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March 3, 2014

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Fax number (202) 501-1450

via Federal Express

**Re: Petition for Objection to Texas Title V Permit No. 064 for the Operation of the
Monticello Steam Electric Station in Titus County, Texas**

Dear Administrator McCarthy:

Enclosed is a petition requesting that the U.S. Environmental Protection Agency object to the Title V Permit No. 064 issued to Luminant Generation Company for operation of the Monticello Steam Electric Station. This petition is timely submitted by the Environmental Integrity Project and Sierra Club. As required by law, we are filing this petition with the EPA Administrator, with copies to EPA Region VI, the Texas Commission on Environmental Quality, and Luminant. The enclosed CD contains electronic copies of all petition exhibits.

Thank you for your attention to this matter.

Sincerely,

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Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF	§	PETITION FOR OBJECTION
	§	
Clean Air Act Title V Permit (Federal	§	
Operating Permit) No. O64	§	
	§	
Issued to Luminant Generation Company,	§	Permit No. O64
LLC, Monticello Steam Electric Station	§	
	§	
Issued by the Texas Commission on	§	
Environmental Quality	§	
	§	

**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO
ISSUANCE OF THE PROPOSED TITLE V OPERATING PERMIT FOR THE
MONTICELLO STEAM ELECTRIC STATION, PERMIT NO. O64**

Pursuant to Clean Air Act § 505(b)(2), 42 U.S.C. § 7661d(b)(2), and 40 CFR § 70.8(d), Sierra Club and the Environmental Integrity Project ("Petitioners") petition the Administrator of the United States Environmental Protection Agency ("EPA") to object to Federal Operating Permit No. O64 ("Proposed Permit") for Luminant Generation Company, LLC's ("Luminant") Monticello Steam Electric Station ("Monticello"), in Titus County, Texas.¹

Petitioners respectfully request that the Administrator object to the Proposed Permit for the following reasons:

- The Proposed Permit's Compliance Assurance Monitoring provisions for the Monticello main Units fail to assure ongoing compliance with the Texas State Implementation Plan ("SIP") particulate matter ("PM") limit of 0.3 lb/MMBtu; and
- The Proposed Permit fails to include a schedule addressing Luminant's ongoing non-compliance with Title V reporting requirements.

The first above-listed deficiency was raised in Petitioners' timely filed public comments. The second issue arose after the close of the public comment period and is timely raised for the first time in this Petition.²

¹ Exhibit A ("Proposed Permit"); Exhibit B ("Revised Statement of Basis").

² 40 C.F.R. § 70.8(d) (explaining that public petitions regarding Title V permits must be based on objections raised during the public comment period, unless the petitioner demonstrates that it was impracticable to raise such objections during the comment period or the grounds for such objection arose after the comment period).

I. THE MONTICELLO PLANT

The Monticello Plant is a three-unit coal-fired power plant in Titus County, Texas. The three units began operating in the 1970s and have a combined generating capacity of 1,880 megawatts. The units fire lignite and subbituminous coal.

II. PETITIONERS

Environmental Integrity Project is a nonprofit, non-partisan organization dedicated to strict enforcement and effective implementation of state and federal air quality laws. Environmental Integrity Project has offices and staff in Austin, Texas.

Sierra Club, founded in 1892 by John Muir, is one of the oldest and largest grassroots environmental organizations in the country. Sierra Club is dedicated to exploring, enjoying, and protecting natural resources and wild places. Sierra Club has the specific goal of improving outdoor air quality. Sierra Club's members and EIP's staff live, work, and recreate in areas that are directly impacted by the emissions from the Monticello power plant.

III. PROCEDURAL BACKGROUND

A. Texas Title V Permit No. O64

Monticello's Texas Federal Operating ("Title V") Permit No. O64 was initially issued on June 4, 1999 and was renewed in 2005. On November 23, 2009, Luminant filed an application to renew Permit No. O64. The TCEQ's Executive Director subsequently issued a draft renewal permit ("Draft Permit"), notice of which was published by Luminant on August 10, 2011. The public comment period for the Draft Permit ended on September 9, 2011. Petitioners timely filed public comments on the Draft Permit with the TCEQ on September 8, 2011.³ More than two years later, the TCEQ issued a response to public comments declining to make any changes to the Draft Permit.⁴ However, the TCEQ's Executive Director did add issuance dates for case-by-case New Source Review ("NSR") permits incorporated by the Draft Permit to the Proposed Permit. EPA's review period for the Proposed Permit began on November 19, 2013 and ended on January 3, 2014. EPA did not object to the Proposed Permit during its review period and Petitioners timely filed this Petition within the 60-day public petition period, which will end on March 4, 2014.⁵

³ Exhibit C (Public Comments submitted by Environmental Integrity Project, Sierra Club, and the Caddo Lake Institute regarding Draft Renewal Permit No. O64) ("Public Comments").

⁴ Exhibit D (The TCEQ's Response to Public Comments) ("Response to Comments").

⁵ *Id.* at Cover Letter.

B. Amendment of Texas Air Quality Permit No. 2401 after the Draft Permit Comment Period Ended

Permit No. 2401, as issued on June 6, 2008, is incorporated by reference into the Proposed Permit.⁶ On December 16, 2011, the TCEQ's Executive Director amended Permit No. 2401 to authorize emissions from planned maintenance, startup, and shutdown activities (the "MSS Amendment").⁷ The MSS Amendment is deficient and violates federal requirements for a number of reasons, including, but not limited to, a lack of public notice, impermissibly weakening SIP limits, as well as SIP and Title V reporting requirements. For example, the MSS Amendment allows unlimited opacity levels and establishes exceedingly high particulate matter limits during broadly defined periods of "planned MSS" activity, based on a broad and non-exhaustive list of so-called "planned activities" that leaves much to Luminant's interpretation.⁸ In addition, to the extent that the MSS Amendment may be read to allow a) opacity levels greater than 30 percent at Units 1 and 2; b) opacity levels greater than 20 percent at Unit 3; or c) PM emissions exceeding 0.3 lb/MMBtu at Units 1 through 3, it conflicts with, and is less stringent than, applicable Texas SIP limits.⁹

On December 14, 2011 (two days before the TCEQ actually issued the MSS Amendment to Permit No. 2401), Luminant filed an application for a minor revision to its Title V Permit to incorporate changes to Permit No. 2401. That application is still pending. However, Luminant has taken the position in federal court pleadings that the filing of a minor revision application to incorporate a NSR permit change—like the MSS Amendment—is effective to incorporate the changes into the Title V permit.¹⁰ Relying on that legal position, Luminant has stopped reporting deviations from SIP opacity limits at Monticello Units 1 through 3 during periods of planned boiler maintenance, startup, and shutdown.¹¹

⁶ Proposed Permit at 80 (New Source Review Authorization References table).

⁷ Exhibit E (Texas Air Quality Permit No. 2401, as amended December, 2011) ("MSS Amendment").

⁸ MSS Amendment at Special Conditions 10-11, MAERT, and Attachments A and B).

⁹ *Id.* (Special Condition 11.F. provides "[f]or periods of maintenance, startup, and shutdown other than those subject to Paragraphs A-D of this condition, 30 TAC § 111.111 [opacity], 111.153 [particulate matter], Chapter 101, Subchapter F [requirements for MSS activities] apply.").

¹⁰ Exhibit F (Defendants' Proposed Findings of Fact and Conclusions of Law, *Sierra Club v. Energy Future Holdings Corp. and Luminant Generation Co. LLC*, Civil Action No. 6:12-cv-00108-WSS, United States District Court for the Western District of Texas, Waco Division) at COL 87 ("The terms and conditions of the revised Permit No. 56445 became terms and conditions of Title V Permit No. O65 when Luminant submitted an application to revise Permit No. O65 to the TCEQ in December 2011."); Exhibit G (Defendants' Reply Regarding Notice of Supplemental Authority in Support of its Pending Motion to Dismiss, *Sierra Club v. Energy Future Holdings Corp.*, No. W-12-CV-108) at n6 ("Further, on December 12, 2011, Luminant applied to TCEQ for a revision of its Title V permit to include these new provisions that authorize and regulate planned MSS emissions. Pursuant to EPA-approved and federally enforceable regulations [at 30 Tex. Admin. Code § 122.217(a)], Luminant's timely application authorizes it to operate, as a matter of federal law, pursuant to the revised MSS terms prior to issuance of the final Title V permit amendment.").

¹¹ Exhibit H (Excepts, Oral Deposition of Lucy Fraiser, *Sierra Club v. Energy Future Holdings Corp. and Luminant Generation Co. LLC*, Civil Action No. 6:12-cv-00108-WSS, United States District Court for the Western District of Texas, Waco Division) at 156-158 (Luminant's witness explains that opacity events that occur during planned MSS

Petitioners appreciate that the TCEQ has added an “Issuance Date” column to the New Source Review Authorization References table in Luminant’s Title V Permit clarifying that the TCEQ elected not to incorporate the MSS Amendment into the Proposed Permit. We note that the Texas Title V rule at 30 Tex. Admin. Code § 122.217(b) clearly states that applicable requirements, like 30 Tex. Admin. Code, Chapter 111 PM and opacity limits, are, “in every case . . . always enforceable” while a permit revision application is pending.¹² Because the meaning of this rule is self-evident and because the Proposed Permit is clear that the MSS Amendment is *not currently part* of the Proposed Permit, we are not petitioning EPA to require modification of the Proposed Permit to restate the obvious.

IV. PROCEDURAL REQUIREMENTS FOR SUBMISSION AND EPA REVIEW OF PETITIONS

The Clean Air Act requires facilities subject to Title V permitting requirements to obtain a permit that “assures compliance by the source with all applicable requirements.”¹³ Applicable requirements include any standard or other requirement in a state’s federally-approved SIP and preconstruction permit limits and conditions.¹⁴ Title V permit applications must disclose all applicable requirements and any violations at the facility.¹⁵

Where a state permitting authority issues a Title V operating permit, EPA will object to the permit if it is not in compliance with applicable requirements under 40 C.F.R. Part 70.¹⁶ If the EPA does not object, any person may petition the Administrator to object within 60 days after the expiration of the Administrator’s 45-day review period.¹⁷ The Administrator “shall issue an objection . . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the . . . [Clean Air Act].”¹⁸ The Administrator must grant or deny a petition to object within 60 days of its filing.¹⁹ While the burden is on the petitioner to demonstrate to EPA that a Title V operating permit is deficient, once such a burden is met, EPA is required to object to the permit.²⁰

activities are no longer considered violations or reported in Luminant’s Title V deviation reports); Exhibit I (Quarterly excess emission reports submitted by Luminant for Permit No. O64).

¹² 30 Tex. Admin. Code § 122.217(b); 30 Tex. Admin. Code § 122.10(2)(A) (definition of “applicable requirement” includes “all of the requirements of Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter) as they apply to the emission units at a site”).

¹³ 40 C.F.R. § 70.1(b); 30 Tex. Admin. Code § 122.142(c).

¹⁴ 40 C.F.R. § 70.2; 30 Tex. Admin. Code § 122.10(2).

¹⁵ 42 U.S.C. § 7661b(b); 40 C.F.R. §§ 70.5(c)(4)(i), (5), and (8); Tex. Admin. Code § 122.132.

¹⁶ 40 C.F.R. § 70.8(c).

¹⁷ 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); 30 Tex. Admin. Code § 122.360.

¹⁸ 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8(c)(1).

¹⁹ 42 U.S.C. § 7661d(b)(2).

²⁰ *New York Public Interest Group v. Whitman*, 321 F.3d 316, 332-34, n12 (2nd Cir. 2003) (“Although there is no need in this case to resort to legislative history to divine Congress’ intent, the conference report accompanying the final version of the bill that became Title V emphatically confirms Congress’ intent that the EPA’s duty to object to non-compliant permits is nondiscretionary”).

V. OBJECTIONS

A. The TCEQ Must Revise the Proposed Permit's Compliance Assurance Monitoring Provision to Assure Compliance with the Applicable SIP Particulate Matter Limit of 0.3 lb/MMBtu at All Times²¹

EPA's Part 70 monitoring rules are designed to satisfy the statutory requirement that "[e]ach permit issued under [Title V] shall set forth . . . monitoring . . . requirements to assure compliance."²² The TCEQ must take three steps to assure a Title V permit complies with EPA's monitoring rules:

- Pursuant to 40 C.F.R. § 70.6(a)(3)(i)(A), the TCEQ must ensure that monitoring requirements contained in applicable requirements are properly incorporated into Texas Title V permits;
- Pursuant to 40 C.F.R. § 70.6(a)(3)(i)(B), if an applicable requirement contains no periodic monitoring, the 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; and
- Pursuant to 40 C.F.R. § 70.6(c)(1), if periodic monitoring in the applicable requirement is not sufficient to assure compliance with permit terms and conditions, the TCEQ must supplement monitoring to assure such compliance.

The TCEQ must also provide a clear account of its rationale for selecting the monitoring requirements in each Title V permit it issues in the permitting record.²³

Monticello's Units 1 through 3 are subject to Compliance Assurance Monitoring ("CAM") requirements and the Proposed Permit must include CAM provisions that assures compliance with the Texas SIP PM limit.²⁴ The CAM rule requires the collection of data at all times, including periods of maintenance, startup, shutdown, and malfunction to demonstrate continuous compliance with applicable limits.²⁵ The purpose of CAM "is to require, as part of

²¹ Public Comments at 7-9.

²² 42 U.S.C. § 7661c(c); *see also* 40 C.F.R. §§ 70.6(a)(3)(i)(A) and (B) and 70.6(c)(1).

²³ 40 C.F.R. § 70.7(a)(5) ("The permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it.").

²⁴ While it is true that the CAM rules only require CAM provisions to provide a "*reasonable* assurance" of compliance. 40 C.F.R. § 64.3(a) (emphasis added). However, the Proposed Permit's CAM Provisions are the only monitoring requirements for the Texas SIP's PM limit of 0.3 lb/MMBtu in the Proposed Permit and must be sufficient to assure ongoing compliance with the limit. 40 C.F.R. § 70.6(a)(1).

²⁵ 40 C.F.R. § 64.7(c) ("Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities . . . , the owner or operator shall conduct all monitoring in continuous operation . . . at all times that the pollutant-specific emissions unit is operating.").

the issuance of a permit under Title V of the Act, improved or new monitoring at those emissions units where monitoring requirements do not exist or are inadequate to meet the requirements of this part.”²⁶ In addition, a CAM provision cannot “[e]xcuse the owner or operator of a source from compliance with any existing emission limitation or standard . . . that may apply under federal, state, or local law, or any other applicable requirements under the Act.”²⁷ CAM provisions do not relax applicable limits or establish new limits. Rather, CAM provisions establish improved monitoring methods as part of the Title V permitting process when necessary to assure compliance with applicable limits.

The Proposed Permit includes two CAM provisions for the Texas SIP PM limit as it applies to Monticello Units 1 through 3 that establish compliance indicators based on opacity levels. The CAM provision for Units 1 and 2 requires Luminant to report opacity levels exceeding 30 percent over a two-hour average as a deviation from the 0.3 lb/MMBtu PM limit.²⁸ The CAM provision for Unit 3 requires Luminant to report opacity levels exceeding 20 percent over a two-hour average as a deviation from the 0.3 lb/MMBtu PM limit.²⁹ Petitioners’ public comments explained that these CAM Provisions are inadequate, because Luminant failed to provide any justification for use of the 30 percent (Units 1 and 2) and 20 percent (Unit 3) indicator ranges and did not explain how opacity monitoring would accurately account for condensable PM emissions, which are included in the 0.3 lb/MMBtu limit.³⁰

Petitioners recommended that the TCEQ either require Luminant to use PM CEMs to directly monitor PM emissions from its main Units or develop site-specific opacity limits, based on source-specific test data, that correlate to a PM emission rate of 0.3 lb/MMBtu.³¹ If the TCEQ was unwilling to require Luminant to adopt one of these monitoring methods, Petitioners explained that the Proposed Permit “must treat *any exceedance* of the . . . opacity limit as conclusive evidence of an exceedance of the Plant’s applicable PM limit.”³² The TCEQ disagreed, stating that the Draft Permit “includes monitoring sufficient to yield reliable data from the relevant time period that is representative of compliance with the permit; and monitoring sufficient to assure compliance with the terms and conditions of the permit.”³³ The TCEQ’s response is deficient for two reasons: 1) the Proposed Permit’s CAM provisions fail to assure compliance with the Texas SIP PM limit during malfunction, maintenance, startup, and shutdown events, because the permit does not require Luminant to report exceedances of the

²⁶ 40 C.F.R. § 64.10(a)(1).

²⁷ *Id.*; see, also, 30 Tex. Admin. Code § 122.161(d) (“The requirements of Subpart G of this Chapter (related to Periodic Monitoring and Compliance Assurance Monitoring) shall not be used to justify the approval of monitoring which is less stringent than the monitoring which is required by the TCAA, FCAA, or a local air pollution control agency”).

²⁸ Proposed Permit at 61.

²⁹ *Id.* at 48.

³⁰ Public Comments at 8-9.

³¹ *Id.*

³² *Id.* at 9

³³ Response to Comments at Response E.

indicator levels during these events as deviations; and 2) Luminant failed to provide information demonstrating a reliable correlation between the Proposed Permit's CAM opacity indicator levels and PM emissions from Units 1 through 3.

1. The Proposed Permit's CAM Provisions Fail to Assure Compliance with the Texas SIP PM Limit at All Times

30 Tex. Admin. Code § 111.153(b) establishes a particulate matter limit for solid fossil fuel-fired steam generators of 0.3 lb/MMBtu, averaged over a two-hour period.³⁴ This limit, which is referenced in the Proposed Permit's Applicable Requirements Summary³⁵ and is also separately enforceable as a SIP limit,³⁶ applies to the three Monticello main boilers *at all times* for at least three independent reasons. First, the limit is clear on its face and contains no qualifying language or exemptions. Second, this is a *SIP* limit and SIP limits are not subject to exemptions during maintenance, startup, shutdown, and malfunction activities.³⁷ Third, EPA has spent the better part of the last decade working with the TCEQ to end the historic (and illegal) practice of allowing blanket exemptions from compliance with SIP limits, and EPA has approved only a limited affirmative defense to *penalties* for violations of SIP limits.³⁸ The Proposed Permit must assure compliance with the Texas SIP PM limit at all times and may not relax the limit or exempt Luminant from compliance with the limit during planned MSS activities.³⁹

³⁴ 30 Tex. Admin. Code § 111.153(b) ("No person may cause, suffer, allow, or permit emissions of particulate matter from any solid fossil fuel-fired steam generator to exceed 0.3 pound of total suspended particulate matter per million Btu heat input, averaged over a two-hour period.").

³⁵ Proposed Permit at 34 and 40 (Applicable Requirements Summary for Units B3 and GRPBOIL12).

³⁶ 40 C.F.R. § 52.2270(c); 64 Fed Reg. 57983, 57985, *Approval and Promulgation of Implementation Plans; Revisions to Particulate Matter Regulations* (October 28, 1999) (approving 111.153(b) into the Texas SIP).

³⁷ 75 Fed. Reg. 68989, 68992, *Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction Activities* (November 10, 2010) ("Although one might argue that it is appropriate to account for . . . variability [of emissions under all operating conditions] in technology-based standards, EPA's longstanding position has been that it is not appropriate to provide exemptions from compliance with emission limits in SIPs that are developed for the purpose of demonstrating how to attain and maintain the public health-based NAAQS.").

³⁸ *Id.* ("For purposes of demonstrating attainment and maintenance, States assume source compliance with emission limitations at all times. Thus, broad provisions that would exempt compliance during periods of startup, shutdown, malfunction and/or maintenance would undermine the integrity of the SIP."), 68996 ("We note that to the extent that a violation of the NAAQS is caused by a violation of an emission limit in a SIP, the most effective means to ensure limited harm to ambient air quality from the exceedance would be an action for injunctive relief. That remedy is unaffected by our approval of the affirmative defense, which is limited to actions for penalties.").

³⁹ 42 U.S.C. § 7410(i) (providing that, with limited inapplicable exceptions, neither states nor the EPA Administrator may issue orders modifying SIP requirements with respect to any stationary source); 40 C.F.R. § 70.6(a)(1) ("[Title V permits must include] [e]missions limitations and standards . . . that assure compliance with all applicable requirements at the time of permit issuance").

The Proposed Permit's CAM provisions for the Texas SIP PM limit both contain the following confusing text:

For each valid 2-hour block that does not include boiler startup, shutdown, maintenance, or malfunction activities, if the opacity exceeds 20% [for Unit 3 or 30% for Units 1 and 2] averaged over the 2 hour block period, it shall be considered and reported as a deviation.⁴⁰

While the TCEQ's response to public comments attempts to demonstrate that stack test information shows that maintenance of opacity levels below the compliance threshold (20 percent for Unit 3 and 30 percent for Units 1 and 2) correlates with PM emission rates well below the Texas SIP limit of 0.3 lb/MMBtu,⁴¹ the TCEQ fails to explain how maintenance of opacity levels below the compliance threshold during periods of "normal" or "steady state" (as defined by Luminant) operation assures compliance with the Texas SIP PM limit during boiler startup, shutdown, maintenance, upsets and malfunctions. *The SIP limit applies at all times.* As EPA emphasized in its recent Hayden Station Title V objection, a CAM provision that excludes data generated during upset events and MSS activities—when emissions are at their highest—does not assure ongoing compliance with a SIP limit.⁴² Thus, the TCEQ's response to comments fails to demonstrate that the Proposed Permit's CAM provisions assure compliance with PM SIP limit during boiler startup, shutdown, maintenance, and malfunction activities.

Requested Revision to the Proposed Permit:

To assure ongoing compliance with the Texas SIP PM limit and to confirm that the limit applies at all times, the Administrator should object to the Proposed Permit and require the TCEQ to remove the portions of the CAM text that excludes periods of malfunction, maintenance, startup, and shutdown.

⁴⁰ Proposed Permit at 48 and 61. The CAM Provision for Unit 3 sets the deviation threshold at 20 percent opacity. The CAM Provision for Units 1 and 2 sets the deviation threshold at 30 percent opacity.

⁴¹ Response to Comments at Response E and Attachments E-1 and E-2.

⁴² Order Granting in Part and Denying in Part Petition for Objection to Permit, *In the Matter of Public Service Company of Colorado, Hayden Station*, Petition VIII-2009-01 at 8 (March 24, 2010) ("Section III.c of Appendix G of the permit says periods of startup, shutdown, and malfunction may be excluded from the 24-hour average opacity for reporting CAM excursions. However, the CAM rule at 40 C.F.R. 64.7(c) requires the collection of data at all times the process is operating, *which includes periods such as startup, shutdown, or malfunctions*. . . . CDPHE must remove from the permit this exclusion for collecting data during periods of startup, shutdown, and malfunction.") (emphasis added).

2. Neither Luminant nor the TCEQ Demonstrated that the Proposed Permit's CAM Indicator Ranges are Based on Reliable Data

For units subject to the CAM rule, Title V permit applicants must submit a CAM plan that identifies compliance indicators to be monitored, the ranges or designated conditions for the indicators, and the performance criteria for the monitoring.⁴³ Applicants must also “submit a justification for the proposed elements of the monitoring” that includes “any data supporting the justification.”⁴⁴ In particular, the applicant must provide “control device . . . operating parameter data obtained during the conduct of the applicable compliance or performance test conducted under conditions specified by the applicable rule.”⁴⁵ If unit-specific compliance or performance test data is not available, the owner or operator must either submit a test plan and schedule for obtaining such data, or demonstrate that “factors specific to the type of monitoring, control device, or pollutant-specific emissions unit make compliance or performance testing unnecessary to establish indicator ranges at the levels that satisfy [CAM] criteria in [40 C.F.R.] § 64.3(a).”⁴⁶

As Petitioners explained in their public comments, Luminant failed to submit a justification for the proposed elements of its CAM plan for the Texas SIP's PM limit as it applies to Monticello Units 1 through 3.⁴⁷ In an attempt to cure this deficiency, the TCEQ included summary information about stack tests conducted at Monticello Units 1 and 2, and Luminant's Martin Lake power plant.⁴⁸ This information, which—along with supporting documents—should have been included in Luminant's renewal application, fails to justify the CAM provisions in the Proposed Permit for two reasons.

a. Neither Luminant nor the TCEQ Provided Source-Specific Data Supporting the Indicator Range Selected for the Proposed Permit's Unit 3 CAM Provision

While the TCEQ reassures Petitioners that stack test data supports the indicator range for the Unit 3 CAM Provision, neither the TCEQ's response nor Luminant's renewal application contains any information regarding compliance or performance tests conducted at that Unit. Instead, the TCEQ relies on a summary chart for tests conducted at Luminant's Martin Lake power plant more than twenty years ago (between 1989 and 1992).⁴⁹ Monticello Unit 3 began commercial operation in 1978, nearly 40 years ago.⁵⁰ Yet, apparently, the TCEQ could not identify any compliance or performance test data for that Unit to support its approval of the Draft Permit's CAM provision for Unit 3. If test data for Monticello Unit 3 is available, it should have

⁴³ 40 C.F.R. § 64.4(a) and (b).

⁴⁴ 40 C.F.R. § 64.4(b).

⁴⁵ 40 C.F.R. § 64.4(c)(1).

⁴⁶ 40 C.F.R. § 64.4(d).

⁴⁷ Public Comments at 8-9.

⁴⁸ Response to Comments at Attachment E-1 and E-2.

⁴⁹ *Id.* at Attachment E-2.

⁵⁰ http://www.luminant.com/plants/pdf/Monticello_Facts.pdf

been included in Luminant's application and provide the basis for determining the sufficiency of the Unit 3 CAM Provision in the Proposed Permit.⁵¹ If test data for Monticello Unit 3 is not available, Luminant must submit a test plan and schedule or demonstrate that "factors specific to the type of monitoring, control device, or pollutant-specific emissions unit make compliance or performance testing unnecessary" to establish CAM indicator ranges.⁵² Luminant has done neither, and the record for the Proposed Permit does not demonstrate that the CAM provision for Monticello Unit 3 reasonably assures compliance with the Texas SIP's PM limit.

The TCEQ contends that Luminant's Martin Lake test summaries are sufficient to demonstrate that the 20 percent opacity indicator threshold reliably indicates compliance with the Texas SIP's PM limit. This is so, because

ML123 and MO3 stack gas PM can be expected to be similar in size and physical properties, based upon similarities in fuel type, combustion method, and emission controls. ML123 and MO3 fire Texas lignite, subbituminous coal, or a combination of these. The units pulverize the coal, inject it into the combustion zone through low-NOx burners, and utilize staged over-fire air injection to further reduce NOx formation. ML123 and MO3 utilize electrostatic precipitators (ESP) to control PM emissions and wet flue gas desulfurization (FGD) scrubbers to control sulfur dioxide (SO2) emissions.⁵³

However, this information does not demonstrate that compliance or performance testing is unnecessary as the CAM rule requires. Both the Martin Lake and Monticello power plants are huge sources of PM emissions that have the potential to emit very high levels of PM across short-term and long-term averaging periods. Even if Monticello Unit 3 and the Martin Lake Units are similarly sized pulverized coal boilers that utilize the same *kind* of PM emissions controls, the emissions control performance of these units may vary significantly depending upon operational factors unique to the two plants, the sizing of the ESPs, as well as each plant's general upkeep. Because Monticello Unit 3 is a large source of PM and because its PM emission performance depends heavily upon source-specific factors, performance testing conducted more than 20 years ago at another plant does not suffice to show that the Proposed Permit's Unit 3 CAM provision indicator range reliably reflects the Unit's performance. Luminant has not shown that compliance or performance testing is unnecessary to establish the proper CAM indicator range for it. Therefore, the TCEQ's response to comments fails to provide information that addresses Petitioners public comments and Luminant's CAM submission is deficient.

⁵¹ 40 C.F.R. § 64.4(c).

⁵² 40 C.F.R. § 64.4(d).

⁵³ Response to Comments at E.1.

b. The Stack Test Information Provided in the TCEQ's Response to Comments Does not Demonstrate that the Proposed Permit's CAM Provisions Provide a Reasonable Assurance of Compliance

Putting to one side Petitioners' concern that the Proposed Permit's CAM Provision for Monticello Unit 3 is not supported by any source-specific test data, the TCEQ's response to Petitioners' comments is also deficient, because the limited stack test summaries included in the TCEQ's response to public comments do not provide enough information to reliably correlate opacity levels with PM emission rates for any of the Monticello Units or show that maintenance of opacity levels below the indicator thresholds "provides a reasonable assurance of ongoing compliance with emission limitations . . . for the anticipated range of operating conditions."⁵⁴ Specifically, the TCEQ's response to public comments does not contain any information about the number of tests conducted at each unit, the duration of the tests, the methods used to conduct each of the tests, the conditions under which each test was run, the operational parameters for each test, the kind and quality of the fuel used in each test, or the methods used to review and assure the quality of data generated by each such test. In short, the TCEQ has provided little more than a series of dots and lines that cannot support its determination that the indicator ranges selected for the Proposed Permit's CAM provisions complies with CAM requirements and Title V monitoring requirements.

Requested Revision to the Proposed Permit:

The Administrator should object to the Proposed Permit and require the TCEQ to establish CAM provisions for Monticello Units 1-3 that reasonably assure compliance with the Texas SIP's PM limit and provide a reasoned justification for the permit's CAM provisions.

B. The TCEQ Must Revise the Proposed Permit to Establish a Compliance Schedule that Requires Luminant to Report all Deviations from Applicable Texas SIP Opacity Limits

As part of the Title V renewal process, the TCEQ must develop a "schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance."⁵⁵ Monticello's Units 1 through 3 regularly exceed applicable Texas SIP opacity limits.⁵⁶ Each exceedance of an applicable Texas SIP opacity limit is a deviation that

⁵⁴ 40 C.F.R. § 64.3(a)(2).

⁵⁵ 40 C.F.R. § 70.5(c)(8)(iii)(C); 30 Tex. Admin. Code § 122.142(e).

⁵⁶ 30 Tex. Admin. Code §§ 111.111(a)(1)(A) and (B); 40 C.F.R. § 52.2270(c); 61 Fed. Reg. 20,732 (May 8, 1996) (approving opacity limits as part of Texas's SIP).

must be included in Luminant's Title V excess emissions reports.⁵⁷ Luminant no longer reports exceedances of Texas SIP opacity limits at its main Units that occur during so-called "Planned MSS" activities as deviations. This failure to report is a violation of applicable Title V reporting requirements that the TCEQ must address through a compliance schedule in the Proposed Permit.⁵⁸

Petitioners were unable to raise this issue during the comment period, because Luminant did not cease reporting opacity exceedances during startup, shutdown, and maintenance until after the TCEQ issued the "MSS Amendment" to Permit No. 2401 on December 16, 2011, *after the comment period for the Draft Permit had closed.*

1. Emissions from the Monticello Plant have exceeded and continue to exceed applicable opacity limits⁵⁹

Each of the Monticello Units must comply with opacity limits (averaged over a six minute period) established by 30 Tex. Admin. Code § 111.111(a)(1), subject to a limited exemption allowing no more than one 6-minute exceedance per hour.⁶⁰ Monticello Units 1 and 2 must comply with an opacity limit of 30 percent and Monticello Unit 3 is subject to an opacity limit of 20 percent.⁶¹ These opacity limits are incorporated into the Texas SIP and are applicable requirements of the Proposed Permit. According to Luminant's Title V excess emissions reports, Monticello exceeded SIP opacity limits on more than 13,000 occasions between July 2006 and January 2011.⁶² Assuming up to one allowable exceedance per hour, Luminant has still exceeded the opacity limits on a regular basis since its Title V Permit was last renewed. The TCEQ contends that the Proposed Permit need not contain a compliance schedule, because the TCEQ's Executive Director has determined that the vast majority of Luminant's self-reported

⁵⁷ 75 Fed. Reg. 68994 ("All emissions in excess of the applicable emission limits are considered violations"); 30 Tex. Admin. Code § 122.145(2)(A) ("The permit holder shall report, in writing, to the executive director all instances of deviations, the probable cause of the deviations, and any corrective actions or preventative measures taken for each emission unit addressed in the permit.").

⁵⁸ *Title V Deviation Reporting and Permit Compliance Certification*, TCEQ Field Operations Guidance (2012) at 12 n3 ("The permit holder is required by the TV permit to comply with the requirement to report a deviation. Noncompliance with that requirement is a separate deviation."). This document is available electronically at: http://www.tceq.texas.gov/assets/public/compliance/field_ops/guidance/Title_V_Guidance_2012_November.pdf (last accessed on January 17, 2014).

⁵⁹ Public Comments at 2.

⁶⁰ 30 Tex. Admin. Code § 111.111(a)(1)(E) ("Visible emissions during the cleaning of a firebox or the building of a new fire, soot blowing, equipment changes, ash removal, and rapping of precipitators may exceed the limits set forth in this section for a period aggregating not more than six minutes in any 60 consecutive minutes, nor more than six hours in any 10-day period. This exemption shall not apply to the emissions mass rate standard, as outlined in § 111.151(a) of this title (relating to Allowable Emissions Limits).").

⁶¹ Proposed Permit at 42 (listing the 111.111(a)(1)(A) 30 percent opacity limit as an applicable requirement for GRPSTACK, which includes Units 1 and 2, and the 111.111(a)(1)(B) 20 percent limit as an applicable requirement for S3, which is Unit 3).

⁶² Public Comments at 2.

opacity deviations qualify for affirmative defense, listed at 30 Tex. Admin. Code § 101.222.⁶³ This response fails to address Petitioners' issue. As EPA has repeatedly made clear, if the criteria are met, the affirmative defense can be used to avoid *penalties* only, but it does not "modify any applicable emission limitation, nor . . . [does it] authorize violations of applicable emission limitations."⁶⁴ That the TCEQ has exercised enforcement discretion, has chosen to take no action, or is satisfied that the reported deviations qualify for the affirmative defense is not evidence that Luminant is complying with applicable opacity limits, and the TCEQ cannot exempt Luminant from having to report any deviations from those limits.

2. Luminant no Longer Reports Deviations from Texas SIP Opacity Limits that Occur During Startup, Shutdown, and Maintenance Activities

The TCEQ's Title V rules require permit holders to "report, in writing, to the executive director all instances of deviation, the probable cause of the deviations, and any corrective actions or preventative measures taken for each emission unit addressed in the permit."⁶⁵ Luminant has stopped reporting deviations from Texas SIP opacity limits at Monticello Units 1 through 3 during maintenance, startups, and shutdowns based on its legal position that the December 16, 2011 MSS Amendment to Permit No. 2401 effectively creates an exception to the SIP opacity limits.⁶⁶ Luminant's legal position is mistaken for several reasons. First, the MSS Amendment *has not* been incorporated into the Proposed Permit and changes to Permit No. 2401 *are not* part of the Proposed Permit. Second, the Proposed Permit still lists the SIP opacity limits as applicable requirements, and Luminant has not requested that the TCEQ remove those requirements from the permit. Third, even if the December 2011 MSS Amendment to Permit No. 2401 had been incorporated into the Proposed Permit, the TCEQ's rules provide that, to the extent that the MSS Amendment establishes limits *less stringent* than the SIP, Luminant must continue to demonstrate compliance with the SIP limits.⁶⁷ Finally, as a matter of law, the TCEQ cannot modify SIP requirements through the Title V or NSR permitting process (and most certainly cannot alter or weaken SIP limits through a Title V "minor revision").⁶⁸

Luminant has not reported any changes to the three Monticello Units or to pollution control equipment that could significantly reduce—let alone eliminate—excess opacity during planned MSS activities.⁶⁹ Yet, it *ceased reporting deviations from the SIP opacity limits during*

⁶³ Response to Comments at Response A.

⁶⁴ 75 Fed. Reg. 68994.

⁶⁵ 30 Tex. Admin. Code § 122.145(2)(A).

⁶⁶ Exhibit I.

⁶⁷ 30 Tex. Admin. Code § 116.115(b)(2)(H)(ii) ("Holders of permits . . . shall comply with the following: If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated.")

⁶⁸ 42 U.S.C. § 7410(i).

⁶⁹ Exhibit I. The TCEQ's Title V rules require information about corrective actions and preventative measures taken to address non-compliance with applicable requirements to be included in Title V excess emissions reports. 30 Tex. Admin. Code § 122.145(2)(A). Luminant's excess emissions reports do not identify any changes to the Monticello

startup, shutdown, and maintenance activities after the MSS Amendment was issued in December 2011. The power plant operates just as it has for decades, which is to say that the particulate matter and opacity pollution controls simply do not work during periods when PM emissions are at their highest. Rather than trying to remedy this problem, Luminant is hiding behind a permit that does not—and cannot—supersede SIP opacity limits. Luminant’s ongoing failure to include planned MSS opacity events in its deviation reports is a violation of Title V reporting requirements. Moreover, as explained above, even if an affirmative defense applies, it does not change underlying standards, and any exceedance of an emission limitation or standard remains a reportable deviation under Title V.

Requested Revision to the Proposed Permit:

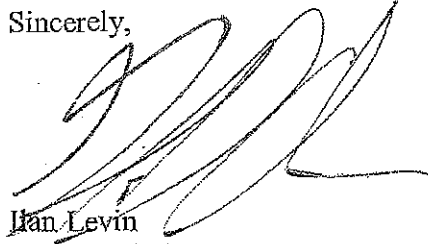
The Administrator should object to the Proposed Permit and require the TCEQ to revise the Proposed Permit to include a schedule for Luminant to supplement its incomplete quarterly excess emissions reports for 2012 and 2013 by reporting all deviations from the 20 and 30 percent opacity limits, including those that occurred during startup, shutdown, or maintenance.

VII. CONCLUSION

For the foregoing reasons, the Proposed Permit is deficient and the Administrator should object to it.

Units that would significantly reduce, let alone completely eliminate, exceedances of SIP opacity limits during planned MSS activities.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ian Levin', written over a horizontal line.

Ian Levin

Gabriel Clark-Leach

ENVIRONMENTAL INTEGRITY PROJECT

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**FOR PETITIONERS SIERRA CLUB and
ENVIRONMENTAL INTEGRITY
PROJECT**

CERTIFICATE OF SERVICE

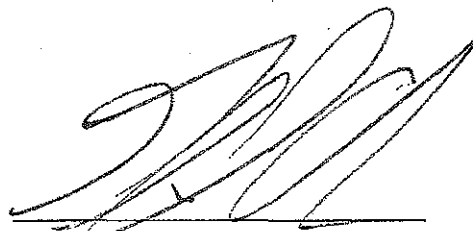
I declare under penalty of perjury under the laws of the United States that I have provided copies of the foregoing Petition to persons or entities below via Federal Express or hand delivery.

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

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

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

Ms. Stephen G. Horn
Senior Vice President
Luminant Generation Company LLC
1601 Bryan St
Dallas, Texas 75201-3430

A handwritten signature in black ink, appearing to read 'G. Clark-Leach', written over a horizontal line.

Gabriel Clark-Leach