

Jon Niermann, *Chairman*  
Bobby Janecka, *Commissioner*  
Catarina R. Gonzales, *Commissioner*  
Kelly Keel, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 20, 2024

MR JEFFREY WIND  
ENVIRONMENTAL COMPLIANCE MANAGER  
OKLAUNION INDUSTRIAL PARK LLC  
500 SENECA ST STE 504  
BUFFALO NY 14204-1963

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment  
Renewal  
Permit Number: O38  
Oklaunion Industrial Park, LLC  
Oklaunion Power Station  
Vernon, Wilbarger County  
Regulated Entity Number: RN101062255  
Customer Reference Number: CN605853951

Dear Mr. Wind:

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.

As of September 24, 2024, the proposed permit is subject to an EPA review for 45 days, ending on November 8, 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 November 9, 2024, and ends on January 8, 2025. 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:

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • [tceq.texas.gov](http://tceq.texas.gov)

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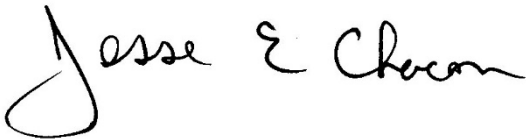
Texas Commission on Environmental Quality  
Office of Air  
Air Permits Division  
Operational Support Section, MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087

Mr. Jeffrey Wind  
Environmental Compliance Manager  
Oklaunion Industrial Park LLC  
500 Seneca St Ste 504  
Buffalo NY 14204-1963

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

Thank you for your cooperation in this matter. If you have questions concerning the processing of this permit application, please contact Ms. Jasmine Yuan, Ph.D., P.E. at (512) 239-6090.

Sincerely,



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

cc: Mr. Jon Greene, Senior Project Manager, Oklaunion Industrial Park, LLC, Austin  
Air Section Manager, Region 3 - Abilene  
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

Project Number: 22527

Jon Niermann, *Chairman*  
Bobby Janecka, *Commissioner*  
Catarina R. Gonzales, *Commissioner*  
Kelly Keel, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 20, 2024

MR ILAN LEVIN  
MR GABRIEL CLARK-LEACH  
ATTORNEY  
ENVIRONMENTAL INTEGRITY PROJECT  
1206 SAN ANTONIO STREET  
AUSTIN TX 78701

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment  
Renewal  
Permit Number: O38  
Oklaunion Industrial Park, LLC  
Oklaunion Power Station  
Vernon, Wilbarger County  
Regulated Entity Number: RN101062255  
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Dear Mr. Levin and Mr. Clark-Leach:

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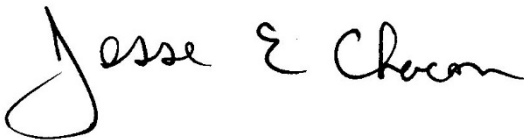
Texas Commission on Environmental Quality  
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Technical Program Support Section, MC-163  
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cc: Mr. Jon Greene, Senior Project Manager, Oklaunion Industrial Park, LLC, Austin  
Air Section Manager, Region 3 - Abilene  
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas (Electronic copy)

Enclosure: Executive Director's Response to Public Comment

Project Number: 22527

## 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. O38 filed by AEP Public Service Company of Oklahoma to operate the Oklaunion Power Station. On October 13, 2020, TCEQ was advised AEP Public Service Company of Oklahoma sold the Oklaunion Power Station located at 12567 FM 3430 in Vernon, Wilbarger County, Texas 76384-8825, to a new owner, Oklaunion Industrial Park, LLC (OIP or Applicant).

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

### BACKGROUND

#### Procedural Background

The Texas Operating Permit Program requires that owners and operators of sites subject to 30 TAC Chapter 122 obtain a FOP that contains all applicable requirements in order to facilitate compliance and improve enforcement. The FOP does not authorize construction or modifications to facilities, nor does the FOP authorize emission increases. In order to construct or modify a facility, the facility must have the appropriate new source review authorization. If the site is subject to 30 TAC Chapter 122, the owner or operator must submit a timely FOP application for the site, and ultimately must obtain the FOP in order to operate. Previous owner AEP Public Service Company of Oklahoma applied to the TCEQ for a renewal of FOP O38 for a Fossil Fuel Electric Power Generation plant located in Vernon, Wilbarger County on March 3, 2015, and notice was published on November 15, 2016. The public comment period ended on December 15, 2016. Comments were received from Mr. Ilan Levin and Mr. Gabriel Clark-Leach on behalf of EIP and SC. 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.

Since acquiring the Oklaunion Power Station in October 2020, OIP has made physical changes to the process units at the site. In response to these changes and in response to the public comments received during the public comment period that ended on December 15, 2016, OIP elected to re-notice the public notice for FOP O38/Project 22527 on April 18, 2024.

The public comment period for the re-notice started on April 18, 2024, and ended on May 20, 2024. No public comments were received during the re-notice public comment period.

#### Description of Site

OIP has applied to the TCEQ for an FOP Renewal that would authorize the applicant to operate the Oklaunion Power Station. The site is located at 12567 FM 3430 in Vernon, Wilbarger County, Texas 76384-8825.

The Oklaunion Power Station located in Vernon, Wilbarger County, Texas is a former 650- megawatt (MW), coal-fired power plant that includes one boiler (Boiler #1/EPN-1) and began operation in 1986. The Texas Commission on Environmental Quality (TCEQ) authorized the construction of the boiler with NSR Permit Number 9015/PSD TX352M2. The plant is authorized to operate under federal Title V Federal Operating Permit No. O38.

On October 13, 2020, TCEQ was advised that OIP purchased the Oklaunion Power Station from American Electric Power (AEP). OIP intends to convert the power plant from coal to natural gas. With this

modification, the plant will no longer have the capability of burning coal. The boiler's existing burners will be replaced with natural gas fired burners, and all coal handling and storage equipment will be removed from the site.

In order to authorize the conversion of the boiler from coal to natural gas, OIP submitted an air permit amendment application to modify NSR Permit Number 9015/PSDTX352M2. On January 17, 2023, TCEQ approved the modification application and issued NSR Permit Number 9015/PSDTX325M3.

Previously, OIP received, stored, and handled coal as the primary boiler fuel. The facility also received, stored, and handled No. 6 fuel oil as pilot fuel. With the approved modification, OIP will cease using coal and No. 6 fuel oil. Natural gas will be the only fuel burned in boiler.

The converted boiler will retain its rated heat input of 6,800 million British thermal units per hour (MMBTU/hr) with a net capacity of 650 MW. The facility proposes an operational schedule of 8760 hours per year. The boiler will continue to produce steam that will be sent to the existing steam turbine generator to make electricity. The boiler's existing control systems, including an electrostatic precipitator (ESP), flue gas desulfurization system (FGD), and activated carbon injection (ACI) system, will no longer be required. This control equipment and associated limestone and activated carbon injection, handling and storage systems will be dismantled and removed from the site. In addition, coal and No. 6 oil storage and handling equipment will be demolished and removed from the site.

To complete the proposed fuel conversion, the boiler's thirty (30) existing coal burners will be replaced with a new Mitsubishi Power Americas, Inc. natural gas combustion system consisting of twenty (20) John Zink Hamworthy Low NOx burners, ten (10) Close Coupled Overfire Air Ports, and an Induced Gas Recirculation System. The combination of these proven technologies will reduce NOx emissions.

## COMMENTS AND RESPONSES

***All written comments received by TCEQ are listed below. 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 were filed by Mr. Ilan Levin and Mr. Gabriel Clark-Leach, on behalf of Environmental Integrity Project (EIP) and Sierra Club (SC).

### **COMMENT 1: Improper exemption from Pollution Control Requirements during Maintenance, Startup, and Shutdown Activities (MSS)**

#### **The Draft Permit Improperly Exempts Oklaunion's Main Boiler from Pollution Control Requirements that Must Apply Continuously During Planned Maintenance, Startup, and Shutdown Activities**

Each Title V permit issued by the TCEQ must include and assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a). Omitting applicable requirements creates a risk that a court could mistakenly conclude that this omission renders these limits unenforceable.

#### **Specific Grounds for Objection**

The Draft Permit is deficient because it improperly exempts Oklaunion's main boiler from pollution control requirements that must apply continuously during planned maintenance, startup, and shutdown ("MSS") activities. These requirements include Texas State Implementation Plan limitations on opacity and particulate matter ("PM"), and Best Available Control Technology ("BACT") requirements for SO<sub>2</sub>, NO<sub>x</sub>, CO, and PM.

Draft Permit, Special Condition No. 8 incorporates by reference Chapter 116 New Source Review ("NSR") permits listed in the permit's New Source Review Authorization References attachment.

The Draft Permit's New Source Review Authorization References attachment lists Permit Nos. PSDTX325M2 and 9015 as permits incorporated by reference into the Draft Permit. Draft Permit at 57. These two permit numbers apply to the same permit, which is included in its entirety as an attachment to the Draft Permit.

Permit No. 9015/PSDTX325M2, Special Condition No. 6 establishes the following emission limits that apply to stack gases from Oklaunion's Steam Generator:

Pollutant or Pollutant Indicator	Emission Limit
NO <sub>x</sub>	0.50 lb/MMBtu (30-day rolling average)
CO	0.07 lb/MMBtu (30-day rolling average)
SO <sub>2</sub>	0.50 lb/MMBtu (3-hour rolling average)
Opacity	20 percent (6-minute average)

Permit No. 9015/PSDTX325M2, Special Condition No. 6 provides that the opacity limit is subject to the limited exemptions in 40 C.F.R. § 60.42Da(b) and 30 Tex. Admin. Code § 111.111(a)(1)(E).

Permit No. 9015/PSDTX325M2, Special Condition No. 23 provides that "[t]he emissions limits that are identified in Special Condition No. 6 do not apply during planned MSS activities."

Permit No. 9015/PSDTX325M2, Special Condition No. 29 provides that Oklaunion may emit more than 20 percent opacity from its Steam Generator during planned MSS activities if certain operating requirements are met. This Special Condition also provides that the Texas State Implementation Plan opacity limit of 20 percent at 30 Tex. Admin. Code § 111.111 and the particulate matter limit of 0.3 lb/MMBtu at 30 Tex. Admin. Code § 111.153, as well as the TCEQ's 30 Tex. Admin. Code, Chapter 101, Subchapter F rules do not apply during planned startup and shutdowns of Oklaunion's steam generator.

The Maximum Allowable Emission Rates table in Permit No. 9015/PSDTX325M2 establishes two different hourly front-half particulate matter emission limits for Oklaunion's Steam Generator. A limit of 205.4 lbs/hr applies during routine operation. A limit of 1,440 lbs/hr applies during planned MSS activities. Emissions up to this planned MSS hourly PM limit would exceed the applicable total PM limit of 0.3 lb/MMBtu/hr limit in the Texas SIP.

### **Additional Specific Grounds for Objection**

In addition, the Draft Permit also illegally exempts the plant from meeting Texas State Implementation Plan limits for PM and opacity during periods when these SIP limits apply. Specifically, Special Condition No. 29.D of incorporated Permit No. 9015/PSDTX325M2 states:

"For periods of planned MSS other than those that are subject to Paragraph A of this condition, 30 TAC 111.111 and 111.153. . . apply".

This term illegally exempts the Oklaunion plant from the applicable requirements for particulate matter found at 30 Tex. Admin. Code § 111.153(b), and opacity found at 30 Tex. Admin. Code § 111.111(a).

Coal-fired generators in Texas may not emit particulate matter (filterable and condensable) in concentrations greater than 0.3 pounds per million British thermal units (lbs/MMBtu). 30 Tex. Admin. Code § 111.153(b). This limit applies at all times and has been incorporated into the Texas State Implementation Plan, making it an applicable requirement for Title V purposes.

The Texas SIP also prohibits coal-fired generators from exceeding an opacity limit of either 20 percent or 30 percent, depending on the unit's date of construction, subject to no more than one six-minute exception per hour or six hours within a 10-day period. 30 Tex. Admin. Code § 111.111(a)(1)(A),(B),(E). Continuous opacity monitors are used to measure compliance with this standard, 30 Tex. Admin. Code § 111.111(a)(1)(C), and generators are required to take prompt action to

bring opacity levels back down if the standard is exceeded. This standard was approved by EPA into the Texas State Implementation Plan in 1996.

Once approved, a State Implementation Plan becomes federal law, enforceable by the state, EPA, and citizens. While the Clean Air Act recognizes that states will often need to revise their SIPs, such revisions may not be effected without EPA's approval.

On November 10, 2010, EPA partially approved the state's proposed program for minimizing emissions during so-called planned maintenance, startup, and shutdown. But in doing so, the Agency stated clearly that TCEQ could not remove or weaken emission limits established in the State Implementation Plan (which defines important federal Clean Air Act standards that apply in Texas) without the review and approval required by Section 116 of the Act:

[W]e note that the State cannot issue any NSR SIP permit that has a less stringent emission limit than already is contained in the approved SIP. For example, the State cannot issue a NSR SIP permit that has less stringent Volatile Organic Compounds limits than those in Chapter 115 as approved into the Texas SIP, or less stringent Oxides of Nitrogen (NO<sub>x</sub>) limits in Chapter 117 as approved into the Texas SIP. The State must issue a NSR SIP permit that meets all applicable requirements of the Texas SIP. If the State wishes to issue a NSR SIP permit that does not meet the applicable requirements of the Texas SIP, then any such alternative limits would need to be submitted to EPA for approval as a source-specific revision to the SIP, before they would modify the federally applicable emission limits in the approved SIP.

The Clean Air Act clearly forbids states from issuing permits, even pursuant to a SIP-approved permitting program, that modify or weaken SIP requirements with respect to any stationary source without approval of the EPA.

Emissions standards and limitations established as part of a state's SIP remain federally enforceable until EPA approves revisions to the SIP. Texas lacks the authority to unilaterally amend its SIP or weaken SIP limits, because doing so would render the federal approval process largely meaningless.

But, TCEQ did just that when it added so called "Planned Maintenance, Startup, and Shutdown" provisions to Oklaunion's major new source review permit. And, now, with this Draft Title V Permit, TCEQ is attempting to incorporate those illegal changes into Oklaunion's Title V permit. Doing so would violate the federal Clean Air Act, because eliminating existing SIP limits during periods of startup, shutdown, and maintenance can only be accomplished as a source-specific SIP revision that requires EPA approval.

The Draft Permit is therefore deficient in that it exempts Oklaunion Boiler No. 1 from complying with both the SIP PM and opacity limits described above, in clear violation of the Title V requirement to include all applicable requirements and to assure compliance with those limits.

SIP limits may only be changed through the SIP process, which requires rulemakings and EPA review and approval. These changes were approved by TCEQ into the underlying PSD permit, but they were never submitted to EPA for review and approval as required by law.

The substantive and procedural prerequisites for changing SIP opacity limits are set forth in 30 Tex. Admin. Code § 111.113. That rule requires an "adjudicative public hearing" before the SIP opacity limits found at 30 TAC § 111.111(a) can be altered, and authorizes a higher limit only for units that continue to meet ". . . all applicable concentration and mass based limits. . ." for PM and other pollutants." This provision, allowing an alternate opacity limit to be established under certain circumstances, was approved by EPA as part of the Texas SIP in 1996. Thus, while the State can establish alternate SIP opacity limits, it can only do so under the approved SIP process.

Here, instead of following the SIP process for increasing opacity limits during maintenance, startup and shutdown events, the SIP opacity limit was removed from the underlying PSD permit without any opportunity for an adjudicative public hearing required by 30 Tex. Admin. Code § 111.113. The table below compares the stringent SIP requirements of 30 Tex. Admin. Code § 111.113 with the Planned

Maintenance, Startup, and Shutdown provisions in the Oklaunion incorporated Permit No. 9015/PSDTX325M2 (specifically Conditions 24 -29 of that permit) that are being incorporated into the Draft Title V Permit:

30 Tex. Admin. Code § 111.113	MSS Permit Conditions
Authorizes “alternate opacity limit” in lieu of opacity requirements of § 111.111 based on specific criteria.	Completely eliminate opacity requirements of 111.111 during MSS events.
Requires “adjudicative public hearing” with hearing record.	No adjudicative hearing prior to approval.
Alternate opacity limit approved only if “all applicable concentration and mass limitations” are met.	Completely eliminate PM concentration based standard (0.3 lb/MMBtu) applicable to all power plants at all times under § 111.153.

TCEQ may not incorporate the provisions of the Oklaunion Permit No. 9015/PSDTX325M2 relating to planned maintenance, start-up, and shutdown, because they impermissibly exempt the plant from complying with SIP PM and opacity limits.

For the reasons explained above the emission limits (which are applicable requirements under 40 CFR 70) are not met. In addition, the permit terms do not assure continuous compliance.

**RESPONSE TO COMMENT 1:** The ED respectfully disagrees with the Commenters assertion that the Proposed Permit and the incorporated NSR Permit No. 9015/PSDTX325M3 provide an improper exemption from the applicable opacity and particulate matter (PM) requirements under 30 TAC §§ 111.111 and 111.153 as listed in the Applicable Requirements Summary table.

As noted in the process description for the Oklaunion Power Station plant, TCEQ approved the modification application and issued NSR Permit Number 9015/PSDTX325M3 to remove use of coal as a fuel. Accordingly, the plant will no longer have the capability of burning coal. Therefore, the ED has determined that the applicable opacity and particulate matter (PM) limits apply at all times including during planned MSS activities, and these requirements are included in NSR Permit No. 9015/PSDTX325M3, issued January 17, 2023, which is appropriately incorporated into the Proposed Permit (see Proposed Permit at page 34). Commenters concerns about visible emissions and opacity from emissions (including MSS) associated with use of burning coal as a fuel have been addressed or are moot in view of the change in the fuel used.

**COMMENT 2: Insufficient monitoring, recordkeeping, and reporting requirements for new source review (NSR) permits**

**The Draft Permit Fails to Include Monitoring Sufficient to Assure Compliance with Hourly and Annual Emission Limits Established by Permit No. 9015/PSDTX325M2**

Title V permits must specify monitoring methods that assure compliance with each applicable requirement. Title V permits must include “compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permits.” To comply with this mandate, permitting authorities must take four steps:

- (1) Permitting authorities must ensure that monitoring requirements contained in applicable requirements are properly incorporated into the Title V permit;
- (2) If the applicable requirements contain no periodic monitoring, permitting authorities 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;

- (3) If there is some periodic monitoring in the applicable requirement, but that monitoring is not sufficient to assure compliance with the permit terms and conditions, permitting authorities must supplement monitoring to assure such compliance; and
- (4) Permitting agencies must clearly document the rationale for the monitoring requirements they select in the permit record.

The Draft Permit is deficient because it does not assure compliance with applicable requirements, it fails to properly incorporate monitoring requirements, it fails to establish periodic monitoring requirements for applicable requirements that do not include monitoring, it fails to supplement insufficient monitoring requirements in applicable requirements, and the permit record fails to provide a clear rationale for the monitoring requirements selected.

**Specific Grounds for Objection**

The Draft Permit is deficient because it does not include monitoring, recordkeeping, and reporting requirements that assure ongoing compliance with hourly and annual emission limits established by Permit No. 9015/PSDTX325M2. The Maximum Allowable Emission Rates table (“MAERT”) in Permit No. 9015/PSDTX325M2 establishes the following emission limits that apply during planned MSS activities and/or routine operation authorized by the permit:

Emission Unit	Pollutant	lbs/hour	TPY
Steam Generator 6,800 MMBtu/hr	NO <sub>x</sub>	3,400 (30-day rolling average)	14,892
	SO <sub>2</sub>	3,410 (3-hour rolling average)	14,936
	PM (front-half)	--	900
	PM/PM <sub>10</sub> /PM <sub>2.5</sub> (front-half) (MSS)	1,440	
	CO	444.1 (30-day rolling average)	1,945
	VOC	4.4	19.3

To determine compliance with these requirements, Oklaunion’s operators must calculate emissions over the relevant averaging periods for planned MSS activities and/or routine operations. The Draft Permit is deficient because it fails to specify how the plant is to calculate its emissions during planned MSS activities. Instead, for pollutants that are not monitored by a CEMS certified to measure emissions over the entire range of a planned MSS activity, the permit allows the power plant to calculate planned MSS emissions using any method it deems appropriate. Permit No. 9015/PSDTX325M2, Special Condition No. 27. It is not enough for the Draft Permit to require the plant to determine emissions using an “appropriate method.” Instead, the permit must actually specify the monitoring and emissions calculations methods necessary to assure ongoing compliance with the applicable limits.

Each Title V permit must specify the monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements. Emission limits in NSR permits incorporated by reference into the Proposed Permit are “applicable requirements.” The rationale for the selected monitoring requirements must be clear and documented in the permit record. For these reasons, the applicable requirements (the permit terms) are not met.

The permit terms described herein are inadequate for the reasons already explained as well as for the following reason. The Draft Permit must specify monitoring, recordkeeping, and reporting requirements that assure ongoing compliance with applicable emission limits. It is not enough for the Draft Permit to require Oklaunion to use monitoring and records the plant operator believes are “appropriate” to determine whether planned MSS emissions from the power plant’s main boiler cause exceedances of

applicable hourly and annual limits. Instead, the Draft Permit must actually specify the appropriate monitoring and recordkeeping requirements that assure compliance.

**RESPONSE TO COMMENT 2:** The ED 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 broad set of generic assertions that: “Draft Permit fails to include monitoring sufficient to assure compliance with hourly and annual emission limits established by Permit No. 9015/PSDTX325M2” and “Draft Permit is deficient because it fails to specify how the plant is to calculate its emissions during planned MSS activities” for the following reasons.

As noted earlier, NSR Permit No. 9015/PSDTX325M3 issued January 17, 2023, authorized the conversion of the boiler/steam generation unit from coal to natural gas, and the NSR permit is appropriately incorporated into the Proposed Permit (see Proposed Permit at page 34). Commenters’ concerns about emissions (including MSS) associated with use of burning coal as a fuel have been addressed or are moot in view of the change in the fuel used.

In regard to monitoring, recordkeeping, and reporting requirements to assure compliance with the applicable requirements, as documented in the applicable requirements summary (ARS) table (see proposed permit at pages 27-30), the proposed permit includes extensive monitoring, reporting, recordkeeping and testing (MRRT) requirements for the various units subject to requirements under 30 TAC Chapter 111, 40 CFR Part 60, Subparts IIII and Da, and 40 CFR Part 63, Subparts DDDDD and ZZZZ. The MRRT requirements listed in the ARS are sufficient to demonstrate compliance with applicable state and federal regulations for applicable criteria pollutants and HAPS. More specifically, boiler/steam generation unit OPS-1 has monitoring requirements for NO<sub>x</sub>, PM and SO<sub>2</sub> pollutants to demonstrate compliance with requirements under 40 CFR Part 60, Subpart Da. The OPS-1 boiler/steam generation unit also has MRRT requirements under 40 CFR Part 63, Subparts DDDDD.

In addition, Special Term 14B(i)(1) in the Proposed Permit requires the Applicant to use a continuous emission monitoring system (CEMS) for measuring SO<sub>2</sub>, NO<sub>x</sub>, and heat input to demonstrate compliance with applicable requirements for the main boiler unit OPS-1 (EPN: 1).

The ED notes that the Proposed Permit and the incorporated NSR Permit No. 9015/PSDTX325M3 include several monitoring, testing, recordkeeping and reporting requirements that demonstrate compliance with applicable requirements during routine operations as well as during MSS activities. Specifically, special conditions (SC) 15 through 18, SC 19.A and 19.B, SC 20.A through 20.D, SC 21.A and 21.B, SC 22.A through 22.D list the MSS related MRRT, emission limits, and emission calculations.

In the NSR Permit No. 9015/PSDTX325M3, the list of specific monitoring, testing, recordkeeping and reporting requirements are as follows:

- 1) Special condition 10 requires CEMS monitoring for NO<sub>x</sub>, CO, VOC, and O<sub>2</sub> emissions from EPN-1 (boiler/steam generator unit);
- 2) SC 10.C requires installation of a fuel flow meter to measure pipeline quality natural gas used as fuel by EPN-1; and
- 3) SC 14, requires reporting of all continuous monitoring readings in excess of the emission limitations in Special Condition No. 1.

In regard to the use of an “appropriate method” to calculate emissions, the ED respectfully disagrees with the Commenters’ assertion that Special Conditions listed in Permit No. 9015/PSDTX325M3 must identify “specific” method(s) to calculate emissions that assure compliance with applicable MSS emission limits.

Emission rates for various pollutants 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 9015/PSDTX325M3 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.

The ED 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.

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 O38, including emission limitations and standards. In addition, EPA requires permit holders to electronically file reports and emissions data for the boiler unit required under 40 CFR Part 63, Subpart DDDDD, via Electronic Reporting of Air Emissions, Compliance and Emissions Data Reporting Interface (CEDRI).

The annual PCCs are available for public viewing at either the affected TCEQ Regional Office (Air Section), or the TCEQ Central File Room (TCEQ Main Campus, Bldg E, Rm 103). Therefore, compliance and enforceability of the Proposed Permit requirements, including MSS emissions is assured.

### **COMMENT 3: The Proposed Permit prohibits the use of credible evidence to demonstrate compliance**

#### **The Draft Permit Violates the Credible Evidence Rule and Title V by Granting the TCEQ the Discretion to Determine Whether Continuous Monitoring Data Required by the Permit is to be Used to Demonstrate Non-Compliance with Applicable Limits**

##### **Specific Grounds for Objection**

Permit No. 9015/PSDTX325M2, Special Condition No. 8(C) provides that "continuous monitoring data may, at the discretion of the permitting authority, be used to determine violations of the conditions of this permit." This special condition is inconsistent with the federal "Credible Evidence" rule described in the Legal Background section above. That rule provides that states, EPA, and citizens may rely on *any credible evidence* to demonstrate non-compliance with applicable requirements in a Title V permit.

The Commenters do not take issue with the TCEQ's enforcement discretion. Our concern is only with the public's right to rely on any credible evidence for enforcement purposes. We seek clarification from the TCEQ that the Title V permit in no way limits members of the public, citizens, or affected parties' ability to utilize available monitoring data, or other credible evidence, in enforcement actions. In those rare cases where citizens file enforcement actions to compel Clean Air Act compliance, it will be the courts (and not the TCEQ) that decide whether evidence of compliance or non-compliance is credible.

**RESPONSE TO COMMENT 3:** The ED respectfully notes that nothing in the Proposed Permit prohibits the use of credible evidence to demonstrate compliance (or noncompliance) with the applicable requirements in the permit. On the contrary, the following Specials Terms in the Proposed Permit explicitly reference the following credible evidence requirements:

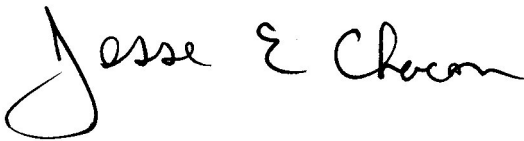
- 1) Special Term 9 at page 8 states "[t]he permit holder shall comply with 30 TAC § 122.146 using at a minimum, but not limited to, the continuous or intermittent compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other *credible evidence* or information" (emphasis added);
- 2) Special Term 13B(ii) at page 9 states "[t]he emissions measurements recorded and reported in accordance with 40 CFR Part 75 and any other *credible evidence* shall be used to determine compliance by the affected source with the acid rain emissions limitations and emissions reduction requirements for SO<sub>2</sub> and NO<sub>x</sub> under the ARP" (emphasis added);

- 3) Special Term 15B(ii) at page 14 states “[t]he emissions data determined in accordance with 40 CFR §§ 97.830 through 97.835 and any other *credible evidence* shall be used to calculate allocations of CSAPR TR NO<sub>x</sub> Annual allowances . . .” (emphasis added); and
- 4) Special Term 8 at page 8 incorporates the deviation reporting requirements of 30 TAC § 122.145. A deviation is defined in 30 TAC § 122.10(6) as “any indication of noncompliance with a term or condition of the permit as found using compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other *credible evidence* or information.” (emphasis added).

Since the Proposed Permit already requires credible evidence to be used in conjunction with other applicable requirements, the ED does not see the need to revise the Proposed Permit.

Since no new public comments were received during the re-notice period that started on April 18, 2024, and ended on May 20, 2024, no changes were made to the re-notice Draft Permit or to the re-notice statement of basis (SOB).

Respectfully submitted,

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

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