaluated to strengthen protection for public health.

Given the realities of climate change, it is particularly important that facilities like the Valero Houston Refinery (including the Valero Energy Partners tanks) implement regular maintenance and winterization of equipment. Based on the severe winter storms that impacted most of Texas in February 2021, severe cold weather may become a more regular event in the future at all Texas facilities. Valero's facility in Houston is not insulated from such events and shut down its operations during the 2021 winter storms. Previously, in January 2018, this facility already had one unauthorized emissions event that was a significant deviation from the permit due to inadequate operations because of frozen pipes and improper winterization of the facility. During the 2018 violation, frozen pipes caused lost caustic flow from two tanks (the primary and backup) due to the freezing of caustic solution in the piping that leads from the tanks to the Complex I Scrubber, which disrupted the normal operation of the scrubber, leading to the emissions event. In reviewing the emissions event, the TCEQ concluded that Valero did not implement measures to protect the impacted piping from freezing weather conditions. On February 7, 2022, power outages precipitated by another cold snap caused another visible upset and flaring event at Valero Houston Refinery, sending a plume of black smoke across the adjacent urban area of East Houston. Given the multiple cold-weather upsets at this facility in the past five years, Commenters recommend the maintenance schedule included in the Draft Permit require regular winterization checks for anticipated colder winter weather at the Valero Houston Refinery and the additional conditions described below.

Some of the terms and conditions that the Commission should evaluate and consider adding to the permit or otherwise implementing, with public input, include:

- Requirements for increased monitoring, and terms to assure adequate maintenance and inspection of all tanks with floating roofs, including frequent inspections and LEL monitoring.

- Requirement to create a plan that includes orderly startup and shutdown and air monitoring procedures. The plan should be implemented at least 24 hours before the arrival of a hurricane or storm with significant potential for high winds or flooding. The plan should implement the Chemical Safety Board recommendations on startup and

shutdown to avoid toxic releases and protect health and safety.[93]

- Additional recommendations made by the Chemical Safety Board after Arkema for chemical facilities, like Valero's Refinery, to prepare for and prevent "natech" chemical disasters during and after hurricanes and other major storms. These recommendations are available in CSB's *Arkema Final Report* are summarized in the EIP report *Preparing for the Next Storm*.

- Additional terms or conditions to account for high hurricane, flooding and other natural disaster risks, and to prepare to prevent and mitigate toxic releases during or near these foreseeable events, to comply with the Risk Management Program Rules and satisfy the Commission's oversight and enforcement authority in 40 C.F.R. § 68.215(e).

Even if the Commission believes it has sufficient evidence to avoid a compliance schedule in this Draft Permit, Commenters urge the Commission to seek public input in a public hearing and follow-up discussions with community members. TCEQ should provide the public with more information on the status of any pending enforcement or compliance investigations or matters at the Valero facility so that Commenters can review it before the requested public hearing and comment on the Commission's proposed determination not to require any compliance schedule.

RESPONSE TO COMMENT 9: The ED appreciates Commenter's concerns regarding asserted increased health and safety risks due to natural events such as hurricanes, flooding, severe cold weather at the site that is affecting local communities.

With regard to comments related to excessive emissions in the wake of natural events such as hurricanes including Hurricane Harvey, flooding, severe cold weather, TCEQ takes your health and environmental concerns seriously. The proposed permit meets all federal and state regulatory requirements and is protective of human health and the environment. TCEQ's Office of Compliance and Enforcement (OCE) enforces compliance with state's environmental laws to address any non-compliance and enforcement issues. In the event of an emergency pr natural disaster, the Local Emergency Planning Committee and the regulated entity have the primary responsibility of notifying potentially impacted parties regarding the situation. In addition, as set forth in 30 TAC § 101.201(a), regulated entities are required to notify the TCEQ regional office within 24 hours of the discovery of releases into the air and in advance of maintenance activities that could or have resulted in excess emissions.

In response to Commenter's request to seek public input in public hearing and in response to public hearing requests from several individuals, TCEQ did schedule a public hearing which was held in Manchester, Texas on December 22, 2022. During the public comment period starting May 21, 2022, and ending December 22, 2022, written and oral comments were received from several Commenters.

Commenter also stated concerns regarding the history of compliance problems, asserted violations concerning operation of tank T-003, TCEQ Enforcement Matter 55902 and the lack of including a Compliance Schedule in the Draft Permit.

The ED's response to each of these concerns is noted below:

In regard to the history of compliance problems, the applicant's and site's compliance history (CH) rating is determined on an annual basis by TCEQ's Office of Compliance and Enforcement (OCE), which enforces compliance with the state's environmental laws to address any non-compliance and enforcement issues. OCE considers past emission releases and events to determine applicant's and site's compliance history (CH) rating on an annual basis. The following OCE link provides more information on CH, including how CH ratings for regulated entities are calculated and how compliance histories, ratings, and classifications are assigned and used by TCEQ staff: Compliance History - Texas Commission on Environmental Quality - www.tceq.texas.gov.

Deviation reports are usually processed by the TCEQ regional office and acted upon as required to address/resolve any potential non-compliance issues such as asserted violations concerning operation of tank T-003, TCEQ Enforcement Matter 55902. Violations are usually addressed through a notice of violation letter that allows the operator a specified period of time within which to correct the problem. The violation is considered resolved upon timely corrective action. A formal enforcement referral will be made if the cited problem is not timely corrected, if the violation is repeated, or if a violation is causing substantial impact to the environment or neighbors.

An explanation of the factors used in the Site Rating formula to calculate CH rating may be found in 30 TAC § 60.2. Based on various factors such as notices of violations, investigations, enforcement order(s), court judgment(s), consent decree(s), criminal conviction(s), and similar others cited in 30 TAC § 60.2, the CH classification for the site with RN109290692 is shown as "satisfactory" [TCEQ Compliance History Search (texas.gov)].

The ED respectfully notes, that in addition to providing online access to air permit records, TCEQ's CFR Online website also provides online 24/7 access to the public for all compliance and enforcement (OCE) records pertaining to a site (e.g., Valero Houston Refinery site having Regulated Entity Number: RN109290692) by selecting OCE/Air Compliance Record Series to search for the OCE records that may include (but not limited to) the following report categories: incident, investigation, audit, compliance, enforcement, certification, deviation, notification, stack test, semi-annual and annual, and others. Therefore, the public has readily available on-line tools to monitor compliance activities at the Valero Houston Refinery site.

FOP assures compliance with all applicable requirements. For example, the PCC forms are required to be submitted annually and OP-ACPS form is submitted with the renewal application. If required, any out of compliance units, violation reasons, citations, and action plan will be included in the permit under a Compliance Schedule.

Per 30 TAC § 122.142(d) (Permit Content Requirements), for any emission units not in compliance with the applicable requirements at the time of the renewal application, the permit holder is required to submit a compliance schedule consistent with § 122.132(d)(4)(C). An OP-ACPS (Application Compliance Plan and Schedule) form referenced above must be contained in the renewal application. The renewal application received by TCEQ on 12/22/2020 indicated that all units were in compliance with the applicable requirements. Since no compliance schedule was included in the renewal application, it is not required to be included in the SOP and SOB.

COMMENTS FILED ON 06/21/2022 BY JENNIFER M. HADAYIA ON BEHALF OF AIR ALLIANCE HOUSTON (AAH).

COMMENT 10: (Jennifer M. Hadayia) Health impact of facility's emissions

A. Valero Houston Refinery

Valero is an international corporation based in Texas, which owns 15 petroleum refineries around the world. The Valero Houston Refinery is located at 9701 Manchester Street in the Houston Ship Channel and produces approximately 250,000 barrels per day and processes sweet crude and intermediate oils into gasoline, jet fuel, and diesel. The Refinery operates pursuant to multiple Title V operating permits, including operating permit O3784.

B. Health Impacts from the Valero Energy Partners, L.P. Emissions

Commenters are concerned about this facility's emissions of particulate matter ("PM2.5" and

"PM10"), volatile organic compounds ("VOCs"), and hazardous air pollutants ("HAPs"). Harris County is currently designated serious nonattainment for the 2008 ozone National Ambient Air Quality Standard ("NAAQS"). Similarly, EPA proposed a regulation that will change the classification level of the Houston-Galveston-Brazoria Ozone Nonattainment Area based on its failure to meet attainment deadlines in the summer of 2021. Once finalized, the HGB area will be reclassified from "serious" to "severe" for the 2008 eight-hour ozone standard. As mentioned above, the areas surrounding the Valero refinery are communities of color with a large and low-income population that is overburdened by hazardous and other air pollution, including from multiple refineries and petrochemical facilities, sewage treatment facilities, hazardous waste (Superfund) sites, and concrete batch plants. A variety of harms impact surrounding communities.

According to EPA's EJSCREEN tool, people living in the two (2) mile radius surrounding the Valero facility are in the top 10 percentile in the country for the following EJ Index criteria: Particulate Matter 2.5 (90%), 2017 Diesel Particulate Matter (91%), 2017 Air Toxics Cancer Risk (94%), 2017 Air Toxics Respiratory Hazard Index (92%), Traffic Proximity and Volume (91%), Lead Paint Indicator (93%), Superfund Proximity (98%), RMP Facility Proximity (99%), Hazardous Waste Proximity (96%), and Underground Storage Tanks (90%). This population is predominantly minority (93%) with more than half (55%) of households earning less than $50,000 a year.

Cumulative Impacts refer to the total burden – positive, neutral, or negative – from chemical and non-chemical stressors and their interactions that affect the health, well-being, and quality of life of an individual, community, or population at a given point in time or over some time. One of those communities includes the Houston Ship Channel – an area inundated with industrial facilities and other pollution sources. Communities that live in and near these facilities are engulfed with pollution of every kind. As a result, Houston Ship Channel communities face serious health impacts. For example, research by the University of Texas's School of Public Health found that children living within two (2) miles of the Houston Ship Channel have a 56 percent greater chance of having leukemia than children living farther away as well as other severe health impacts. All of the above means this is a permit that involves significant environmental justice implications and requires particular focus and action by TCEQ to address these concerns. Given that people living near Valero Refinery's refinery are already overburdened by pollution, vulnerable to health concerns due to age, isolated due to language barriers, and facing more serious barriers to upward mobility than most people living in Texas, the TCEQ must carefully weigh the impacts associated with the proposed expansion project against the burdens it will create.

RESPONSE TO COMMENT 10: The ED respectfully notes Comment 10 submitted by the Commenter is similar to Comment 2 submitted by T.E.J.A.S listed earlier. The ED respectfully notes a detailed response to this comment has already been provided. As such, please refer to response to Comment 2 listed above for additional information.

COMMENT 11: (Jennifer M. Hadayia) Inadequate monitoring

C. The Draft Permit Does Not Include Adequate Monitoring, Reporting, Recordkeeping, Or Emission Calculation Requirements To Ensure Compliance

The CAA provides that Title V permits must include monitoring and reporting requirements sufficient to assure compliance with all applicable emission limits and standards and with the permit terms and conditions. Houston's PM2.5 pollution, however moderate, contributed to more than 5,000 premature deaths and cost $49 billion in economic damages in 2015 alone. According to the 2019 World Air Quality Report, Houston ranks 244th out of 1517 included cities for the highest PM2.5 in the United States. Moreover, the city has seen a recent rise in both PM2.5 and ozone pollution since 2017. For PM2.5, Houston experienced a 7.8 percent increase from 2017 to 2018 and another 11.3 percent increase from 2018 to 2019. As such, to assure compliance with "all applicable requirements" of the Clean Air Act, the Draft Permit must include more frequent and more reliable monitoring for the listed equipment.

RESPONSE TO COMMENT 11: The ED respectfully notes under the two-permit system in Texas, only new source review (NSR) permits authorize air emissions under 30 TAC Chapter 116. The Proposed Permit issued under 30 TAC Chapter 122 (or Title V program) does not authorize any emission limits or changes to emission limits for various emission sources.

The ED respectfully disagrees with the Commenters assertion that Title V permit O3784 (Proposed Permit) does not include adequate monitoring, reporting, recordkeeping, or emission calculation requirements to ensure compliance with hourly and annual limits for particulate matter (including PM2.5 emissions).

As documented in Special Terms and Condition 3 of the Proposed Permit, it includes monitoring, reporting, recordkeeping and testing (MRRT) requirements for stationary vent units subject to requirements under 30 TAC Chapter 111. The requirements listed are sufficient to demonstrate compliance with applicable regulations. The ED respectfully notes Comment 11 submitted by the Commenter is similar to Comment 5 submitted by T.E.J.A.S listed earlier. The ED respectfully notes a detailed response to this comment has already been provided. As such, please refer to response to comment 5 listed above for additional information.

As described above in Response to Comment 4, emission rates for various pollutants listed in MAERT for NSR permit 129444 are calculated/determined using the methodology summarized in the NSR permit application representation including using stack testing data, manufacturer's specifications, applicable work practice standard, engineering estimates, mass balances, TCEQ guidance, and EPA's Compilation of Air Emission Factors (AP-42). These approaches and emission factors were determined to be correct and applicable by TCEQ staff during the technical review based on standard industry air permitting practices for processing NSR permit 129444 projects (and not during Title V permit review). The Applicant represented the appropriate methodologies to control and minimize emissions and utilized corresponding control efficiencies when calculating the emission rates. As provided in 30 TAC § 116.116(a), the Applicant is bound by this representation, including the represented performance characteristics of the control equipment. In addition, the permit holder must operate within the limits of the permit, including the emission limits as listed in the MAERT.

Validation and stability of emission factors used in the emission calculations may be ascertained by the public by various methods such as use of MRRT (which assists in controlling the performance and reducing variances of the manufacturing process), analyzing PCC deviation reports for the unit over a time period of interest, conducting stack testing per EPA approved procedures, analyzing emissions inventory reports submitted by the site and determining impact (if any) of recent NSR amendment projects that may affect the units performance. TCEQ is not aware of any facts that

would require any other additional monitoring beyond that which has consistently been required under federal law and Texas permits.

The ED respectfully notes that emission calculation methodologies represented by the applicant in an NSR permit application must be consistent with the emission calculation methodologies used by the applicant to report emissions inventory data to TCEQ. Chapter 4 of the TCEQ's 2022 emissions inventory guidelines document describes the acceptable emissions determination methodologies.

TCEQ's Office of Compliance and Enforcement (OCE) enforces compliance with state's environmental laws to address any non-compliance and enforcement issues. In addition to providing online access to air permit records, TCEQ's CFR Online website also provides online 24x7 access to the public for all compliance and enforcement (OCE) records pertaining to a site (e.g., Valero Refining having Regulated Entity Number: RN109290692) by selecting OCE/Air Compliance Record Series to search for the OCE records that may include (but not limited to) the following report categories: incident, investigation, audit, compliance, enforcement, certification, deviation, notification, stack test, semi-annual and annual, and others.

The Title V permit holder is required to file a permit compliance certification (PCC) report annually to certify compliance with the applicable requirements listed in the FOP O3784 including emission limitations and standards.

COMMENT 12: (Jennifer M. Hadayia) TCEQ incorrectly submitted the draft permit for EPA review.

D. TCEQ Must Withdraw the Draft Permit from EPA Review

The Clean Air Act requires that TCEQ revise the Draft Permit and permit record to address public comments before submitting it to EPA for review. Similarly, EPA's Title V regulations make clear that EPA's 45-day review period cannot run concurrently with the public comment period when significant comments are submitted on a Draft Permit as part of the public participation process. Here, the comment period remains open, indicating that the public participation process is ongoing. There have been significant comments in response to the draft permit. TCEQ incorrectly submitted the permit for EPA review. It shows that TCEQ is uninterested in the input of community members and organizations. Accordingly, TCEQ must withdraw its permit submission from EPA review to properly consider any comments it receives during the public comment period, prepare a response to comments, then revise the permit to correct problems identified in submitted comments.

RESPONSE TO COMMENT 12: The ED respectfully notes Comment 12 submitted by the Commenter is similar to Comment 1 submitted by T.E.J.A.S listed earlier. The ED respectfully notes a detailed response to this comment has already been provided. As such, please refer to response to Comment 1 listed above for additional information.

ORAL COMMENTS MADE BY INDIVIDUALS DURING PUBLIC HEARING MEETING IN HOUSTON ON 12/12/2022.

GROUPED COMMENT 13 BY INDIVIDUALS REPRESENTING ORGANIZATIONS
Christine Holland - CEO of Rebuilding Together Houston, Tammie Kahn, Richard Torres – President of CHRISTUS FOUNDATION for HealthCare, Diana Trevino – Houston East End Chamber of Commerce, Sandra Wicoff – CEO of Target Hunger, Rosalba Castillo – on behalf of Community Family Center

Supportive comments highlighting Valero's contributions to the local community.

RESPONSE TO GROUPED COMMENT 13: The ED is appreciative of the supporting comments made by the Commenters highlighting Valero's contributions to the local community.

GROUPED COMMENT 14 BY INDIVIDUALS
Pilar Fuentes, Shiv Srivastava, John Rainas, Pat Gonzales – President of Caring for Pasadena Communities, Mary Vargas – CPC, Rodrigo Cantu -Attorney with Earth Justice, Yvette Arellano – Director of Fenceline Watch, Amy Dinn – Attorney with Lone Star Legal Aid, Jennifer Hadayia – ED of Air Alliance Houston, Nalleli Hidalgo – TEJAS, Bryan Parras with Sierra Club, Leticia Gutierrez), Gabriel Clark-Leach

Commenters expressed concerns over health risks due to emissions from the Valero site. A commenter suggested Valero set up a compensation fund to assist families facing health risks due to the emissions. Many of the commenters also have submitted written comments.

RESPONSE TO GROUPED COMMENT 14: The ED respectfully notes Comment 14 submitted by the Commenters is similar to Comment 2 submitted by T.E.J.A.S listed earlier. The ED respectfully notes a detailed response to this comment has already been provided. As such, please refer to response to Comment 2 listed above for additional information.

GROUPED COMMENT 15 BY INDIVIDUALS
Shiv Srivastava, Rodrigo Cantu, Yvette Arellano, Amy Dinn, Nalleli Hidalgo, Gabriel Clark-Leach

Commenters expressed Environmental Justice (EJ) concerns that emissions from the Valero site disproportionately impacts people of color and low-income people in the local community.

RESPONSE TO GROUPED COMMENT 15: The ED respectfully notes Comment 15 submitted by the Commenters is similar to Comment 2 submitted by T.E.J.A.S listed earlier. The ED respectfully notes a detailed response to this comment has already been provided. As such, please refer to response to Comment 2 listed above for additional information.

GROUPED COMMENT 16 BY INDIVIDUALS
Shiv Srivastava, John Rainas, Rodrigo Cantu, Yvette Arellano, Amy Dinn, Gabriel Clark-Leach

Commenters expressed concerns over inadequate monitoring to ensure compliance with authorized emission limits. Many of the commenters also have submitted written comments.

RESPONSE TO GROUPED COMMENT 16: The ED respectfully notes Comment 16 submitted by the Commenter is similar to Comments 4, 5 and 11 submitted by T.E.J.A.S and Jennifer Hadayia listed earlier. The ED respectfully notes a detailed response to these comments has already been provided. As such, please refer to response to comments 4, 5 and 11 listed above for additional information.

GROUPED COMMENT 17 BY INDIVIDUALS
Pat Gonzales, Mary Vargas, Yvette Arellano, Priscilla Argueta, Nalleli Hidalgo, Bryan Parras, Ana Parras, Gabriel Clark-Leach

Commenters expressed concerns over lack of fence line monitoring, EPA-tier monitors with live readings and/or real-time monitoring to ensure compliance with authorized emission limits. Many of the commenters also have submitted written comments.

RESPONSE TO GROUPED COMMENT 17: The Draft Permit inadvertently did not include in the special term and condition 9 fence line monitoring requirements under MACT CC. The Proposed Permit has corrected to address this inadvertent error.

The Proposed Permit does include fence line monitoring requirements that are sufficient to demonstrate compliance with authorized emission limits. Specifically, special term and condition 9 in the Proposed

Permit, specifies fence line monitoring requirements stated in 40 CFR Part 63, Subpart CC, § 63.658(a) - (k) to demonstrate compliance with the applicable authorized benzene emissions.

Regarding requiring EPA-tier monitors with live readings and/or real-time monitoring to be included in the Draft Permit, the ED respectfully notes that these requirements are not supported as a BACT or by any applicable state or federal regulation to demonstrate compliance.

Although ambient air monitoring is outside the scope of a Title V permit action, the ED respectfully notes that the Federal Clean Air Act (FCAA) requires every state to establish a network of air monitoring stations for criteria pollutants, using criteria set by EPA's Office of Air Quality Planning and Standards for their location and operation. The TCEQ submits an annual monitoring network plan (AMNP) report to EPA in partial fulfillment of these requirements. Additional information about TCEQ's ambient air monitoring for various pollutants and the locations of various ambient air monitors may be found at https://www.tceq.texas.gov/airquality/monops.

Current live ambient air values of ambient air monitoring data within the State of Texas may be found at The TAMIS Experience (arcgis.com).

MISCELLANEOUS COMMENT 18 BY INDIVIDUALS
Amy Dinn, Alex Morales

Commenters made inquiries about the status of a public information request (PIR) that was submitted to TCEQ and data on percentage of Valero employees that live within 1 mi, 3 mi, 5 mi, and 10-mile radius of plant.

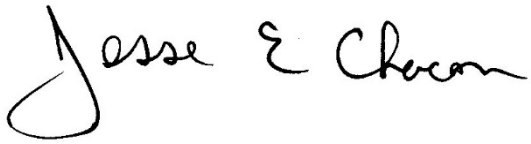
RESPONSE TO COMMENT 18: The ED respectfully notes that issues related to the specifics of a PIR request and data on Valero employees are outside the scope of a Title V permit action. The Executive Director has reviewed the permit application in accordance with the applicable law, policy, and procedures, in accordance with the agency's mission to protect our state's human and natural resources consistent with sustainable economic development. All TCEQ issued Title V permits must meet the requirements under 30 TAC Chapter 122 regulations.

Regarding PIR request, TCEQ processed PIR 23-79127 in accordance with the Public Information Act. TCEQ requested appropriate clarification as allowed by Texas Government Code § 552.222; provided the requestor with a cost estimate as required by Texas Government Code § 552.2615; provided advance notice that TCEQ would be unable to produce the requested information within the 10 business day deadline as allowed by Texas Government Code § 552.221(d); and ultimately produced the information (size was estimated at 112 megabytes of electronic documents) one day later, on the 10th business day deadline.

Regarding data on percentage of Valero employees that live near the refinery, as a courtesy, Valero Energy Partners LP has voluntarily provided the following information.

Distance (Miles)	% employees per mile radius
1	0%
3	1%
5	2%
10	16%
20	60%

Respectfully submitted,



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

APPENDIX A – LIST OF COMMENTERS (IN ALPHABETICAL ORDER)

AGUIRRE HERNANDEZ, ADRIANA
ARELLANO, YVETTE
ARGUETA, PRISCILLA
CARMAN, NEIL
CASTILLO, ROSALBA
CHEUSE, EMMA
CLARK-LEACH, GABRIEL
CANTU, RODRIGO
CORONA, RAQUEL F (MAILING LIST ADD)
DEL TORRO, MARIA DEL SOCORO; LUNA, ALFONSO (MAILING LIST ADD)
DINN, AMY CATHERINE
DYCUS, PATTON
FUENTES, PILAR
GONZALES, PAT (MAILING LIST ADD)
GUTIERREZ, LETICIA
HADAYIA, JENNIFER M
HIDALGO, NALLELI
HOLLAND, CHRISTINE
KAHN, TAMMIE
MORALES, ALEX
PARRAS, BRYAN
PARRAS, ANA
PARRAS, JUAN
RAINAS, JOHN
SCHUETZ, REBECCA (MAILING LIST ADD)
SRIVASTAVA, SHIV
TORRES, RICHARD R
TREVINO, DIANA
TREVINO, SERENITY (MAILING LIST ADD)
TUMEH, DEENA
VARGAS, MARY
VILLARREAL, VICTOR (MAILING LIST ADD)
WICOFF, SANDRA