

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE ADMINISTRATOR**

IN THE MATTER OF	)	PETITION FOR OBJECTION
	)	
Proposed Clean Air Act Title V	)	Permit No. O1498
Operating Permit Issued to Premcor	)	
Refining Group, Inc., for Operation of	)	
Port Arthur Refinery	)	
_____	)	

Pursuant to Section 505(b)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7661d(b)(2), 40 C.F.R. § 70.8(d), and Title 30 § 122.360 of the Texas Administrative Code (“TAC”), the Environmental Integrity Project, Community In-Power and Development Association, Inc., Public Citizen’s Texas office, and the Refinery Reform Campaign (“Petitioners”) petition the Administrator of the U.S. Environmental Protection Agency (“EPA”) to object to proposed Title V Federal Operating Permit number O1498, issued by the Texas Commission on Environmental Quality (“TCEQ”) to Premcor Refining Group, Inc. (“Premcor” or “Applicant”) for operation of Premcor’s Port Arthur Refinery. As required by the cited provisions, Petitioners are providing this Petition to the Administrator of the U.S. EPA, the Texas Commission on Environmental Quality (“TCEQ”), and Premcor. Petitioners are also providing this Petition to the EPA Region VI Air Permit Section Chief.

EPA must object to the proposed permit because it is not in compliance with the Clean Air Act. Specifically, the proposed permit’s monitoring requirements are not adequate to ensure compliance with the CAA , and its use of incorporation by reference

for emissions limitations and standards violates Title V of the Act and its implementing regulations at 40 C.F.R. Part 70, thereby rendering the permit practically unenforceable.

### **BACKGROUND**

Premcor applied to the TCEQ for a Federal Operating Permit (“FOP”) Initial Issuance to allow Premcor to operate its Port Arthur petroleum refinery (“Refinery”), located in Port Arthur, Texas, on May 23, 2000. Notice was published on January 2, 2005, February 11, 2005, and August 6, 2006. The public comment period ended on September 5, 2006.

During the public comment period on the proposed Title V permit, Petitioners Community In-Power and Development Association, Inc., Public Citizen’s Texas office, and the Refinery Reform Campaign timely submitted written comments to TCEQ on February 3, 2005. On July 11, 2005, Petitioner Environmental Integrity Project submitted additional comments to TCEQ to supplement the February 3, 2005 comments. All Petitioners resubmitted the July 11, 2005 comments on May 31, 2006, in response to TCEQ’s May 2, 2006 solicitation for public comments. Petitioners raised all issues in this Petition in their comments to TCEQ.

EPA received the proposed Title V permit from TCEQ on November 7, 2006. EPA’s 45-day review period ended on December 22, 2006. EPA did not object to the proposed permit during the review period, and TCEQ issued the permit on January 8, 2007. This Petition is timely filed since Petitioners submitted it within 60 days following the end of EPA’s 45-day review period as required by CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2).

## SPECIFIC OBJECTIONS

“If any [Title V] permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this chapter ... the Administrator shall ... object to its issuance.” CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1) (emphasis added). EPA “does not have discretion whether to object to draft permits once noncompliance has been demonstrated.” N.Y. Pub. Interest Group v. Whitman, 321 F.3d 316, 334 (2<sup>nd</sup> Cir. 2003) (EPA required to object to Title V permits once petitioner demonstrated permits did not comply with the Clean Air Act).

### **I. INADEQUATE MONITORING**

The Clean Air Act requires that “[e]ach [Title V] permit ... shall set forth ... monitoring ... and reporting requirements to assure compliance with the permit terms and conditions.” CAA § 504(c), 42 U.S.C. § 7661c(c) (emphasis added). The EPA itself has acknowledged:

[i]n the absence of effective monitoring, emissions limits can, in effect, be little more than paper requirements. Without meaningful monitoring data, the public, government agencies and facility officials are unable to fully assess a facility’s compliance with the Clean Air Act.

Initial Brief of Respondent United States Environmental Protection Agency, Appalachian Power Co. v. EPA, No. 98- 1512 (D.C. Cir., Oct. 25, 1999) quoted at 71 Fed. Reg. 75422, 75425 (Dec. 15, 2006) (emphasis added).

The proposed Premcor Title V permit lacks monitoring, record keeping, and reporting sufficient to assure compliance with all emission limitations and other substantive Clean Air Act requirements, rendering its emission limits “little more than paper requirements” and defeating Title V’s central purpose of increasing enforcement

and compliance. Specifically, the underlying permits, incorporated into the proposed Title V permit by reference, contain the following monitoring, record keeping, and reporting deficiencies that render the proposed Title V permit noncompliant with the CAA, such that the EPA must object to the proposed permit.

### **Monitoring Inadequacies in Underlying NSR Permits**

#### **Permit No. 6825A:**

Special Condition # 5C - The facility should be required to monitor visible emissions in case there is an interruption in steam assistance. Monitoring should include continuous video monitoring with a time and date stamp. Additionally, Method 9 should be employed to test opacity.

Special Condition # 5D - The permit should require the facility to monitor “maintenance and upset” emissions which are directed to flares. At the least, these emissions should be recorded and reported. Additionally, the permit should define what constitutes “maintenance and upset” in regard to this condition.

Special Condition # 5F - The permit should require reporting of all excess emissions of sulfur dioxide pursuant to TCEQ’s Chapter 101 emissions event rules.

Special Condition # 6 - The permit requires that “the flare shall operate with no less than 98 percent efficiency and the incinerator shall operate with no less than 99.9 percent efficiency.” Neither of these conditions, however, requires testing to determine efficiency. The permit must require testing to verify that the flare actually operates at 98 percent efficiency and that the incinerator operates at 99.9 percent efficiency.

Additionally, the permit allows the TNRCC Executive Director to make exceptions to

this condition. Such exceptions render condition 6 largely unenforceable and should be deleted.

Special Condition # 7A - The permit states that records must be kept for at least two years. Part 70 requires that records be kept for five years. 40 C.F.R. § 70.6(a)(3)(ii)(B). The TCEQ Executive Director states that “[o]nce the permit holder receives the effective FOP, the permit holder will be required to keep all records at the facility for a period of at least 5 years.” Executive Director’s Response to Public Comment at 4 (response to “Item No. 4”) (Nov. 1, 2006). The Executive Director’s response to this deficiency is insufficient to resolve the conflict between the 2-year provision in the underlying permit, which is incorporated by reference, and the 5-year record-keeping requirement in the proposed Title V permit. The proposed Title V permit should explicitly state that any requirement to keep records for a period of less than 5 years in any<sup>1</sup> underlying permit is replaced by the 5-year requirement of 40 C.F.R. § 70.6(a)(3)(ii)(B).

Special Condition # 7B (replaced with 5A-5C) - The permit should require all investigation and remedial measures to be recorded.

Special Condition # 8A - The permit should require a report identifying which valves were routed to a flare and which were equipped with an upstream rupture disk. The requirement that disks be replaced “at the earliest opportunity” is vague and unenforceable. The permit should require that discs be replaced within 5 days unless delayed until the next process shutdown.

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<sup>1</sup> This same objection is applicable to numerous record-keeping requirements in numerous underlying permits which are incorporated by reference, as noted below. Rather than reiterate this objection in every instance, this objection is hereby stated to apply to all such instances.

Special Condition # 9D - The permit requires annual visual inspection of the seals on VOC tanks equipped with floating roofs. This is not frequent enough to ensure compliance. Seals should be inspected quarterly.

Special Condition # 10 - The permit should require the facility to record all emission control upgrades and the emission reductions obtained through such upgrades.

Special Condition # 12B(1) - The permit requires that loading emissions will be “routed to a flare with a destruction efficiency of at least 98 percent for all VOC” but does not require testing to determine the efficiency of this flare. The permit must require periodic testing to verify that the flare actually operates at 98 percent efficiency.

Special Condition # 12B(2) - See above comments on Special Condition # 7A.

Special Condition # 12B(3) - The permit should require the facility to document all attempts to repair leaks immediately rather than “as soon as possible.” The requirement to repair “as soon as possible” is too vague to be clearly enforceable. If the leak cannot be repaired immediately, the cargo tank should be emptied immediately. Opacity requirements must be adhered to at all points in the process.

Special Condition # 12D - In addition to inspecting for liquid leaks, the permit should require the facility to document all liquid leaks, the date they were discovered, and the date they were repaired.

Special Condition # 12F - See above comments on Special Condition # 7A.

Special Condition # 12H - See above comments on Special Condition # 7A.

Special Condition #13 – The permit should clarify that opacity must be determined by Method 9. In addition, the permit should specify the frequency of required Method 9 tests.

Special Condition # 14 - The permit should specify the method required for monitoring cooling tower water VOCs. The current requirement to use “an approved air stripping system or equivalent” is vague and not practicably enforceable. Likewise, the “appropriate equipment” that must be maintained in order to minimize VOC emissions from the cooling tower should be specified in the permit. The current requirement is too vague to be practicably enforceable. Additionally, the condition states that records must be maintained for two years. Part 70, however, requires that records be kept for five years § 70.6(a)(3)(ii)(B).

Special Condition # 16 - See above comments on Special Condition # 7A.

Special Condition #17 – The permit should define what constitutes an “emergency condition.” In addition, Premcor should be required to maintain records of each time vent streams are sent to the flare and documentation as to what emergency condition justified not routing the emissions to the SRU. Further, the Executive Director should not be allowed to create off-permit exemptions to this requirement. Such exemptions would constitute illegal modifications of the PSD permit without required public participation.

Special Condition # 18E - See above comments on Special Condition # 7A.

Special Condition # 19 – Premcor should be required to maintain records documenting compliance with this condition.

Special Condition # 21 - The permit must require the facility to record the results of monitoring the tail gas incinerator stacks for visible emissions and should specify the method and frequency for such monitoring.

Special Condition #23 – Premcor should be required to record any unscheduled shutdown of facilities at the SRU complex resulting in noncompliance with emission caps or conditions and to document the steps taken to implement the sulfur load shedding plan and the actions taken to re-establish compliance. Also, see above comments on Special Condition # 7A.

Special Condition # 26 - The permit should require that evaluations of firebox exit temperatures be recorded.

Special Condition # 27A - The permit must specify monitoring sufficient to assure compliance for visible emissions at heaters and boilers and require the facility to record all results of all such monitoring.

Special Condition # 27B - The facility should be required to record and report all events of visible emissions and repairs.

Special Condition # 28 - Records should be maintained for 5 years even after Low-NOx burners are installed.

Special Condition # 30E - The permit should require gas and hydraulic tests on new or reworked connections to be recorded. Sensory inspections of flanges should also be recorded.

Special Condition # 30F - The facility must be required to record the results of monitoring disc integrity as it is a parametric test for emissions.

Special Condition # 30G – The requirements for an “approved gas analyzer” should be specified in the permit (as in Special Condition #30F), and the results of its monitoring must be recorded.



Special Condition # 30I – Premcor should be required to document in a log the efforts made to repair the leaking component within 15 days and any rationale for why repair would require unit shutdown.

Special Condition # 31B - See above comments for Special Condition # 7A.

Special Condition # 32 – Specific requirements for monitor testing and calibration should be included in the Title V permit. Also, see above comments for Special Condition # 7A.

Special Condition # 33A - The permit should require the facility to keep records documenting that sensory inspections for HF occur every four hours.

Special Condition # 34 – The permit should require the facility to keep records documenting that inspections of locations with HF detection paint occur as required.

Special Condition # 37B(5) - The permit empowers the TNRCC Executive Director Regional Director or the Manager of the TNRCC Enforcement Division, Air Section, Engineering Services Team to allow deviations from specified stack sampling procedures and to waive testing for any pollutant. Any off-permit authorizations of deviations or exemptions from the permit requirements would constitute an illegal modification of the PSD permit without required public participation. Further, such conditions render the permit requirements practicably unenforceable and should be eliminated from the Title V permit.

Special Condition # 39D - See above comments for Special Condition # 7A.

Special Condition # 40G – Premcor should be required to maintain records of daily sensor validation.

Special Condition # 42 - The permit should require that fuel gas mix drum monitoring be recorded and reported.

Special Condition # 44 - See above Comments for Special Condition # 7A.

General Comment - The permit requires that monitoring records be stored on-site with availability to the TNRCC upon request. Many of these records must be filed with the agency with Premcor's six-month monitoring report. In addition, in order to ensure public access to this information, the facility should provide the TCEQ with a list of the records that it has in storage so that the TCEQ can then honor citizen requests for documents by retrieving them.

**Permit No. 2303A:**

Permit listed as Permit No. 2303 in the facility's operating permit but as Permit No. 2303A in the TCEQ's Beaumont Regional Office's files.

Special Condition # 4C – The permit should include a requirement for periodic Method 9 opacity monitoring for visible emissions from the flare. In addition, the Title V permit should require continuous video monitoring of all flares.

Special Condition # 5 - The permit requires that the flare operate with 98 percent efficiency and that the incinerator operate with 99.9 percent efficiency or 5 ppmv or less hydrogen sulfide in its exhaust. The permit, however, requires no testing to determine the efficiency of either piece of equipment. The permit must require periodic testing to verify that the flare actually operates at 98 percent efficiency and that the incinerator operates at 99.9 percent efficiency. Additionally, the permit allows the TCEQ Executive Director to authorize exceptions to this condition. Such conditions render this requirement practicably unenforceable and should be deleted from the permit.

Special Condition # 6A – The permit requires that records of investigations and actions be maintained for two years. Part 70 requires that records of such actions be kept for five years. 40 C.F.R. § 70.6(a)(3)(ii)(B).

Special Condition # 6C –The records of all modeling relating to emergency relief events and subsequent monitoring should be maintained for 5 years.

Special Condition # 7D – The permit requires annual visual inspection of the seals on VOC tanks equipped with floating roofs. This is not frequent enough to ensure compliance. Seals should be inspected quarterly.

Special Condition # 7G – The permit requires that VOC monitoring data be maintained for two years. Part 70, however, requires that records be kept for five years. 40 C.F.R. § 70.6(a)(3)(ii)(B).

Special Condition # 8A – The permit should require recording of all VOC monitoring results. Additionally records of monitoring should be maintained for 5 years as required by § 70.6(a)(3)(ii)(B).

Special Condition # 11 – The permit should require reports of any instance where vent streams are routed to the flare. The reports should include all information justifying the event as resulting from an emergency condition. The ability of the TCEQ Executive Director to grant exemptions from this requirement without public process renders the requirement practicably unenforceable.

Special Condition # 12D – The permittee is required to conduct “sampling and other testing as required” to demonstrate the sulfur degassing system’s performance. This condition, however, is unenforceable as it does not specify what testing is required. The Title V permit should specify required periodic monitoring sufficient to assure

compliance. Additionally, the sampling required in this condition should be recorded and retained for 5 years as specified in § 70.6(a)(3)(ii)(B).

Special Condition # 13 – The permit must require visible emissions monitoring in order to be enforceable. The facility should be required to monitor the stack for visible emissions at least daily and record such observations.

Special Condition # 14 – The Title V permit should specify that the TCEQ will obtain a copy of a facility's sulfur load shedding plan if requested by the public. If the public cannot access such plans, this condition is practicably unenforceable.

Special Condition # 15 – The records discussed in this condition should be maintained for 5 years as required by §70.6(a)(3)(ii)(B), and not 4 years.

Special Condition # 18 – The permit must specify required visible emissions monitoring for the heaters in order for this condition to be enforceable. The facility should be required to monitor the heater for visible emissions daily and record such observations. Additionally, rather than requiring inspection and repair “as necessary,” the permit should specifically identify when and within what time frame inspection and repair must occur.

Special Condition # 20F – The requirement to replace leaking discs “at the earliest opportunity” is too vague. The permit should specify that all leaking discs must be reported and replaced within 5 days or, if the facility can demonstrate that they cannot be repaired while the equipment is in operation, at the next process shutdown.

Special Condition # 20G – Shaft sealing systems should be monitored and recorded in case of defect or malfunction. For the same reasons, submerged or sealless pumps should also be monitored if used in the alternative.

Special Condition # 21B – The permit should require the facility to record all audio, olfactory, and visual checks and to report all leaks that are found. Additionally, § 70.6(a)(3)(ii)(B) requires that all monitoring records be maintained for 5 years.

Special Condition # 22 – The permit must follow § 70.6(a)(3)(ii)(B) and require that monitor testing and calibration records be maintained for 5 years.

Special Condition # 23G – Stack sampling for units not equipped with a CEMS or a PEMS should be conducted more frequently than every five years as malfunctions or defects can easily develop within this long time period. Stack sampling, instead, should be conducted every two years.

Special Condition # 24D – The permit must require that facilities maintain monitoring and quality-assurance data for 5 years as mandated by § 70.6(a)(3)(ii)(B).

Special Condition # 24E – The permit should require that cylinder gas audit exceedances or CEMS downtime be reported much more quickly than within 3 days. Facilities should be required to report these malfunctions within 36 hours so that a TCEQ regional director may take appropriate action.

Special Condition # 24A – All PEMS equivalency demonstration data should be recorded and reported until the CEMS is removed.

Special Condition # 24D – The permit must require that facilities maintain monitoring and quality-assurance data for 5 years as mandated by § 70.6(a)(3)(ii)(B).

Special Condition # 24E – The permit should require that PEMS downtime be reported sooner than currently specified. Facilities should be required to report these malfunctions within 36 hours.

Special Condition # 28 – Records of compliance testing, CEMS/PEMS results, and process parameters must be maintained for 5 years as required by § 70.6(a)(3)(ii)(B).

Special Condition # 30 – Because emissions from stored crude oils are estimated based on sampling, records of these stored oils, including Reid vapor pressure, are parametric measurements used to monitor emissions. As such, these records should be maintained for 5 years as mandated by § 70.6(a)(3)(ii)(B).

Special Condition # 31 – Rather than require estimates of emissions from stored crude oil only upon request of the TNRCC, the permit should require the facility to conduct sampling to determine emissions at least quarterly.

Special Condition # 32 – Records must be maintained for at least 5 years as required by § 70.6(a)(3)(ii)(B).

Special Condition # 34 – As written, this condition is unenforceable. It must specify how and how often visible emissions should be monitored and should require that this monitoring be recorded and reported.

Special Condition # 39 – Rather than require high volume air sampling for net ground level concentrations of particulate matter only upon request of the TCEQ, the permit should require the facility to conduct this sampling at least quarterly. Further, this sampling should be recorded and reported.

Special Condition # 40 – This condition is unenforceable as written. It must specify how often visible emissions should be monitored and should require that this monitoring be recorded and reported. The Title V permit should require continuous video monitoring as well as periodic visual inspections and recordkeeping.

General Comment - The permit requires that monitoring records be stored on-site with availability to the TCEQ upon request. Many of these records must be filed with the agency with Premcor's six-month monitoring report. In addition, in order to ensure public access to this information, the facility should provide the TCEQ with a list of the records that it has in storage so that the TCEQ can then honor citizen requests for documents by retrieving them.

**Permit No. 5491A:**

General Provision # 5 - The permit states that records must be kept for at least two years. Part 70 requires that records be kept for five years § 70.6(a)(3)(ii)(B).

Special Condition # 1 - The permit should require the facility to periodically monitor emissions of any air contaminants from the tanks. Additionally, these measurements should be recorded reported.

Special Condition # 2 - The permit requires annual visual inspection of the secondary seals on tanks 110 and 111. This is not frequent enough to ensure compliance. Secondary seals should be inspected quarterly.

**Permit No. 8369A:**

Special Condition # 1F - The permit should require leak-checking to be recorded. Sealless or leakless valves should be monitored and recorded in case of defect or malfunction, and measurements from the pressure-sensing device should be recorded. Additionally, the permit should specify that all leaking discs be reported and replaced within 5 days or, if they cannot be repaired while the equipment is in operation, at the next process shutdown.

Special Condition # 1G - Seal systems designed and operated to prevent emissions or those equipped with automatic failure detection and alarm systems should continue to be monitored in case of defect or malfunction.

Special Condition # 1I - “Every reasonable effort” is vague and practicably unenforceable. The permit should specify what efforts are required on the part of the facility.

Special Condition # 1J - The permit must require all monitoring and inspection to be recorded including physical inspections that do not detect leaks.

Special Condition # 2 - The permit requires that waste gas from point sources containing VOC and other organic compounds be routed to “a flare, an incinerator, or recovery system which will operate with no less than 95 percent efficiency.” This condition, however, does not require testing to determine if the equipment is operating with this efficiency. The permit must require periodic testing to verify that the flare, incinerator, or recovery system operates with at least 95 percent efficiency. Additionally, the Title V permit should eliminate the TCEQ Executive Director’s discretion to make exceptions to this condition as such discretion renders this condition practicably unenforceable.

**Permit No. 56546:**

Special Condition # 4 – The requirement for “representative documentation which demonstrates that operations covered by this permit are achieving compliance” is vague and unenforceable and cannot substitute for specific monitoring sufficient to assure compliance. In addition, compliance documentation must be maintained for 5 years as mandated by § 70.6(a)(3)(ii)(B).



Special Condition # 5F – Sealless or leakless valves and specified relief valves should be monitored and recorded in case of defect or malfunction. Additionally, the permit should specify that all leaking discs be reported and replaced within 5 days or, if they cannot be repaired while the equipment is in operation, at the next process shutdown.

Special Condition # 5G – Shaft sealing systems should be monitored and the data recorded in case of defect or malfunction. For the same reasons, submerged or sealless pumps should also be monitored if used in the alternative.

Special Condition # 5H – The permit should require that leaks be repaired or replaced within 5 days. Additionally it should specify what efforts are required on the part of the facility rather than requiring the unenforceable standard “every reasonable effort.”

Special Condition # 7G – The permit must require the facility to maintain records of monitoring for five years as mandated by § 70.6(a)(3)(ii)(B).

General Comment - The permit requires that monitoring records be stored on-site with availability to the TNRCC upon request. Many of these records must be filed with the agency with Premcor’s six-month monitoring report. In addition, in order to ensure public access to this information, the facility should provide the TCEQ with a list of the records that it has in storage so that the TCEQ can then honor citizen requests for documents by retrieving them.

**Permit No. 802:**

Special Condition # 3 – The permit should require periodic opacity monitoring sufficient to assure compliance.

Special Condition # 4 – Premcor should be required to analyze the total sulfur content of its natural gas weekly or with each new shipment. Premcor should also be required to test the sulfur content of fuel oil any time it is burned.

**Permit No. 7600A:**

Special Condition # 3B – The permit empowers the TCEQ Executive Director to allow deviations from specified tank control. Any off-permit authorizations of deviations or exemptions from the permit requirements would constitute an illegal modification of the PSD permit without required public participation. The permit should state that only the alternatives listed in Special Condition # 3C may be used without public process.

Special Condition # 3G – The permit must require that records be maintained for five years per § 70.6(a)(3)(ii)(B).

Special Condition # 3I – As written, this condition is practicably unenforceable. It states that momentary drippings are permitted although sustained drippings are not. It does not, however, specify how long a drip must exist in order to be classified as “sustained.” I’m here

**Monitoring Inadequacies in Underlying Permits-by-Rule and Exemptions**

**§ 106.261 (06/29/2001):**

Provision 106.261(3)-(4) – The permit should require periodic monitoring of new or increased emissions, including fugitives, to ensure that they comply with emissions limitations.

Provision 106.261(6) – The permit requires that visible emissions not exceed 5 percent opacity but does not include any monitoring requirements. Periodic monitoring sufficient to assure compliance should be added to the Title V permit.

**§ 106.472 (09/04/200):**

The Title V permit should require monitoring to ensure that no visible emissions result while loading and unloading organic and inorganic liquids. The results of this monitoring should be recorded. In addition, Premcor should be required to maintain a list of chemicals loaded, unloaded or stored pursuant to this rule. This list should identify any compound with an initial boiling point of 300 degrees Fahrenheit or greater listed in 40 CFR Part 261, Appendix VIII. If such compounds are identified, Premcor should attach to the list certification that the facilities loading, unloading or storing such compounds are at least 500 feet from any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facilities

**§ 106.511 (12/02/2003):**

The permit should require the facility to record and report hours that the engines and turbines subject to the rule are used and calculations of the percentage of the normal annual operating schedule of the primary equipment that such use constitutes. In addition, the report should include an explanation of why/how each use qualifies as portable, emergency, and/or standby services.

**§ 111 (01/11/1985):**

Condition # 3 – The facility should be required to monitor to assure that it does not exceed 25 tons per year of any air contaminant. This data should be recorded and reported.

Condition #5 – Premcor should be required to keep records of capacity, production rate and throughput.

Condition # 6 – The facility should be required to conduct sampling at specified intervals to determine that no hazardous compounds listed under 40 CFR 261, Appendix VIII are released. The results of this sampling should be recorded and reported.

## II. INCORPORATION BY REFERENCE

The Clean Air Act’s Title V permit program is to be implemented by states in a manner which improves enforcement of, and compliance with, federal air quality requirements, thereby improving air quality. 57 Fed. Reg. 32250, 32251 (Jul. 21, 1992). As the EPA has stated, by “clarify[ing], in a single document, which requirements apply to a source,” the Title V program “will enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements. Increased source accountability and better enforcement should result.” *Id.* (emphasis added). See also Environmental Integrity Project v. EPA, 425 F.3d 992 (2005):

Title V of the 1990 Amendments to the Clean Air Act (CAA) requires that certain air pollution sources ... obtain a single, comprehensive operating permit to assure compliance with all emission limitations and other substantive CAA requirements that apply to the source. See 42 U.S.C. §§ 7661a(a), 7661c(a) (2000); Virginia v. Browner, 80 F.3d 869, 873 (4<sup>th</sup> Cir. 1996) (describing the Title V permit as “a source-specific bible for Clean Air Act compliance”).

*Id.* at 993-94 (emphasis added).<sup>2</sup>

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<sup>2</sup> See also 40 C.F.R. § 70.6(a)(1): Title V permits are required to contain “emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.” (Emphasis added). In addition, “each permit shall include ... such other conditions as are necessary to assure compliance with the applicable requirements.” 42 U.S.C. § 7661c(a) (emphasis added). The use of incorporation by reference in Premcor’s proposed operating permit violates these requirements of Title V and Part 70 and renders the permit practically unenforceable.

Flaws in the current proposed permit, however, thwart the goals of Title V. Specifically, the permit extensively incorporates by reference numerous underlying New Source Review (“NSR”) and Permit-By-Rule (“PBR”) permits without adequate guidance as to where the referenced permits may be found. The permit’s use of incorporation by reference thus violates the requirements of 40 C.F.R. Part 70.

Part 70 and EPA’s guidance are clear that permits must specifically include all emissions limitations, and may only use incorporation by reference for other permit terms if the method of their application is clear and the permit can still “assure compliance.” Premcor’s proposed permit does not specifically include all emission limitations nor does it make application of permit terms clear so as to “assure compliance.”

This grave inadequacy of the proposed permit is illustrated by the fact that Petitioners were unable to obtain copies of a number of the underlying permits incorporated by reference into Premcor’s Title V permit. Petitioners conducted a file review at the TCEQ Beaumont Regional Office, but files for permit numbers 6825, 7600, 8369, C-802, 45737, X-17038, 5491, C-8456, R-7600A, and X-3698 were not available. In addition, the files that were available did not contain complete, current copies of the permits. Instead, various parts of the permits and revisions to the permits were included at different places in the file, making it extremely difficult to obtain a complete, current copy of each permit. Petitioners also called the TCEQ Office of Public Assistance to ask if the underlying permits were available at a local library or other public location near the facility, and were told that they were not.

This incorporation of the underlying NSR permits by reference does not, therefore, “assure compliance.” To the contrary, the proposed permit’s extensive use of

incorporation by reference makes it difficult, if not impossible, for the public to know the precise requirements of the permit from its face, or even from a review of TCEQ's files, thus defeating the central purpose of the Title V program to improve accountability and enforcement by "clarify[ing], in a single document, which requirements apply to a source." 57 Fed. Reg. 32251 (Jul. 21, 1992) (emphasis added).

### **CONCLUSION**

The proposed Premcor Title V permit lacks monitoring sufficient to assure compliance with all emission limitations and other substantive Clean Air Act requirements. Many of the underlying permits include no monitoring or record keeping requirements that would allow the public or the TCEQ to determine whether or not Premcor is in compliance with the permits. Additional monitoring, as described above, must be required by the final permit. Without the required monitoring and record keeping, Title V's purpose of increasing enforcement and compliance will be defeated.

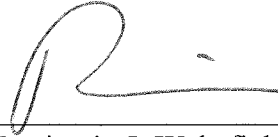
Further, the proposed permit's extensive use of incorporation by reference makes it practically impossible for the public to discover the requirements of the permit, thus defeating the central purpose of the Title V program to improve accountability and enforcement by "clarify[ing], in a single document, which requirements apply to a source." Id.

For all of these reasons, the proposed permit is not in compliance with the Clean

Air Act, and the EPA therefore must object to the proposed permit.

DATED: February 16, 2007

Respectfully Submitted,

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

Benjamin J. Wakefield  
Counsel  
Environmental Integrity Project  
919 Eighteenth Street, N.W., Suite 650  
Washington, D.C. 20006  
(202) 263-4450

**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 on February 16, 2007 as specified:

*VIA FACSIMILE AND CERTIFIED MAIL*

Administrator Stephen L. Johnson  
U.S. Environmental Protection Agency  
Ariel Rios Building, Mail Code 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
Fax Number: (202) 501-1450

*VIA FACSIMILE AND CERTIFIED MAIL*


Texas Commission on Environmental Quality  
Office of Permitting, Remediation, and Registration  
Air Permits Division  
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Benjamin J. Wakefield