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. O31	§	
	§	Permit No. O31
Issued to Southwestern Electric Power Company, H.W. Pirkey Power Plant	§	
	§	
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 H.W. PIRKEY POWER PLANT, PERMIT NO. O31

Pursuant to Clean Air Act § 505(b)(2), 42 U.S.C. § 7661d(b)(2), and 40 CFR § 70.8(d), Environmental Integrity Project and Sierra Club ("Petitioners") petition the Administrator of the United States Environmental Protection Agency ("EPA") to object to Federal Operating Permit No. O31 ("Proposed Permit") for Southwestern Electric Power Company's ("SWEPCO"), H.W. Pirkey Power Plant ("Pirkey Plant"), in Harrison County, Texas.[1]

As set forth below, the Administrator should object to the Proposed Permit for the following reasons:

- The Proposed Permit is an impermissible end-run around the Clean Air Act's State Implementation Plan ("SIP") revision requirements that undermines the enforceability of Texas SIP particulate matter and opacity limits; and

- The Proposed Permit fails to ensure that citizens, EPA, and the State may all rely on credible evidence to demonstrate non-compliance with applicable requirements.

The first issue was raised with specificity during the draft permit public comment period. 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 (Draft Statement of Basis).
[2] 42 U.S.C. § 7661d(b)(2) (A Title V petition "shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition ot the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)").

I. INTRODUCTION

SWEPCO's Pirkey Plant is a 721 megawatt coal and lignite-fired power plant located in Harrison County, Texas that began operation in 1985. The plant utilizes one boiler to burn lignite, coal, or sweet natural gas. The Pirkey Plant is a significant source nitrogen oxide ("NOx"), volatile organic compounds ("VOC"), particulate matter ("PM"), and Mercury. In 2011, the Pirkey Plant was the tenth largest source of mercury emissions in the United States.[3]

II. PETITIONERS

Environmental Integrity Project ("EIP") 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 is the oldest and largest grassroots environmental organization in the county, with hundreds of thousands of members nationwide. Sierra Club is a non-profit corporation with offices, programs, and many members in Texas and has the specific goal of improving outdoor air quality.

III. PROCEDURAL AND LEGAL BACKGROUND

A. Texas's Rules For Regulating Emissions During Planned Maintenance, Startup, and Shutdown Activities

In 2005, Texas's SIP-approved rules establishing affirmative defense provisions for excess emissions during upset events and planned MSS activities expired. Prior to the plan's expiration, EPA informed Texas that the State would be required to develop a new approach for regulating planned MSS emissions, because the previously approved affirmative defense was inconsistent with Clean Air Act requirements. To address EPA's concern, Texas proposed to phase out the affirmative defense for planned MSS activities and to establish in its place a program for permitting planned MSS activities.[4] The proposed rules established a schedule for the submission and evaluation of MSS permit applications and provided that the affirmative defense would no longer be available to sources with permits authorizing planned MSS activities.[5]

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[3] *The Toxic Ten: Top Power Plant Emissions of Mercury, Toxic Metals, and Acid Gases in 2011*, Environmental Integrity Project (January 3, 2013). Available electronically at: http://environmentalintegrity.org/news_reports/documents/Toxic10PowerPlantsreport-January32013.pdf

[4] *Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction Activities*, 75 Fed. Reg. 68989 (November 10, 2010). The rules Texas submitted with its SIP revision included provisions in 30 Tex. Admin. Code Chapter 101, Subchapter A (General Rules) and Subchapter F (Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities).

[5] *Id.* at 68994.

While EPA ultimately rejected TCEQ's proposal to include a temporary affirmative defense for planned MSS activities in the Texas SIP, the agency did not object to Texas's proposal to issue permits authorizing MSS activities. Though EPA agreed that permits were an appropriate instrument for authorizing and regulating planned MSS emissions, the agency was also concerned that Texas might be tempted to use its MSS permitting process to improperly relax federally-enforceable SIP requirements.

In particular, EPA was concerned that Texas might read its rule at 30 Tex. Admin. Code § 101.221(d) to allow the TCEQ to issue permits exempting sources from SIP requirements during planned MSS activities. The rule provides:

> Sources emitting air contaminants that cannot be controlled or reduced due to a lack of technological knowledge may be exempt from the applicable rules when so determined and ordered by the commission. The commission may specify limitations and conditions as to the operation of such exempt sources. The commission will not exempt sources from complying with any federal requirements, including New Source Performance Standards (40 Code of Federal Regulations Part 60) and National Emission Standards for Hazardous Air Pollutants (40 Code of Federal Regulations Parts 61 and 63).

Before taking action on Texas's SIP revision, EPA asked the TCEQ to clarify whether 101.221(d) could be applied to relax SIP requirements.[6] The TCEQ squarely addressed EPA's concern about the rule in a letter written by John Steib, Jr., Deputy Director of the TCEQ's Office of Compliance and Enforcement, which was included in the SIP revision rulemaking docket:

> The TCEQ agrees that this rule cannot be used by the agency to grant any requested relief from compliance with <u>any State Implementation Plan (SIP) requirements</u>, such as, for example, SIP approved rules in 30 Tex. Admin. Code Chapters 115 and 117, or in approved area-specific plans. Any such relief would be limited to state-only requirements for controlling air contaminants. <u>Further, as stated in the last sentence, the commission will not exempt sources from compliance with any federal requirements</u>.[7]

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[6] *Proposed Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction Activities* 75 Fed. Reg. 26892, 26894 (May 13, 2010).

[7] Exhibit C, Letter from John Steib, Jr., TCEQ, Deputy Director, Office of Compliance and Enforcement, to John Blevins, EPA Region 6, Director, Compliance Assurance and Enforcement Division, Re: EPA Approval of the TCEQ Emission Events Rule (April 17, 2007) at 3 (emphasis added).

Based on the TCEQ's response and the clear language in the rule stating that it may not be used to create exemptions to "any" federal requirements, EPA approved 30 Tex. Admin. Code § 101.221(d). In the preamble to its final action on Texas's SIP revision, EPA offered the following response to two commenters seeking additional clarification regarding 101.221(d):

> *Comments:* One commenter asserts that the exemption provision of section 101.221(d) . . . should be interpreted to apply to the opacity requirements of 30 TAC section 111.111, while another commenter requests clarification that the exemption provision in section 101.221(d) . . . be interpreted to exclude federally approved SIP requirements. The commenter claims that TCEQ's and EPA's interpretation of that section is incorrect.
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> *Response*: 30 TAC section 111.111 entitled "Requirements for Specified Sources" was adopted by TACB on June 18, 1993, and approved by EPA as a revision to the Texas SIP on May 8, 1996 (61 FR 20734). At that time, it became federally enforceable. Therefore, the requirements in the SIP rule found at 30 TAC section 111.111 are "federal requirements." Section 101.221(d) plainly states that TCEQ will not exempt sources from complying with any "federal requirements." This position is also consistent with the April 17, 2007 letter from John Steib, Deputy Director, TCEQ Office of Compliance and Enforcement to EPA Region 6, in which the State confirmed that the term "federal requirements" in 30 TAC 101.221(d) includes any requirement in the federally-approved SIP. In section D of our May 13, 2010 proposal, we stated that new section 101.221 (Operational Requirements) requires that no exemptions can be authorized by the TCEQ for any federal requirements to maintain air pollution control equipment, including requirements such as NSPS or National Emissions Standards for Hazardous Air Pollutants (NESHAP) or requirements approved into the SIP. Texas confirmed this interpretation and, therefore, the State may not exempt a source from complying with any requirement of the federally-approved SIP. Any action to modify a state-adopted requirement of the SIP would not modify the federally enforceable obligation under the SIP unless and until it is approved by EPA as a SIP revision.[8]

Thus, EPA approved 101.221(d) and signed-off on Texas's plan to issue permits for planned MSS activities, because it was clear to EPA, Texas, and the regulated community that the TCEQ could not issue permits that relaxed or exempted sources from federal requirements, including Texas SIP requirements. The TCEQ has issued permits to many large industrial sources, including the Pirkey Plant, authorizing planned MSS activities.

[8] 75 Fed. Reg. 68998.

B. Procedural Background

Since at least 2000, New Source Review ("NSR") Permit No. 6269 has included emission limits and operational requirements for the Pirkey Plant main boiler. On February 3, 2012, the Executive Director of the TCEQ issued an amendment to Permit No. 6269 ("MSS Amendment") specifically authorizing emissions during planned MSS activities at the plant. As part of the authorization, certain operating requirements and emission limits were relaxed during planned MSS activities. Most notably, the amended permit purports to create exemptions to SIP particulate matter and opacity limits during planned MSS activities.

Special Condition 18(B) of Permit No. 6269 provides that "opacity greater than 20 percent" is authorized during "planned online and offline maintenance activities" identified in attachments to the permit. This Special Condition purports to create an exemption to the 20 percent opacity SIP limit established by 30 Tex. Admin. Code § 111.111(a)(2)(B). The Maximum Allowable Emission Rate Table ("MAERT") of Permit No. 6269 authorizes the Pirkey Plant main boiler to emit up to 1,457 pounds of particulate matter per hour. Prior to the MSS authorization, the main boiler was only authorized to emit 682 pounds per hour. The limit was increased to allow higher emissions during planned MSS activities. The Pirkey Plant main boiler cannot emit 1,457 an hour without exceeding the Texas SIP PM limit of 0.3 lb/MMBtu established by 30 Tex. Admin. Code § 111.153(b). While neither Special Condition 18(b) nor the MAERT state that the new opacity exemption and increased PM limit are meant to relax applicable SIP limits, Special Condition 18(D) makes this intent clear: "For periods of MSS other than those subject to Paragraphs A-C of this condition, 30 TAC § 111.111, 111.153, and Chapter 101, Subchapter F apply." Special Condition 18(D) confirms what Special Condition 18(B) and the increased hourly PM limit suggest: the purpose of the MSS Amendment is to exempt the Pirkey Plant from SIP particulate matter and opacity limits during authorized planned MSS activities.

After the MSS Amendment was issued, SWEPCO filed an application to incorporate the MSS Amendment into its Title V permit. On May 14, 2013, the Executive Director publicly announced issuance of a draft permit for and recommended approval of SWEPCO's application. On June 13, 2013, the Environmental Integrity Project timely submitted comments to the TCEQ explaining that the Draft Permit was deficient, because it improperly relaxed applicable SIP limits, it was improperly processed as a minor revision, and it failed to assure compliance with applicable SIP limits.[9] More than a year later, on July 15, 2014, the Executive Director issued his response to public comments, which he forwarded to EPA with the Proposed Permit for

[9] Exhibit D, Public Comments on Draft Title V Permit No. O31 Filed by the Environmental Integrity Project ("Comments").

review.[10] The Executive Director did not make any changes to the draft permit in response to EIP's comments.

EPA's 45-day review period began on July 22, 2014 and ended on September 5, 2014.[11] EPA did not object to the Proposed Permit. Petitioners timely file this petition for objection within 60 days after EPA's review period ended. As required by 42 U.S.C. § 7661d(b)(2), the issues raised in this petition were either identified with specificity in timely-filed public comments or arose after the public comment period closed.

IV. PROCEDURAL REQUIREMENTS FOR SUBMISSION AND EPA REVIEW OF TITLE V PETITIONS

The Clean Air Act requires sources subject to Title V permitting requirements to obtain a permit that "assures compliance by the source with all applicable requirements."[12] Applicable requirements include, among others, any standard or other requirement in a state's federally-approved SIP and preconstruction permit limits and conditions.[13] Title V permit applications must disclose all applicable requirements and any violations at the source.[14]

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.[15] 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.[16] 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]."[17] The Administrator must grant or deny a petition to object within 60 days of its filing.[18] 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.[19]

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[10] Exhibit E, Notice of Proposed Permit and Executive Director's Response to Public Comment, Minor Revision, Permit No. O31 ("Response to Comments").
[11] *Id.* ("As of July 22, 2014 the proposed permit is subject to an EPA review for 45 days, ending on September 5, 2014.").
[12] 40 C.F.R. § 70.1(b); 30 Tex. Admin. Code § 122.142(c).
[13] 40 C.F.R. § 70.2; 30 Tex. Admin. Code § 122.10(2).
[14] 42 U.S.C. § 7661b(b); 40 C.F.R. §§ 70.5(c)(4)(i), (5), and (8); Tex. Admin. Code § 122.132.
[15] 40 C.F.R. § 70.8(c).
[16] 42. U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); 30 Tex. Admin. Code § 122.360.
[17] 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8(c)(1).
[18] 42 U.S.C. § 7661d(b)(2).
[19] *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. Issues Raised During the Draft Permit Public Comment Period

1. *The TCEQ may not use its NSR and Title V permitting programs to unilaterally relax or create exemptions to Texas SIP requirements.*[20]

The Clean Air Act forbids state permitting agencies from issuing permits that modify SIP requirements.[21] Such permits are ineffective, unless and until the permitting agency applies to EPA for a site-specific SIP revision and obtains EPA approval.[22] The Proposed Permit violates this prohibition by incorporating SIP exemptions established by the MSS Amendment as federally-enforceable terms of SWEPCO's Title V permit. So long as SWEPCO's Title V permit includes these exemptions, EPA, the State, and citizens will be barred under the prevailing doctrine of collateral attack from enforcing Texas SIP particulate matter and opacity limits in federal court, so long as SWEPCO complies with the requirements of its Title V permit.[23] Incorporation of the MSS Amendment into SWEPCO's Title V permit is an impermissible end-run around the Clean Air Act's SIP-revision process and the Administrator should object to it.

2. *The conditions and limits in Permit No. 6269 that purport to create exemptions to Texas SIP requirements violate Clean Air Act requirements and therefor may not be incorporated into SWEPCO's Title V permit through a minor revision.*[24]

Texas's Title V program rules establish a streamlined "minor revision" process that may be used to authorize certain kinds of insignificant changes to Title V permits. The rules provide that streamlined process is not appropriate to authorize changes that "violate any applicable

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[20] Comments at 2-3.

[21] 42 U.S.C. § 7410(i) ("Except for a primary nonferrous smelter order under section 7419 of this title, a suspension under subsection (f) or (g) of this section (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d) of this title (relating to compliance orders), a plan promulgation under subsection (c) of this section, or a plan revision under subsection (a)(3) of this section, no order, suspension, plan revision, or other action modifying any requirement of an applicable implantation plan may be taken with respect to any stationary source by the State or by the Administrator."); 75 Fed Reg. 68,995 ("[T]he State cannot issue any NSR SIP permit that has a less stringent emission limit than already is contained in the approved SIP.")."

[22] 75 Fed Reg. 68998 ("Any action to modify a state-adopted requirement of the SIP would not modify the federally enforceable obligation under the SIP unless and until it is approved by EPA as a SIP revision."); *United States v. General Dynamics Corp*, 755 F.Supp. 720, 723 (N.D. Texas 1991) ("Because the effect of the agreed board order is to raise the emissions limits set by the Texas SIP, the order requires approval by . . . [EPA] to be effective.").

[23] *U.S. v. EME Homer City Generation, L.P.*, 727 F.3d 274, 300 (3rd Cir. 2013) (EPA barred from enforcing federal requirements omitted from power plant Title V permit); *Sierra Club v. Otter Tail Power Co.*, 615 F.3d 1008, 1020-21 (8th Cir. 2010) (Court lacked jurisdiction to consider Sierra Club's allegation that source violated requirement that was not included in its Title V permit); *Romoland School Dist. v. Inland Empire Energy Center*, 548 F.3d 738, 754-755 (9th Cir. 2008).

[24] Comments at 4-5

requirement."[25] "Applicable requirement" is defined to include applicable SIP opacity and PM limits.[26] The Proposed Permit violates applicable requirements by creating improper exemptions to Texas SIP particulate matter and opacity limits without full public notice and EPA approval. The Executive Director's end-run around the SIP revision process is not the kind of change that can be authorized as a streamlined Title V permit minor revision.

3. *Incorporation of the MSS Amendment into SWEPCO's Title V permit fails to assure compliance with applicable requirements.*[27]

Texas Title V permits must include conditions necessary to assure compliance with applicable requirements, including Texas SIP requirements.[28] The Texas SIP's 20 percent opacity limit and 0.3 lb/MMBtu PM limit are applicable requirements for the Pirkey Plant. These SIP limits apply at all times, including planned MSS activities. This is so for at least three independent reasons. First, the rules establishing the limits do not provide any exception for planned MSS events. Second, these limits are SIP limits and SIP limits are not subject to exemptions during maintenance, startup, shutdown, and malfunction activities.[29] 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. The Proposed Permit fails to assure compliance with these requirements because it says that the SWEPCO does not need to comply with them during MSS Activities authorized by Permit No. 6269.

4. *The Executive Director's Response to Public Comments misstates the law and fails to address Petitioners' concerns.*

The Executive Director does not deny that the Proposed Permit incorporates purported exemptions to Texas SIP particulate matter and opacity limits. Instead, he claims that he has the authority to unilaterally exempt sources from SIP requirements. The source of this authority, the Executive Director contends, is Texas's SIP-approved rule at 30 Tex. Admin. Code § 101.221(d):

> The MSS Amendment does not modify permit requirements in a way that violates the SIP. Rather, the Commission has specified limitations and conditions for certain specific operational phases. The Texas SIP includes 30 TAC § 101.221(d). That rule provides that sources emitting air contaminants that cannot

[25] 30 Tex. Admin. Code § 122.215(1).
[26] 30 Tex. Admin. Code § 122.10(2)(A).
[27] Comments at 5.
[28] 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.6(a).
[29] 75 Fed. Reg. 68992 ("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.").

be controlled or reduced due to a lack of technological knowledge may be exempt from the applicable rules when so determined and ordered by the Commission," (sic) and allows the Commission to "specify limitations and conditions as to the operation of such exempt sources."[30]

Here, in one short paragraph, the Executive Director looks to sweep the clear language of the rule ("The commission will not exempt sources from complying with any federal requirements[.]"),[31] the TCEQ's on-the-record interpretation of the rule with respect to SIP requirements ("The TCEQ agrees that this rule cannot be used by the agency to grant any requested relief from compliance with any State Implementation Plan requirements[.]"),[32] the conditions of EPA's approval of the rule ("[T]he State may not exempt a source from complying with any requirement of the federally-approved SIP")[33]—all of it—under the rug, like a pile of dust. Obviously, 30 Tex. Admin. Code § 101.221(d) does not say what the Executive Director contends it does. Accordingly, the Executive Director's response fails to address Petitioners' concerns and the Administrator should object to the Proposed Permit.

The Executive Director's position is wrong for another important reason: it is fundamentally incompatible with the Clean Air Act's core concept of cooperative federalism. While the Clean Air Act affords states discretion to develop their own SIPs, it also provides that EPA must approve state SIPs and SIP revisions before they may be implemented. Just as EPA may not dictate SIP particulars to the states, states cannot unilaterally discard the particulars of their own plans once they are approved by EPA.[34] If the Executive Director can exempt sources from SIP requirements at his own discretion, without any public notice, without EPA approval, without any real scrutiny, EPA's SIP-approval authority and the Clean Air Act itself is a dead letter in Texas. As a matter of law, the Executive Director's response is meritless. However, this fact means very little if EPA is unwilling to enforce the law. As a matter of fact, the Executive Director's attempt to skirt the law in this case—and others—will be successful unless the Administrator addresses and corrects his missteps as they happen. The Administrator should object to the Proposed Permit.

- **Requested Revision to the Proposed Permit:**

The Administrator should require the Executive Director to revise the Proposed Permit to state that any condition in any incorporated NSR permit that purports to modify an applicable requirement contained in the Texas SIP or a federal rule is ineffective and does not excuse non-compliance with the requirement. The Executive Director should also be

[30] Response to Comments at Response 1.
[31] 30 Tex. Admin. Code § 101.221(d).
[32] Exhibit C.
[33] 75 Fed. Reg. 68998.
[34] 42 U.S.C. §§ 7410(i), 7416; 40 C.F.R. §§ 51.102, 51.105.

required to revise the Statement of Basis to clarify that SIP limits apply at all times, regardless of what may be indicated in NSR permits incorporated by reference into the final permit.

B. Credible Evidence

In 1997, EPA promulgated revisions to 40 C.F.R. Parts 51, 52, 60, and 61 to clarify that nothing shall preclude the use of *any* credible evidence or information in demonstrating compliance or noncompliance with federal emission limits.[35] The purpose of this rule is to allow enforcement entities to rely on any available credible evidence to demonstrate compliance or noncompliance with a federally enforceable emission limit.[36] To ensure that the Credible Evidence rule would achieve this purpose, EPA included language in the rule prohibiting states from barring the use of credible evidence to assess compliance with federal emission limits:

> For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this part, the plan *must not preclude the use*, including the exclusive use, *of any credible evidence or information*, relevant to whether the source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.[37]

In response to this rulemaking and EPA's proposed Compliance Assurance Monitoring rule, some commenters suggested that Title V permits may still be written to limit the use of credible evidence to prove violations of emissions standards.[38] EPA not only rejected this suggestion, the agency also emphasized that permits containing such limits should be vetoed.[39] And in cases where objectionable permits are not vetoed, EPA clarified that terms limiting the use of credible evidence should be read as "null and void" and "without meaning."[40]

While the Proposed Permit does not contain language limiting the use of credible evidence, a recent Texas federal court ruling suggests that the mere absence of limiting language is not sufficient to protect the use of credible evidence. After the close of the Draft Permit public comment period, the United States District Court for the Western District of Texas held that "a concerned citizen is limited to the compliance requirements, as defined in the Title V permit,

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[35] *Credible Evidence Revisions*, 62 Fed. Reg. 8314 (February 24, 1997); 40 C.F.R. §§ 52.12(c), 60.11(g) and 61.12(e); *Natural Res. Def. Council*, 194 F.3d 130, 134 (D.C. Cir. 1999).
[36] *Id.*
[37] 40 C.F.R. § 51.212(c)(emphasis added).
[38] *Compliance Assurance Monitoring*, 62 Fed. Reg. 54900, 54907-8 (October 22, 1997).
[39] *Id.*
[40] *Id.*

when pursuing a civil lawsuit for CAA violations."[41] According to the Court, Title V permits must be read to limit applicable compliance demonstration methods, because a different reading would undermine the "permit's objective as the source-specific bible for Clean Air Act compliance."[42] To address this decision and to ensure that EPA's Credible Evidence and CAM rules are properly implemented in Texas, the Administrator should object to the Proposed Permit and require the Executive Director to revise the Proposed Permit to state that any credible evidence may be used to demonstrate non-compliance with applicable requirements.

- **Requested Revision to the Proposed Permit:**

To assure that applicable requirements in the Proposed Permit are practicably enforceable, the Administrator should require the Executive Director to revise the permit to include the following condition: "Nothing in this permit shall be interpreted to preclude the use of any credible evidence to demonstrate non-compliance with any term of this permit."

VII. CONCLUSION

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

Sincerely,

/s/

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[41] Exhibit F, Order Granting Motion for Partial Summary Judgment, *Sierra Club v. Energy Future Holdings Corp.*, No. W-12-CV-108 (W.D. Tex. February 10,.2014) at 15-16.
[42] Exhibit F at 16 (citations omitted).