

by Plaintiffs. The petition requests that the Administrator object to Title V Permit No. O1553 (“Proposed Permit” or “Permit”), issued by the Texas Commission on Environmental Quality (“TCEQ”) to the ExxonMobil Corporation authorizing operation of the company’s Baytown Olefins Plant. *See* Exhibit A (Petition to Object to Proposed Permit) (attachments omitted). Plaintiffs also seek an order requiring the Administrator to perform his non-discretionary duty to grant or deny this petition.

JURISDICTION, VENUE, AND NOTICE

3. This is a Clean Air Act citizen suit. Thus, this Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(a), and has the authority to award attorneys’ fees pursuant to 42 U.S.C. § 7604(d). The Clean Air Act is a federal statute. The Administrator is an agent of the United States government. Thus, this Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 28 U.S.C. §§ 1331 (federal question) and 1346 (United States as defendant). This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, nor does it involve the Tariff Act of 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. § 2201. If the Court orders such relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief and 28 U.S.C. § 2412 authorizes this Court to award Plaintiffs their costs and attorneys’ fees.

4. A substantial part of the alleged events or omissions giving rise to Plaintiffs’ claims occurred in the District of Columbia. In addition, this suit is being brought against the Administrator in his official capacity as an officer or employee of the United States Environmental Protection Agency, residing in the District of Columbia. Thus, venue is proper in this Court, pursuant to 28 U.S.C. § 1391(e).

5. As required by 42 U.S.C. § 7604(b)(1)(A), Plaintiffs notified the Administrator of the EPA of the violations alleged in this complaint and of Plaintiffs' intent to sue, via certified first-class mail on November 10, 2016. *See* Exhibit B (Notice of Intent to Sue Administrator McCarthy for her Failure to Timely Grant or Deny a Petition to Object to Part 70 Operating Permit No. O1553) (attachments omitted). More than 60 days have passed since the Administrator received this notice of intent to sue letter. The Administrator has not acted to remedy the violations alleged in this complaint. Therefore, an actual controversy exists between the parties.

PARTIES

The Plaintiffs

6. Plaintiff ENVIRONMENTAL INTEGRITY PROJECT ("EIP") is a national nonprofit corporation founded to advocate for the effective enforcement of state and federal environmental laws, with a specific focus on the Clean Air Act and large stationary sources of air pollution, like chemical plants and petroleum refineries. EPA's failure to timely respond to the petition, which demonstrates that the Title V permit fails to comply with the law, adversely affects EIP's ability to assure that ExxonMobil complies with Clean Air Act requirements at the Baytown Olefins Plant.

7. Plaintiff AIR ALLIANCE HOUSTON is a 501(c)(3) nonprofit organization whose mission is to reduce air pollution in the Houston region and protect public health and environmental integrity through research, education, and advocacy. Air Alliance Houston is active throughout the greater Houston area, with a particular focus on the communities and industry around the Houston Ship Channel.

8. Plaintiff SIERRA CLUB is one of the Nation's largest and oldest grassroots nonprofit membership organizations. Sierra Club's Texas chapter was formed more than forty years ago and has a long history of working to reduce power industrial air pollution that adversely

affect air quality in Texas. Sierra Club petitioned the Administrator to object to Title V Permit No. O1553, because the permit fails to comply with applicable Clean Air Act requirements. The Administrator's failure to perform his non-discretionary duty to grant or deny this petition injures the organizational interests of Sierra Club as well as the concrete public health interests of its members.

9. Plaintiffs have an interest in ensuring that ExxonMobil's Title V operating permit complies with all applicable federal requirements. Members and employees of Plaintiff organizations live, work, and recreate in areas that are affected by air pollution from the Baytown Olefins Plant. These members and employees, as well as Plaintiff organizations, will be adversely affected if EPA fails to object to ExxonMobil's Title V permit.

The Defendant

10. Defendant SCOTT PRUITT is the Administrator of the Environmental Protection Agency. The Administrator is responsible for implementing and enforcing the Clean Air Act. As described below, the Clean Air Act assigns to the Administrator a non-discretionary duty to grant or deny timely filed Title V petitions within 60 days.

11. For the foregoing reasons, the Administrator's failure to respond to Plaintiffs' petition has caused, is causing, and unless this Court grants the requested relief, will continue to cause Plaintiffs concrete injuries that the Court can redress through this case.

LEGAL AUTHORITY

12. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and productive capacity of its population. 42 U.S.C. § 7401(b)(1). To advance this goal, Congress amended the Act in 1990 to establish the Title V operating permit program. *See* 42 U.S.C. §§ 7661-7661f. Title V of the Clean Air Act provides

that “[a]fter the effective date of any permit program approved or promulgated under this subchapter, it shall be unlawful for any person to violate any requirement of a permit issued under this subchapter, or to operate . . . a major source . . . except in compliance with a permit issued by a permitting authority under this subchapter. 42 U.S.C. § 7661a(a).

13. ExxonMobil’s Baytown Olefins Plant is a major source subject to Title V permitting requirements.

14. The Clean Air Act provides that the Administrator may approve a state’s program to administer the Title V operating permit program with respect to sources within its borders. 42 U.S.C. § 7661a(d). The Administrator approved Texas’s administration of its Title V operating permit program. 61 Fed. Reg. 32693 (June 25, 1996); 66 Fed. Reg. 66318 (December 6, 2001). Thus, the TCEQ is responsible for issuing Title V operating permits in Texas.

15. Before the TCEQ may issue, modify, or renew a Title V permit, it must forward the proposed permit to EPA for review. 42 U.S.C. § 7661d(a)(1)(B). The Administrator then has 45 days to review the proposed permit. The Administrator must object to the permit if he finds that it does not comply with all applicable provisions of the Clean Air Act. 42 U.S.C. § 7661d(b)(1). If the Administrator does not object to the permit during EPA’s 45-day review period, “any person may petition the Administrator within 60 days” to object to the permit. 42 U.S.C. § 7661d(b)(2).

16. If a petition is timely filed, the Administrator has a non-discretionary duty to grant or deny it within 60 days. *Id.*

17. The Clean Air Act authorizes citizen suits “against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2).

FACTUAL BACKGROUND

18. ExxonMobil's Baytown Complex is located in Harris County, Texas. The complex consists of a petroleum refinery, a chemical plant, and an olefins plant and is the largest integrated petrochemical manufacturing facility in the United States. Each of the three sources that comprise ExxonMobil's Baytown Complex is a major source of air pollution that emits a variety of federally regulated pollutants, including particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, and hazardous air pollutants.

19. ExxonMobil applied to the TCEQ for a minor revision to Title V Permit No. O1553 for the Baytown Olefins Plant on August 29, 2014. The Executive Director of the TCEQ issued a draft revision operating permit ("ExxonMobil Draft Permit"), notice of which was announced on the TCEQ's Title V Minor Revision Public Announcement webpage on July 7, 2015. The public comment period for the ExxonMobil Draft Permit ended on August 6, 2015.

20. On August 6, 2015, Plaintiffs submitted timely written comments to the TCEQ during the public comment period. The comments identified specific deficiencies contained in the ExxonMobil Draft Permit.

21. EPA's 45-day review period for the proposed permit ended on June 10, 2016. EPA did not object to the permit.

22. On August 8, 2016, Plaintiffs timely filed with EPA a petition to object to the ExxonMobil Title V operating permit ("Petition"). 42 U.S.C. § 7661d(b)(2). The Petition was based on objections to the ExxonMobil Draft Permit that were raised with reasonable specificity during the public comment period, as required by 42 U.S.C. § 7661d(b)(2).

23. Though the Administrator was required to grant or deny the Petition within 60 days, he has not yet done so. 42 U.S.C. § 7661d(b)(2).

24. On November 10, 2016, Plaintiffs sent then-Administrator Gina McCarthy notice of their intent to sue for her failure to grant or deny the Petition within 60 days.

CLAIM FOR RELIEF

**VIOLATION OF 42 U.S.C. § 7661d(b)(2)
(Failure to Respond to Plaintiffs' Petition)**

25. Plaintiffs re-allege and incorporate the allegations set forth in Paragraphs 1-24.

26. The Clean Air Act required the Administrator to act on the Petition within 60 days of its filing. 42 U.S.C. § 7661d(b)(2) (stating that “[t]he Administrator *shall* grant or deny such a petition within 60 days after the petition is filed.”) (emphasis added). This is a non-discretionary duty.

27. It has been more than 60 days since the Administrator received the Petition. The Administrator’s failure to grant or deny the Petition constitutes a failure to perform an act or duty that is not discretionary. 42 U.S.C. § 7604(a)(2).

PRAYER FOR RELIEF

WHEREFORE, based upon the allegations set forth above, Plaintiffs respectfully request that this Court:

- A. Declare that the Administrator’s failure to grant or deny the Plaintiffs’ Petition within 60 days constitutes a failure to perform acts or duties that are not discretionary within the meaning of 42 U.S.C. § 7604(a)(2);
- B. Order the Administrator to grant or deny the Petition within sixty (60) days;
- C. Retain jurisdiction over this action to ensure compliance with the Court’s Order;
- D. Award Plaintiffs their costs and fees related to this action; and
- E. Grant such other relief as the Court deems just and proper.

Respectfully submitted this 20th day of July, 2017.

/s/ Adam Kron

ADAM KRON (D.C. Bar No. 992135)

Environmental Integrity Project

1000 Vermont Ave. N.W., Suite 1100

Washington, D.C. 20005

(202) 263-4451

(202) 296-8822

akron@environmentalintegrity.org

Attorney for Plaintiffs

EXHIBIT A

Cover Letter and Petition for Objection to Texas Title V Permit No. 01553



707 Rio Grande, Suite 200
Austin, TX 78701
p: 512-637-9478 f: 512-584-8019
www.environmentalintegrity.org

August 8, 2016

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 Electronic Filing

Re: Petition for Objection to Texas Title V Permit No. O1553 for the Operation of ExxonMobil's Baytown Olefins Plant in Harris County, Texas

Dear Administrator McCarthy:

Enclosed is a petition requesting that the U.S. Environmental Protection Agency object to the TCEQ's minor revision of Title V Permit No. O1553, issued to ExxonMobil for operation of the Baytown Olefins Plant. This petition is timely submitted by the Environmental Integrity Project, Sierra Club, and Air Alliance Houston. As required by law, petitioners are filing this petition with the EPA Administrator, with copies to EPA Region VI, the Texas Commission on Environmental Quality, and ExxonMobil.

Thank you for your attention to this matter.

Sincerely,

Gabriel Clark-Leach
Environmental Integrity Project
707 Rio Grande, Suite 200
Austin, TX 78701
(512) 637-9478 (phone)
(512) 584-8019 (fax)
gclark-leach@environmentalintegrity.org

**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. O1553	§	
	§	
Issued to ExxonMobil Corporation	§	Permit No. O1553
	§	
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
BAYTOWN OLEFINS PLANT PERMIT NO. O1553**

Pursuant to section 42 U.S.C. § 7661d(b)(2), Environmental Integrity Project, Sierra Club, and Air Alliance Houston (“Petitioners”) hereby petition the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) to object to Federal Operating Permit No. O1553 (“Proposed Permit”) issued by the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) for the Baytown Olefins Plant, operated by the ExxonMobil Corporation (“ExxonMobil”).

I. INTRODUCTION

ExxonMobil’s Baytown Olefins Plant is part of the largest integrated refining and petrochemical complex in the United States. This complex is located in Baytown, Texas; approximately 30 miles east of Houston. The Baytown Olefins Plant is located in the Harris County ozone non-attainment area and is a major source of “criteria pollutants,” including ozone-forming pollutants, and toxic air pollutants.

For more than a decade, the primary New Source Review (“NSR”) authorization for the Baytown Olefins Plant has been state-only Flexible/PAL Permit No. 3452/PAL6. ExxonMobil’s

Flexible/PAL permit was issued before Texas's *minor*-source flexible permitting program was approved by EPA and before Texas had even promulgated its initial Plantwide Applicability Limit rules (which were subsequently disapproved by EPA). These permits establish allowables-based limits that ExxonMobil has relied on to avoid otherwise-applicable minor and major preconstruction permitting requirements in the Texas State Implementation Plan ("SIP"). Though EPA has informed ExxonMobil that its flexible permit and state-only PAL permit do not modify the Company's obligations under the Act and the Texas State Implementation Plan ("SIP"), EPA has not taken action to require TCEQ to remove these permits from ExxonMobil's Title V permit or to identify them as state-only authorizations.

Because EPA has not objected to the TCEQ's incorporation of ExxonMobil's state-only Flexible/PAL permit into Title V Permit No. O1553 as a federally-enforceable authorization, the TCEQ relied on ExxonMobil's state-only PAL permit to determine that construction of a new ethylene production unit at the Baytown Olefins Plant may be authorized as a minor modification.¹ The TCEQ's issuance of Permit No. 102982 authorizing construction of the new ethylene production unit as a minor modification without properly determining whether it triggered major NSR preconstruction permitting requirements was inconsistent with the Act and the Texas SIP. ExxonMobil's construction of the same project without properly determining whether it was a major modification was a violation of the Act and the Texas SIP.

The Administrator must now address these issues and object to the Proposed Permit because it fails to assure compliance with applicable requirements, it fails to provide a clear and complete accounting of the requirements that apply to the Baytown Olefins Plant, and it fails to address ExxonMobil's ongoing non-compliance with the Act and the Texas State

¹ This expansion project, as explained below, has—by itself—the potential to emit PSD and NNSR pollutants at rates that exceed applicable major modification thresholds as well as the major source thresholds.

Implementation Plan New Source Review requirements. The Administrator should also object because the Executive Director failed to sufficiently respond to EIP's comments identifying defects in the Draft Permit.

II. PETITIONERS

Environmental Integrity Project ("EIP") is a non-profit, non-partisan organization with offices in Austin, Texas and Washington, D.C. that seeks to improve implementation, enforcement, and compliance with federal environmental and public health protections.

Sierra Club, founded in 1892 by John Muir, is the oldest and largest grassroots environmental organization in the country, with over 600,000 members nationwide. Sierra Club is a non-profit corporation with offices, programs and numerous members in Texas. Sierra Club has the specific goal of improving outdoor air quality.

Air Alliance Houston is a non-profit organization whose mission is to reduce air pollution in the Houston region and to protect public health and environmental integrity through research, education, and advocacy. Air Alliance Houston participates in regulatory and legislative processes, testifies at hearings, and comments on proposals. Air Alliance Houston is heavily involved in community outreach and works to educate those living in neighborhoods directly affected by air pollution about local air pollution issues, as well as state and federal policy issues.

PROCEDURAL BACKGROUND

This Petition concerns the TCEQ's revision to Permit No. O1553 to incorporate by reference Permit No. 102982, which authorizes construction of a new ethylene production unit as a minor modification to the Baytown Olefins Plant, and an administrative revision to ExxonMobil's state-only Flexible/PAL Permit No. 3452/PAL6 to increase the existing

particulate matter (“PM”) PAL.² Presently, the PM PAL in state-only PAL6 exceeds the amount of PM ExxonMobil is authorized to emit under its state-only flexible permit by more than 97 tons. Even though PALs, as a matter of law, may not exceed allowable emissions and even though increases to PALs must be authorized by a permit amendment, the Executive Director’s “upward adjustment” to ExxonMobil’s state-only PM PAL—establishing a limit higher than the applicable flexible permit allowable—was accomplished as an administrative reopening. *See* (Exhibit 1), Environmental Integrity Project, Air Alliance Houston, and Sierra Club’s Reply to Responses to its Motion to Overturn the Executive Director’s Reopening of Permit No. PAL6.

EIP timely-filed comments identifying deficiencies in ExxonMobil’s Draft Minor Revision Title V Permit on August 6, 2015. (Exhibit 2) Public Comments Submitted on Behalf of the Environmental Integrity Project Regarding the Draft Minor Revision to Permit No. O1553 (“Comments”). These comments provide the basis for each of the issues raised in this petition.

The Executive Director issued notice of Proposed Title V Permit No. O1553 and his response to public comments on April 21, 2016. (Exhibit 3) Notice of Proposed Permit and Executive Director’s Response to Public Comment, Minor Revision, Permit No. O1553 (“Response to Comments”). EPA’s 45-day review period ended on June 10, 2016. EPA did not object to the Proposed Permit. This petition to object is based on issues raised with specificity during the public comment period and is timely filed within 60 days of the conclusion of EPA’s review period.

III. LEGAL REQUIREMENTS

All major stationary sources of air pollution are required to apply for operating permits under Title V of the Clean Air Act. 42 U.S.C. § 7661a(a). Title V permits must include all

² A Plantwide Applicability Limit is single-pollutant permit limit that reflects baseline actual emissions of that pollutant from all emission units at an existing major source. Modifications to sources covered by a federally-enforceable PAL permit, so long as source-wide emissions of all PAL pollutants remain below the PAL(s).

federally enforceable emission limits and operating requirements that apply to a source as well as monitoring requirements sufficient to assure compliance with these limits and requirements in one legally enforceable document. 42 U.S.C. §§ 7661a(a), 7661c(a); *see also* 40 C.F.R. § 70.6(a)(1). Non-compliance by a source with any provision in a Title V permit constitutes a violation of the Clean Air Act and provides ground for an enforcement action against the source. Title V permits are the primary method for enforcing and assuring compliance with State Implementation Plan requirements for major sources. *Operating Permit Program*, 57 Fed. Reg. 32,250, 32,258 (July 21, 1992). Because federal courts are often unwilling to enforce otherwise applicable requirements that have been omitted from or displaced by conditions in a Title V permit, state-permitting agencies and EPA must take care to ensure that Title V permits accurately and clearly list what each major source must do to comply with the law. *See, e.g., Sierra Club v. Otter Tail*, 615 F.3d 1008 (8th Cir. 2008 (holding that enforcement of New Source Performance Standard omitted from a source's Title V permit was barred by 42 U.S.C. § 7607(b)(2)).

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 or fails to assure compliance Title I major source preconstruction permitting requirements. 40 C.F.R. § 70.8(c). If EPA does not object, “any person may petition the Administrator within 60 days after the expiration of the Administrator’s 45-day review period to make such objection.” 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); 30 Tex. Admin. Code § 122.360. 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].” 42 U.S.C. § 7661d(b)(2); *see also*

40 C.F.R. § 70.8(c)(1). The Administrator must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2).

While the burden is on the petitioner to demonstrate to EPA that a Title V operating permit is deficient, once that burden is met, “EPA has no leeway to withhold an objection.” *Sierra Club v. EPA*, 557 F.3d 401, 405 (6th Cir. 2009); *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”).

IV. GROUNDS FOR OBJECTION

This petition concerns ExxonMobil’s application for a minor revision to, among other things, incorporate by reference Permit Nos. PAL6 and 102982, and to incorporate an updated version of Flexible Permit No. 3452 into Title V Permit No. O1553. Statement of Basis (“SOB”) at 2. EIP’s comments identified several deficiencies arising from the incorporation of these permits as federally-enforceable conditions of ExxonMobil’s Title V permit.

First, EIP’s comments demonstrate that the Proposed Permit’s incorporation of PAL6, which EPA previously determined is a state-only permit, as a federally-enforceable permit undermines the enforceability of major NSR preconstruction permitting requirements established by the Act and the Texas SIP.

Second, EIP demonstrated that the TCEQ and ExxonMobil’s reliance on the state-only limits in PAL6 to determine that the expansion project authorized by Permit No. 102982 did not trigger major modification preconstruction permitting requirements under the Act and the Texas SIP was deficient as a matter of law. Because the TCEQ relied exclusively on ExxonMobil’s

state-only PAL permit to determine that the expansion project, which resulted in new emissions that are not only higher than applicable major modification thresholds for several pollutants, but also exceed applicable major source thresholds for PSD and NNSR pollutants, was a minor modification, the Proposed Permit's incorporation of Permit No. 102982 undermines the enforceability of and violates NSR preconstruction permitting requirements in the Act and the Texas SIP.

Third, EIP demonstrated that, in the alternative, even if PAL6 is recognized as a federally-enforceable PAL permit, it does not contain a PM_{2.5} PAL. Accordingly, the TCEQ erred as a matter of law by relying on PAL6 to determine that ExxonMobil's expansion project was not a major modification for PM_{2.5}. Because this is so, the Proposed Permit's incorporation of Permit No. 102982, which authorizes ExxonMobil's expansion project as a minor modification, both undermines the enforceability of and violates NSR preconstruction requirements in the Act and the Texas SIP.

A. The Proposed Permit's Incorporation of PAL6 as a Federally-Enforceable Permit Undermines the Enforceability of Major New Source Review Requirements and Violates Title V Requirements

*1. ExxonMobil's PAL6 Permit is not a Federal Permit*³

EPA has already determined that PAL6 is a state-only permit that may not be used to modify ExxonMobil's obligations under the Act or the Texas SIP. (Exhibit 4) Letter from John Blevins, Director, Compliance Assurance and Enforcement Division, EPA Region 6, to Evelyn R. Ponton, Environmental Coordinator, ExxonMobil Corporation, Re: Permit Number PAL6. Even if EPA had not already made this determination, EIP's comments demonstrate—as a matter of law—that PAL6 is a state-only requirement that cannot modify SIP requirements.

³ Comments at 8.

ExxonMobil's PAL6 permit was issued in 2005 and predates Texas's initial PAL rules (which were disapproved by EPA). 75 Fed. Reg. 41,312 (July 15, 2010). At the time PAL6 was issued, the Texas SIP required operators to conduct case-by-case netting demonstrations to determine whether projects at the Baytown Olefins Plant were major modifications triggering PSD and/or NNSR preconstruction permitting requirements. Because the TCEQ did not have the authority to issue PAL permits—or other orders that displace netting requirements in the Texas SIP—PAL6 has no effect on ExxonMobil's obligation to comply with SIP netting requirements for projects at the Baytown Olefins Plant. 42 U.S.C. § 7410(i). Because PAL6 is not federally-enforceable, it must be designated as “state-only” in the Proposed Permit. 40 C.F.R. § 70.6; *Objection to Federal Part 70 Operating Permit, Valero Refining Texas, Permit No. O1253* (October 30, 2009) (objecting to incorporation of state-only flexible permit as federally enforceable permit).

2. *ExxonMobil's State-Only PAL6 Permit Undermines the Enforceability of SIP Requirements*⁴

The Clean Air Act provides that, with limited exceptions inapplicable to this case, states may not issue permits that unilaterally modify SIP requirements with respect to any stationary source. 42 U.S.C. § 7410(i). Consistent with the Clean Air Act, the Texas SIP requires operators without a federally-enforceable PAL permit to conduct a netting demonstration to determine whether anticipated or potential post-project emission increases are significant and trigger major NSR preconstruction permitting requirements. 30 Tex. Admin. Code §§ 116.150(c) and (d), 116.160(b) and (c). PAL6 purports to displace these requirements, as a matter of federal law: “Physical changes and changes in method of operation at this site are exempt from federal New Source Review for VOC, CO, NO_x, SO₂, H₂SO₄, and PM as long as

⁴ Comments at 8.

site emissions do not exceed the PAL caps.” State-only Permit No. 3452/PAL6, Special Condition 6. Because PAL6 purports to displace netting requirements in the Texas SIP, it is inconsistent with the Act and undermines the enforceability of those requirements. The Proposed Permit’s incorporation of PAL6 as a federally-enforceable permit is therefore contrary to Title V requirements. 42 U.S.C. § 7661c(a).

3. *PAL6 is Incompatible with the Act and the Texas SIP, because it Establishes Major Modification Thresholds Based on Allowable Emissions Instead of Increases from Baseline Actual Emissions*⁵

The Clean Air Act requires operators to determine whether projects at existing major sources are “major modifications” subject to the Act’s PSD and NNSR preconstruction permitting requirements by comparing post-project projected actual or potential emissions to baseline *actual* emissions. *Environmental Defense v. Duke Energy Corp.*, 549 U.S. 561, 580-81 (2007); *New York v. EPA*, 413 F.3d 3, 39-40 (D.C. Cir. 2005). Allowable emissions may not be used as a surrogate for baseline actual emissions in making major NSR applicability determinations. *New York*, 413 F.3d 40 (“[T]he plain language of the CAA indicates that Congress intended to apply NSR to changes that increase actual emissions instead of potential or allowable emissions[.]”).

State-only PAL6 is deficient as a matter of law, because it ties the Act’s major modification preconstruction requirements to increases in *allowable* emissions, or, in the case of PM, to a limit that is even higher than the relevant allowable.⁶ While ExxonMobil’s initial PAL6 application represented that allowables-based limits in PAL6 were lower than baseline actual

⁵ Comments at 3-4.

⁶ ExxonMobil’s PAL6 PM cap is almost 100 tons higher than the amount the plant is authorized to emit. Comments at 3.

emissions, EIP's comments demonstrate that this representation is incorrect and turns on the application of an improper definition of "baseline actual emissions":

While ExxonMobil's initial PAL application suggests that ExxonMobil opted to base these PALs on potential rather than actual emissions because baseline actual emissions were higher than potential emissions when new emission controls that were required by ExxonMobil's flexible permit were taken into account, Attachment 3, they are actually much lower because ExxonMobil's baseline actual emissions should have been adjusted downward to exclude emissions that exceeded these pollution control requirements. 40 C.F.R. § 51.166(b)(47)(ii)(c) ("The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period."); 30 Tex. Admin. Code § 116.12(3)(B).

For example, the NO_x cap contribution of 796.66 tons per year for ExxonMobil's Boilers A-D and Cogeneration Trains 1-4 is 439.8 tons higher—almost 18 times the applicable major modification threshold—than baseline actual emissions calculated using ExxonMobil's actual heat input data and BACT limits listed in the initial PAL application.⁷ ExxonMobil's cap contribution calculations for other emission units included in its NO_x PAL undoubtedly exceed baseline actual emissions, but ExxonMobil's does not include information about actual utilization of these other units during the baseline period in its PAL application.

Comments at 4.

Because state-only PAL6 establishes major modification thresholds that are allowables-based, or even exceed allowable emissions, and because EIP demonstrated that allowables-based emissions used to establish PAL6 limits are higher than the Plant's baseline actual emissions, PAL6 cannot be used to determine that projects at the Baytown Olefins Plant are not major modifications without violating the Act and the Texas SIP. Because this is so, incorporation of PAL6 as a federally-enforceable requirement into the Proposed Permit undermines the enforceability of and violates major NSR requirements in the Act and the Texas SIP.

⁷ See Comments, Attachments 6 (Baseline Calculations Using ExxonMobil Actual Heat Input and BACT) and 7 (Calculation Summary and Comparison).

B. The Executive Director's Response to Comments Failed to Rebut EIP's Demonstration the Proposed Permit's Incorporation of PAL6 as a Federally-Enforceable Permit Undermines the Enforceability of Applicable Requirements⁸

The Executive Director begins his response to comments by claiming that EIP's concerns about PAL6 were already "addressed during the technical review of Permit 102982 and the issue is not part of the review of this minor revision for Title V Permit O1553." Response to Comments at Response 1. The Executive Director, however, fails to provide any support for his factual claim that issues raised in EIP's comments had been addressed during the technical review of Permit No. 102982 or any legal support for his conclusion that EIP's comments on PAL6 are beyond the scope of the proposed minor revision to ExxonMobil's Title V permit. To the extent that the response to public comments contains information that is relevant to EIP's comments on ExxonMobil's Draft Title V Permit, it supports rather than rebuts EIP's demonstration of deficiency.

1. The Executive Director Failed to Rebut EIP's Demonstration that PAL6 is a State-only Permit

The Executive Director's response to comments does not include a substantive response to EIP's demonstration that PAL6 must be listed as a state-only permit in the Proposed Permit. It does not include any information supporting a determination to the contrary or show that the Executive Director previously considered and rejected EIP's argument that PAL6 must be listed a state-only permit in ExxonMobil's Title V permit. The only relevant information provided in

⁸ To determine whether a petitioner has sufficiently demonstrated that a Proposed Permit is deficient, EPA considers whether the petitioner provided sufficient evidence to support a finding of deficiency during the public comment period. In cases where a petitioner raises new arguments in a petition that the state permitting authority did not have an opportunity to consider, EPA may determine that the petitioner failed to raise the claim with reasonable specificity during the comment period. *See, e.g., In the Matter of Shell Chemical LP and Shell Oil Co.*, Order on Petition Nos. VI-2014-04 and VI-2014-05 (September 24, 2015) ("Deer Park Order") at 8. EPA also requires petitioners to consider and respond to the state permitting agency's response to public comments. *Id.* at 3. Petitioners contend that EIP conclusively demonstrated that the Proposed Permit is deficient in its comments and that any new facts or arguments presented in this petition are included to address the Executive Director's Response to Comments and not to bolster claims raised during the comment period.

the response—that PAL6 was issued before the TCEQ finalized its first PAL rules, which were subsequently disapproved by EPA—supports EIP’s demonstration that PAL6 is a state-only permit. Response to Comments at Response 1.

2. *The Executive Director Failed to Rebut Petitioners’ Demonstration that PAL6 Undermines the Enforceability of Requirements in the Texas SIP*

The Executive Director’s response to comments does not include a substantive response to EIP’s demonstration that incorporation of state-only PAL6 into the Proposed Permit as a federally enforceable authorization undermines the enforceability of Texas SIP requirements for future projects at the Baytown Olefins Plant. While the response to comments does suggest that the Executive Director rejected the argument that PAL6 should not be used to determine major NSR applicability for ExxonMobil’s ethylene expansion project, his reasoning does not address EIP’s demonstrations in this matter: The Executive Director’s response does not consider or reject EIPs’ demonstration that PAL6 is a state-only permit that may not be used to displace netting requirements in the Texas SIP without violating 42 U.S.C. 7410(i). Nor does the Executive Director assert that the substantive deficiency alleged in EIP’s comments—that PAL6 establishes major modification thresholds that are higher than baseline actual emissions—is without merit. Instead, the Executive Director’s response contains an extended discussion of whether deficiencies alleged during his review for Permit No. 102982 were consistent with EPA’s objections to the TCEQ’s initial PAL rules. Response to Comments at Response 1. This discussion is beside the point, both in this case and in the context of the challenge to Permit No. 102982, because PAL6 was not actually issued under the TCEQ’s disapproved PAL rules.

EIP’s comments demonstrate that PAL6 is a state-only permit and that its unqualified incorporation into the Proposed Permit undermines the enforceability of major modification

applicability determination requirements in the Texas SIP. The Executive Director's response to comments does not rebut this demonstration.

3. *The Executive Director Failed to Rebut Petitioners' Demonstration that PAL6 Undermines the Enforceability of the Clean Air Act and Texas SIP's Requirement that Major NSR Applicability Determinations be Based on Increases from Baseline Actual Emissions*

The Executive Director's response to comments supports rather than disputes EIP's demonstration that limits in PAL6 reflect allowable rather than actual emissions:

When Permit 3452 was issued in 2001, an emissions cap was established by applying then current best available control technology (BACT) to the existing furnaces. As a result the cap was less than the prior two-year actual emissions. When PAL6 was issued, several additional furnaces were added to the flexible cap, *and the PAL was set equal to the new flexible cap.*

Response to Comments at Response 1 (emphasis added).

While the Executive Director does not dispute EIP's demonstration that the limits in state-only PAL6 reflect allowable rather than baseline actual emissions, he suggests that allowable-based limits in PAL6 are actually lower than baseline actual emissions. The Executive Director's statement, however, demonstrates that the opposite is true. As EIP explained in its public comments, baseline actual emissions must be "adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month [baseline] period." 40 C.F.R. 51.166(b)(47)(ii)(c); 30 Tex. Admin. Code § 116.12(3)(B). The BACT limits established in 2001 were requirements that applied to the Baytown Olefins Plant at the time PAL6 was issued. Thus, the actual emissions that ExxonMobil used to compare with the BACT-based flexible permit caps should have been adjusted downward to reflect the application of BACT. EIP

anticipated the Executive Director's response and included excerpts from ExxonMobil's PAL application demonstrating that properly calculated baseline actual emissions would have been far lower than the allowables-based limits in PAL6. Comments at 4. EIP demonstrated that PAL6 establishes allowables-based major modification thresholds and that the thresholds are higher than the Plant's baseline actual emissions. The Executive Director failed to rebut this demonstration. The Proposed Permit's unqualified incorporation of PAL6 undermines the enforceability of the Clean Air Act and Texas SIP requirement that major NSR applicability determinations must be based on increases from baseline actual emissions.

C. EIP's Comments Demonstrate that the TCEQ and ExxonMobil's Reliance on State-Only PAL6 to Determine that the Company's Ethylene Expansion Project was a Minor Modification Violated the Act and the Texas SIP⁹

1. State-Only PAL6 does not Establish Major Modification Thresholds that Displace SIP Requirements

The Clean Air Act provides that any physical or operational change to an existing major source that has the potential to result in significant emissions increases and significant net emissions increases is a major modification subject to applicable requirements in a state's PSD and/or NNSR preconstruction permitting programs. 40 C.F.R. §§ 52.21(b)(23), (39), (47); 30 Tex. Admin. Code §§ 116.12(20); 116.111(a)(2)(H) and (I); 116.150(d); 116.160(c). The Texas SIP provides two mechanisms for determining whether a project at an existing major source is a major modification: Federally-enforceable PALs and the de minimis threshold test (otherwise known as "netting"). 30 Tex. Admin. Code §§ 116.150(d); 116.160(c); 116.190. A federally-enforceable PAL is "[a]n emission limitation expressed, in tons per year, for a pollutant at a major stationary source, that is enforceable and established in a plant-wide applicability limit permit under § 116.186 of this title[.]" 30 Tex. Admin. Code § 116.12(24). Each PAL in a

⁹ Comments at 1-5.

federally-approved PAL permit must reflect source-wide baseline actual emissions of a single NSR pollutant. *Id.* at § 116.188. As Petitioners explain above, as EIP explained in its public comments, and as EPA made clear in its letter to ExxonMobil, the limits in PAL6 are not federally-enforceable. PAL6 predates and therefore could not have been issued under § 116.186 as the TCEQ's SIP-approved rules require. The limits in PAL6 reflect allowable rather than baseline actual emissions. As a matter of law, state-only PAL6 is not a proper basis for determining that projects at the Baytown Olefins Plant do not trigger the Act's PSD and/or NNSR preconstruction permitting requirements for any pollutant. 42 U.S.C. § 7410(i). Thus, the Texas SIP requires ExxonMobil to conduct a netting demonstration to determine whether construction projects at the Baytown Olefins Plant trigger major modification preconstruction permitting requirements.

This netting demonstration is required for modifications to existing units or construction of new units that have the potential to result in new emissions that exceed applicable significance thresholds. 30 Tex. Admin. Code §§ 116.150(c); 116.160(b). According to the Technical Review Document for the initial issuance of Permit No. 102982, which was linked in EIP's comments, the permit authorizes potential increases that exceed applicable significance thresholds for the following pollutants:

Pollutant	Allowable Emissions (tpy)	Major Modification Threshold (tpy)
PM	90.54	25
PM ₁₀	78.58	15
PM _{2.5}	73.45	10 direct or 40 tpy NO _x or SO ₂
VOC	224.14	25
NO _x	235.59	25
CO	931.16	100

Thus, ExxonMobil was required to conduct a netting demonstration to determine whether the project authorized by Permit No. 102982 was a major modification. Nonetheless, ExxonMobil failed to evaluate actual emissions increases resulting from the project and has not obtained a major NSR permit authorizing the project. ExxonMobil, therefore, never properly determined whether its expansion project triggered major NSR preconstruction permitting requirements. The Proposed Permit's unqualified incorporation of Permit No. 102982, which purports to authorize significant new emissions from ExxonMobil's expansion project as a minor modification, therefore violates and undermines the enforceability of PSD/NNSR applicability determination requirements in the Clean Air Act and the Texas SIP. Because, as a matter of law, ExxonMobil was required to demonstrate compliance with applicable PSD/NNSR preconstruction permitting requirements before constructing the ethylene expansion project, and because (1) ExxonMobil failed to properly determine whether these requirements were triggered by the project, and instead (2) relied on its state-only PAL authorization, the order authorizing construction of the expansion project as a minor modification should also be considered enforceable, if at all, as a state-only permit that does not change ExxonMobil's ongoing obligation to comply with federal requirements.

2. *Even if PAL6 is a Federally-Enforceable Permit, the Executive Director and ExxonMobil Failed to Properly Determine Whether the Ethylene Expansion Project was a Major Modification*¹⁰

Even if PAL6 is a federally enforceable permit, EIP's comments still demonstrate that the TCEQ's reliance on it to determine that ExxonMobil's ethylene expansion project was not a major modification for PM_{2.5} was deficient as a matter of law. As EIP explained in its comments, PAL6 does not include a PM_{2.5} PAL. Each PAL may cover emissions of only one

¹⁰ Comments at 4-5.

pollutant. 40 C.F.R. §§ 51.166(w)(4) and (6); 30 Tex. Admin. Code §§ 116.12(24) and 116.186(a). PM and PM_{2.5} are separately-regulated NSR pollutants and operators must determine major NSR applicability for each. *See, e.g.*, 77 Fed. Reg. 65,107, 65,111, *Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers* (October 25, 2012) (“PM, PM₁₀, and PM_{2.5}] are considered separately as regulated NSR pollutants subject to review under the PSD program, which means that proposed new and modified sources must treat each indicator of PM as a separate regulated pollutant for applicability determinations, and must then apply the PSD requirements, as appropriate, independently for each indicator of PM”). Accordingly, ExxonMobil’s PM PAL is not a PM_{2.5} PAL. Because this is so, ExxonMobil’s ethylene production unit may be a major modification even if PAL6’s PM limit is federally-enforceable.

The Executive Director argued that ExxonMobil’s PM PAL is also a PM_{2.5} PAL, because it was issued while EPA’s Interim PM₁₀ Surrogate Policy was in effect and, pursuant to the Policy, a PM PAL may be considered a PM_{2.5} PAL. This argument is wrong as a matter of law, because (1) EPA’s Interim PM₁₀ Surrogate Policy never applied to PALs;¹¹ (2) even if the Policy once applied to PALs, it has been terminated and may not be relied upon for any purpose;¹² and (3) whatever EPA intended its Policy to mean, an informal policy cannot modify the express language of EPA and Texas’s rules that “each PAL must include emissions of only one pollutant.” 30 Tex. Admin. Code § 116.186(a); 40 C.F.R. § 51.166(w)(4)(e).

Because ExxonMobil and the TCEQ’s reliance on PAL6 to determine that ExxonMobil’s ethylene expansion project is not a major modification for PM_{2.5} was deficient as a matter of law,

¹¹ *See, e.g.*, 40 C.F.R. § 52.21(i)(1)(xi) (July 1, 2011) (repealed) (listing review requirements affected by Interim PM₁₀ Surrogate Policy without including PALs).

¹² 76 Fed. Reg. 28,646, 28,648 (May 18, 2011) (“With the end of the 1997 PM₁₀ Surrogate Policy in SIP-approved states on May 16, 2011, and the repeal of the grandfather provision in this final action, the 1997 PM₁₀ Surrogate Policy may not be relied on for any pending or future applications”).

the Proposed Permit's unqualified incorporation of Permit No. 102982—which authorizes construction of the project as a minor modification—undermines the enforceability of and violates major NSR preconstruction permitting requirements in the Act and the Texas SIP.

D. The Executive Director's Response to Public Comments Failed to Rebut EIP's Demonstration that the Proposed Permit's Incorporation of Permit No. 102982 Violates and Undermines the Enforceability of Preconstruction Permitting Requirements in the Act and the Texas SIP

The Executive Director's response to comments fails to rebut EIP's demonstration that (1) the TCEQ and ExxonMobil's determination that the ethylene expansion project authorized by Permit No. 102982 was a minor modification was deficient as a matter of law and (2) that incorporation of Permit No. 102982 as a federally-enforceable authorization to construct that expansion violates and undermines the enforceability of major NSR preconstruction permitting requirements established by the Act and the Texas SIP.

First, the Executive Director relies on an excerpt from his technical review of ExxonMobil's application for Permit No. 102982, which explains that projects at sources regulated under a federally-enforceable PAL permit do not trigger major modification preconstruction requirements unless the proposed project increases cannot fit under limits established by the permit. Response to Comments at Response 1. This discussion has no bearing on the issue raised in EIP's comments, because it presumes without demonstrating that PAL6 is a federally-enforceable PAL permit. As Petitioners explained above and as EIP explained in its comments, this presumption is incorrect. EPA determined that PAL6 was not a federally-enforceable permit prior to ExxonMobil's submission of its application for Permit No. 102982 and EIP demonstrated that the permit does not reflect baseline actual emissions from the Plant, as the law requires. Thus, PAL6 did not modify ExxonMobil's obligation to use the netting method in the Texas SIP to determine major NSR applicability for its expansion project.

ExxonMobil has not done this, and thus Permit No. 102982, which authorizes construction of the expansion as a minor modification, may not be included in the Proposed Permit as a federally-enforceable construction authorization without undermining the enforceability of and violating NSR preconstruction permitting requirements in the Texas SIP and the Act.

The Executive Director's response to public comments also fails to address EIP's demonstration that PAL6 does not contain a PM_{2.5} PAL. Instead, he copied the following language from the record for his review of ExxonMobil's application for Permit No. 102982:

The PAL limits for PM were established by taking previously authorized PM limits from Permit 3452. ExxonMobil is required to operate within the existing PM PAL limit, which include the subsets PM_{2.5} and PM₁₀ as indicator pollutants for PM. In 2005, reliable PM_{2.5} data was unavailable and the EPA allowed use of the PM₁₀ surrogacy policy to complete the evaluation of PM. This surrogacy policy was developed because when EPA adopted the PM_{2.5} standard in 1997, it recognized the technical challenges that permitting authorities faces regarding the implementation of PM_{2.5} into new source review permitting programs. For nearly eight years after the EPA implemented its surrogacy policy, the EPA continued to acknowledge the outstanding difficulties related to implementing a PM_{2.5} NSR program. The difficulties included the lack of the necessary and specific tools to calculate the emissions of PM_{2.5}. The TCEQ recognizes the EPA ended the use of its PM₁₀ surrogacy policy in May 2011 and does not rely on the surrogacy policy to issue new source review permits. . . . PM is one of the criteria pollutants under evaluation for this project and Exxon Mobil represented that the PM₁₀ and PM_{2.5} emissions associated with the project will be within the established PAL6 PM limit.

Response to Comments at Response 1.

This response is beside the point. The question is whether the PM limit in PAL6 permit was also a PM_{2.5} PAL. EIP demonstrated that the answer to this question must be "no," because PM and PM_{2.5} are separately-regulated NSR pollutants and each PAL may only establish a major modification threshold for a single pollutant. The fact that EPA's PM₁₀ Surrogate policy was used to establish the allowables-based PM limit included in ExxonMobil's flexible permit/state-

only PAL permit issued in 2005 has no bearing on the question of whether ExxonMobil and the TCEQ may rely on that PM limit to determine, after the surrogacy policy has ended, that PM_{2.5} increases associated with a construction project do not trigger major modification preconstruction requirements. Thus, the Executive Director's response to comments fails to address Petitioners' objection and does not rebut EIP's demonstration that the Proposed Permit's incorporation of Permit No. 102982 as a federally-enforceable authorization to construct ExxonMobil's ethylene expansion project as a minor modification both violates and undermines the enforceability of major New Source Review requirements in the Act and the Texas SIP.

E. CONCLUSION

For the foregoing reasons, and as explained in EIP's timely-filed public comments, the Proposed Permit is deficient. The Executive Director's response to EIP's public comments was also insufficient. Accordingly, Petitioners respectfully request that the Administrator object to the Proposed Permit.

Sincerely,



Gabriel Clark-Leach
Environmental Integrity Project
707 Rio Grande, Suite 200
Austin, TX 78701
(512) 637-9477 (phone)
(512) 584-8019 (fax)
gclark-leach@environmentalintegrity.org

Attorney for Petitioners:
Environmental Integrity Project,
Sierra Club,
Air Alliance Houston

EXHIBITS

(Exhibit 1), Environmental Integrity Project, Air Alliance Houston, and Sierra Club's Reply to Responses to its Motion to Overturn the Executive Director's Reopening of Permit No. PAL6

(Exhibit 2) Public Comments Submitted on Behalf of the Environmental Integrity Project Regarding the Draft Minor Revision to Permit No. O1553

(Exhibit 3) Notice of Proposed Permit and Executive Director's Response to Public Comment, Minor Revision, Permit No. O1553

(Exhibit 4) Letter from John Blevins, Director, Compliance Assurance and Enforcement Division, EPA Region 6, to Evelyn R. Ponton, Environmental Coordinator, ExxonMobil Corporation, Re: Permit Number PAL6

CERTIFICATE OF SERVICE:

I hereby certify that on August 8, 2016 I provided copies of the foregoing Petition to persons or entities below via electronic filing, e-mail, U.S. certified mail, or hand delivery:

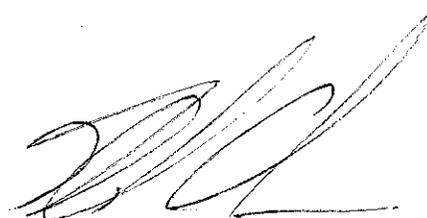
Texas Commission on Environmental Quality
Office of Permitting & Registration
Air Permits Division
Technical Program Support Section, MC-163
P.O. Box 13087
Austin, Texas 78711-3087

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

Mr. Howard C. Paul Jr.
BOP Plant Manager
Exxon Mobil Corporation
P.O. Box 100
Baytown, Texas 77522-0100

Kimberly J. Haas
BOP Process Manager
ExxonMobil Corporation
3525 Decker Drive
Baytown, Texas 77520-1646
kimberly.j.haas@exxonmobil.com



Gabriel Clark-Leach

EXHIBIT B

Notice of Intent to Sue Letter



707 Rio Grande, Suite 200
Austin, TX 78701
Phone: (512) 637-9478
www.environmentalintegrity.org

November 10, 2016

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 Certified Mail

RE: Notice of Intent to Sue for Failure to Timely Grant or Deny a Petition to Object to Part 70 Operating Permit No. O1553 Issued to the ExxonMobil Corporation for the Baytown Olefins Plant in Harris County, Texas

Dear Administrator McCarthy:

With this letter, the Environmental Integrity Project, Sierra Club, and Air Alliance Houston (“Plaintiffs”) are giving you notice of our intent to sue you in your official capacity as Administrator of the U.S. Environmental Protection Agency for your failure to timely respond to our petition to object to the Part 70 Operating Permit (Title V permit) No. O1553 issued to the ExxonMobil Corporation for operation of the Baytown Olefins Plant in Harris County, Texas. Plaintiffs timely filed their petition on August 8, 2016, within 60 days following the end of EPA’s 45-day review period for the Title V permit.¹ Though more than 60 days have passed since Plaintiffs filed their petition, you have not yet granted or denied the petition, as required by 42 U.S.C. § 7661d(b)(2).

Authority to Bring Suit

Clean Air Act, Section 304(a)(2) authorizes a citizen suit in federal district court “against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2). You have failed to perform your nondiscretionary duty to grant or deny Plaintiffs’ petition within 60 days of receipt. 42 U.S.C. § 7661d(b)(2). Plaintiffs are hereby giving you the required 60-day notice of our intent to bring a citizen suit to compel you to expeditiously grant or deny our

¹ Plaintiffs’ Title V petition is included with this NOI as Attachment I.

petition. If you fail to grant or deny Plaintiffs' petition within 60 days after receiving this notice, Plaintiffs will file suit in federal district court to compel your response.

Relief Requested

Plaintiffs will seek the following relief:

1. An order compelling you to expeditiously grant or deny the Petition;
2. Attorney's fees and other litigation costs; and
3. Other appropriate relief as allowed.

Parties

As required by 40 C.F.R. § 54.3, the persons providing this notice are:

Environmental Integrity Project
707 Rio Grande, Suite 200
Austin, Texas 78701
Attn: Gabriel Clark-Leach
Tel: (512) 637-9478

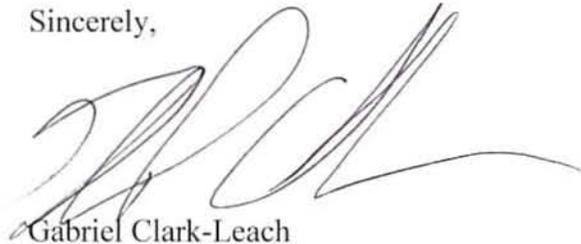
Sierra Club
2101 Webster Street, Suite 1300
Oakland, California 94612
Attn: Katie Schaefer
Tel: (415)-977-5745

Air Alliance Houston
3914 Leeland
Houston, Texas 77003
Tel: (713) 528-3779
Attn: Adrian Shelley

While EPA regulations require this information, please direct all correspondence and communications regarding this matter to the undersigned attorney.

If you have any questions regarding this notice letter, believe any of the foregoing information to be in error, or would otherwise like to discuss settlement of this matter, please contact Gabriel Clark-Leach at (512) 637-9478 or gclark-leach@environmentalintegrity.org.

Sincerely,



Gabriel Clark-Leach

Environmental Integrity Project

707 Rio Grande, Suite 200

Austin, TX 78701

(512) 637-9476 (phone)

(512) 584-8019 (fax)

gclark-leach@environmentalintegrity.org

Attorney for Plaintiffs

Environmental Integrity Project,

Sierra Club, and Air Alliance Houston

Attachment

cc: (Via Certified Mail)

Loretta Lynch, Attorney General

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530-0001

Ron Curry, Regional Administrator

U.S. EPA Region 6

1445 Ross Avenue, Suite 1200

Dallas, Texas 75202-2733

Steve Hagle, P.E.

Office of Air Deputy Director, MC-122

Texas Commission on Environmental Quality

P.O. Box 13087

Austin, Texas 78711-3087

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X Mail Management</p> <p>B. Received by (Printed Name) C. Date of Delivery</p>	
<p>1. Article Addressed to:</p> <p>Administrator Gina McCarthy U.S. EPA Ariel Rios Building, MC 1101A 1200 Pennsylvania Ave, NW Washington, D.C. 20460</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p style="text-align: center; font-size: 2em; opacity: 0.5;">NOV 21 2016</p>	
	<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. A C</p>	<p>7009 2250 0004 2310 3699</p>	
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt 102595-02-M-1540</p>

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 42 U.S.C. 7604(a)(2), failure to perform a nondiscretionary act or duty

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ 0	Check YES only if demanded in complaint JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 07/20/2017	SIGNATURE OF ATTORNEY OF RECORD: /s/ Adam Kron
------------------	--

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Environmental Integrity Project, Air Alliance Houston, and Sierra Club

Plaintiff(s)

v.

Scott Pruitt, in his official capacity as the Administrator of the United States Environmental Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Scott Pruitt, Administrator U.S. Environmental Protection Agency William Jefferson Clinton Building 1200 Pennsylvania, Ave NW, Mail Code 1101A Washington, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Adam Kron Environmental Integrity Project 1000 Vermont Ave. NW, Suite 1100 Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Environmental Integrity Project, Air Alliance Houston, and Sierra Club

Plaintiff(s)

v.

Scott Pruitt, in his official capacity as the Administrator of the United States Environmental Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Jeff Sessions, Attorney General of the United States, U.S. Department of Justice, 950 Pennsylvania Ave, NW, Washington, DC 20530-0001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Adam Kron, Environmental Integrity Project, 1000 Vermont Ave. NW, Suite 1100, Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Environmental Integrity Project, Air Alliance Houston,
and Sierra Club

Plaintiff(s)

v.

Scott Pruitt, in his official capacity as the
Administrator of the United States Environmental
Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Channing D. Phillips
c/o Civil Process Clerk
United States Attorney's Office
555 4th Street, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Adam Kron
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: