

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF	§	PETITION FOR OBJECTION
	§	
Clean Air Act Title V Permit No. O3764	§	
	§	
Issued to Kinder Morgan Crude & Condensate LLC	§	Permit No. O3764
	§	
Issued by the Texas Commission on Environmental Quality	§	
	§	
	§	

**PETITION TO OBJECT TO TITLE V PERMIT NO. O3764 ISSUED BY THE TEXAS
COMMISSION ON ENVIRONMENTAL QUALITY**

Pursuant to section 42 U.S.C. § 7661d(b)(2), Environmental Integrity Project, Texas Environmental Justice Advocacy Services, Sierra Club, Environment Texas, Air Alliance Houston, and Patricia Gonzales (“Petitioners”) hereby petition the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) to object to Proposed Federal Operating Permit No. O3764 issued by the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) authorizing operation of a crude condensate splitter and related equipment located at Kinder Morgan’s Galena Park Terminal in Harris County, Texas.

I. PETITIONERS

The Environmental Integrity Project is a non-profit, non-partisan watchdog organization that advocates for effective enforcement of environmental laws. EIP has three goals: (1) to illustrate through objective facts and figures how the failure to enforce and implement environmental laws increases pollution and harms public health; (2) to hold federal and state agencies, as well as individual corporations accountable for failing to enforce or comply with environmental laws; and (3) to help local communities obtain protections guaranteed by

environmental laws. The Environmental Integrity Project has offices and programs in Austin, Texas and Washington, D.C.

Texas Environmental Justice Advocacy Services (“TEJAS”) is a non-profit organization dedicated to providing communities in the Houston area with the tools necessary to create sustainable, environmentally healthy communities. TEJAS’s goal is to promote environmental protection through education, policy development, community awareness, and legal action. TEJAS’s guiding principle is that everyone, regardless of race or income, has the right to live in a clean environment.

The Sierra Club is a national nonprofit organization with 67 chapters and over 635,000 members dedicated to exploring, enjoying, and protecting the wild places of earth; to practicing and promoting the responsible use of earth’s ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Lone Star Chapter of the Sierra Club has members who live, work, and recreate in areas affected by air pollution from the Deer Park Complex.

Environment Texas is a statewide non-profit environmental organization that advocates for clean air, clean water, and preservation of Texas’s natural areas on behalf of its approximately 5,000 members across the state of Texas. Environment Texas researches and distributes analytical reports on environmental issues, advocates before legislative and administrative bodies, conducts public education, and pursues public interest litigation on behalf of its members.

Air Alliance Houston is a 501(c)(3) 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 is active throughout the greater Houston

area, with a particular focus on the communities and industrial sources located along the Houston Ship Channel.

Patricia Gonzales lives in Pasadena, Texas near Galena Park and the Houston Ship Channel. Ms. Gonzales is concerned that the Proposed Permit's failure to assure compliance with all public health protections that apply to the Galena Park Terminal could contribute to the State's ongoing noncompliance with ambient ozone standards and that flaring at the Terminal may increase her exposure to dangerous air pollutants, including Volatile Organic Compounds and Particulate Matter.

II. PROCEDURAL BACKGROUND

This petition addresses the TCEQ's initial issuance of Permit No. O3764 authorizing operation of a condensate splitter at Kinder Morgan's Galena Park Terminal, which now consists of a terminal, a condensate splitter, a warehouse, and a storage area.¹ The Galena Park Terminal is located in the Houston, Galveston, Brazoria ("HGB") severe ozone nonattainment area and is a major source of criteria air pollutants and hazardous air pollutants that contribute to the condition of air pollution that plagues neighborhoods near the Houston Ship Channel.

Kinder Morgan filed its application for Permit No. O3764 on November 12, 2014. The Executive Director conducted his technical review of Kinder Morgan's application from May 27, 2015 until September 1, 2015. The Executive Director proposed to approve Kinder Morgan's application and issued Draft Permit No. O3764 ("Draft Permit"), notice of which was published on October 29, 2015. (Exhibit A), Draft Permit No. O3764 ("Draft Permit"). Bilingual notice of the Draft Permit was published on November 1, 2015. Petitioner groups timely-filed comments

¹ Permit No. O988 authorizes operation of other equipment at the Galena Park Terminal.

with the TCEQ identifying several deficiencies in the Draft Permit. (Exhibit B), Public Comments on Draft Permit No. O3764 (“Public Comments”).

On May 10, 2017, the TCEQ’s Executive Director issued notice of Proposed Permit No. O3764 along with his response to public comments on the Draft Permit. (Exhibit C), Notice of Proposed Permit and the Executive Director’s Response to Public Comment (“Response to Comments”); (Exhibit D), Proposed Permit No. O3764 (“Proposed Permit”); (Exhibit E); Statement of Basis, Permit No. O3764.

EPA’s 45-day review period for the Proposed Permit began on May 16, 2017 and ended on June 30, 2017. Because the Administrator did not object to the Proposed Permit during his 45-day review period, members of the public have 60-days from the close of the review period to petition the Administrator to object to the Proposed Permit. This petition for objection is timely filed.

III. LEGAL REQUIREMENTS

Title V permits are the primary method for enforcing and assuring compliance with the Clean Air Act’s pollution control requirements for major sources of air pollution. *Operating Permit Program*, 57 Fed. Reg. 32,250, 32,258 (July 21, 1992). Prior to enactment of the Title V permitting program, regulators, operators, and members of the public often had difficulty determining which requirements applied to each major source and whether sources were complying with applicable requirements. This was a problem because applicable requirements for each major source were spread across many different rules and orders, some of which did not make it clear how general requirements applied to specific sources.

The Title V permitting program was created to resolve this problem by requiring each major source to obtain an operating permit that (1) lists all applicable federally-enforceable requirements, (2) contains enough information for readers to determine how applicable

requirements apply to units at the permitted source, and (3) establishes monitoring requirements that assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a) and (c); *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996) (“The permit is crucial to implementation of the Act: it contains, in a single, comprehensive set of documents, all CAA requirements relevant to the particular source.”); *Sierra Club v. EPA*, 536 F.3d 673, 674-75 (D.C. Cir. 2008) (“But Title V did more than require the compilation in a single document of existing applicable emission limits It also mandated that each permit . . . shall set forth monitoring requirements to assure compliance with the permit terms and conditions”).

The Title V permitting program provides a process for stakeholders to resolve disputes about which requirements should apply to each major sources outside of the enforcement context. 57 Fed. Reg. 32,266 (“Under the [Title V] permit system, these disputes will no longer arise because any differences among the State, EPA, the permittee, and interested members of the public as to which of the Act’s requirements apply to the particular source will be resolved during the permit issuance and subsequent review process.”). Accordingly, federal courts do not generally second guess Title V permitting decisions and will not enforce otherwise-applicable requirements that have been omitted from or displaced by conditions in a Title V permit. *See*, 42 U.S.C. § 7607(b)(2); *see also*, *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)). Because courts rely on Title V permits to determine which requirements may be enforced and which requirements may not be enforced against each major source, state-permitting agencies and EPA must exercise care to ensure that each Title V permit includes a clear, complete, and accurate account of the requirements that apply to each permitted source.

The Act requires the Administrator to object to a state-issued Title V permit if he determines that it fails to include and assure compliance with all applicable requirements. 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c). If the Administrator does not object to a Title V permit, “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).

IV. GROUNDS FOR OBJECTION

A. The Proposed Permit Fails to Assure Compliance with Applicable Requirements in Kinder Morgan’s Major Nonattainment New Source Review Permit (Monitoring)

1. Specific Grounds for Objection, Including Citation to Permit Term

The Proposed Permit is deficient because it fails to specify monitoring and testing requirements that assure compliance with performance standards, emission limits, and operating requirements established by Permit No. 101199/N158 (“Nonattainment Permit”).

Proposed Permit, Special Condition No. 14 provides that (1) Kinder Morgan must comply with the requirements of NSR permits referenced in the Proposed Permit’s New Source Review Authorization References attachment, and (2) that listed NSR permits are incorporated into the Title V permit by reference.

The Proposed Permit’s New Source Review Authorization References attachment identifies the Nonattainment Permit as an authorization incorporated by reference into the Proposed Permit. Proposed Permit at 72.

The Statement of Basis includes the following statement regarding the sufficiency of monitoring in the Proposed Permit:

Federal and state rules, 40 CFR § 70.6(a)(3)(i)(B) and 30 TAC § 122.142(c) respectively, require that each federal operating permit include additional monitoring for applicable requirements that lack periodic or instrumental monitoring (which may include recordkeeping that serves as monitoring) that yields reliable data from a relevant time period that are representative of the emission unit's compliance with the applicable emission limitation or standard. Furthermore, the federal operating permit must include compliance assurance monitoring (CAM) requirements for emission sources that meet the applicability criteria of 40 CFR Part 64 in accordance with 40 CFR § 70.6(a)(3)(i)(A) and 30 TAC § 122.604(b).

With the exception of any emission units listed in the Periodic Monitoring or CAM Summaries in the FOP, the TCEQ Executive Director has determined that the permit contains sufficient monitoring, testing, recordkeeping, and reporting requirements that assure compliance with the applicable requirements. If applicable, each emission unit that requires additional monitoring in the form of periodic monitoring or CAM is described in further detail under the Rationale for CAM/PM Methods Selected section following this paragraph.

Statement of Basis at 26.

None of the Periodic Monitoring or CAM Summaries in the Proposed Permit address requirements in Kinder Morgan's Nonattainment Permit, *see* Proposed Permit at 62-63, and the Statement of Basis does not provide a reasoned justification for the Executive Director's determination that provisions in Kinder Morgan's Nonattainment Permit assure compliance with applicable emission limits and operating requirements.

2. Applicable Requirement or Part 70 Requirement Not Met

Each Title V permit must contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1); *In the Matter of Wheelabrator Baltimore, L.P.* ("Wheelabrator Order"), Permit No. 24-510-01886 at 10 (April 14, 2010). Emission limits in NSR permits incorporated by

reference into the Proposed Permit are applicable requirements. 40 C.F.R. § 70.2. The rationale for the selected monitoring requirements must be clear and documented in the permit record. 40 C.F.R. § 70.7(a)(5); *In the Matter of United States Steel, Granite City Works* (“Granite City I Order”), Order on Petition No. V-2009-03 at 7-8 (January 31, 2011).

As explained below, the Proposed Permit is deficient because (1) it fails to specify monitoring and emission calculation methods that assure compliance with emission limits and operating requirements in incorporated the Nonattainment Permit; and (2) the permit record does not contain a reasoned justification for the Executive Director’s determination that monitoring methods included in the Proposed Permit assures compliance with emission limits in the Nonattainment Permit.

3. Inadequacy of the Permit Term

According to the Proposed Permit’s Major NSR Summary Table, Kinder Morgan’s Nonattainment Permit does not contain any monitoring, testing, recordkeeping, or reporting requirements that assure compliance with annual emission caps for Kinder Morgan’s two heaters and the permit’s site-wide annual benzene limit. Proposed Permit at 78 and 80. Accordingly, the Proposed Permit fails to specify minimum testing and monitoring requirements that assure compliance with federally-enforceable emission limits in Kinder Morgan’s Nonattainment Permit.

Table 1: Site-wide Benzene Limit and Heater Emission Caps Established by Kinder Morgan’s Nonattainment Permit

Units	Pollutant	Limit (TPY)
F-101 and F-202 (Heater Annual Emission Cap)	CO	72.84
	NO _x	11.83
	VOC	10.63
	SO ₂	11.83
	PM	8.87
	PM ₁₀	8.87
	PM _{2.5}	8.87

	Ammonia	14.57
All Units Authorized by Permit	Benzene	0.30

Proposed Permit at 79-80.

4. Issue Raised in Public Comments

Commenters raised this issue on page 7 of their Public Comments.

5. Analysis of State’s Response

The Executive Director does not dispute Petitioners’ claim that the Proposed Permit’s Major NSR Summary Table indicates that Kinder Morgan’s Nonattainment Permit does not include any monitoring, testing, recordkeeping, or reporting requirements that assure compliance with annual emission caps for Kinder Morgan’s two heaters and the permit’s site-wide annual benzene limit. Response to Comments at 8. Instead, the Executive Director contends that special conditions in the Proposed Permit and Kinder Morgan’s Nonattainment Permit that are not identified in the Proposed Permit’s Major NSR Summary Table are sufficient to assure compliance with the heater emission caps and site-wide benzene limit. *Id.*

With respect to the site-wide benzene limit, the Executive Director claims:

Special Term and Conditions 9 and 10, Proposed Permit at page 8, contain various monitoring, testing recordkeeping and reporting requirements to demonstrate compliance with the site-wide benzene emission limit. Specifically, monitoring and testing requirements are specified in 40 CFR §§ 61.13, 61.14, 61.355(a)(1)(iii), (a)(2), (a)(5)(i) - (ii), (a)(6), (b), and (c)(1) - (3). Recordkeeping requirements are stated in 40 CFR §§ 61.356(a), 61.356(b), and 61.356(b)(1). Reporting requirements are stated in 40 CFR §§ 61.357(a) and 61.357(b).

Id.

This response does not rebut Petitioners’ demonstration that the Proposed Permit fails to include monitoring and testing requirements that assure compliance with the site-wide benzene limit established by Kinder Morgan’s Nonattainment Permit, because (1) the monitoring and

testing provisions cited by the Executive Director only apply to waste-streams and do not account for benzene emitted during condensate processing and storage, *see*, 40 C.F.R. § 61.340;² (2) the Proposed Permit's Major NSR Summary Table fails to require Kinder Morgan to apply methodologies identified in the cited rules to determine compliance with Kinder Morgan's site-wide benzene limit; and (3) none of the benzene waste rules cited by the Executive Director are actually listed as applicable requirements for any unit at the Galena Park Terminal in the Proposed Permit's Applicable Requirements Summary table. Proposed Permit at 20-61. *See, e.g., In the Matter of Shell Chemical and Shell Oil Company, Deer Park Chemical Plant and Refinery* ("Deer Park Order"), Order on Petition Nos. VI-2014-04 and VI-2014-05 at 25 (September 24, 2015) ("If the TCEQ determines that elements of the monitoring already set forth in . . . [the] permit are capable of providing an adequate means to assure compliance with the title V . . . limits . . . originally in the underlying PSD permit, then the TCEQ should clearly identify this monitoring in the title V permit and explain the rationale for the selected monitoring."). Accordingly, the Executive Director has not only failed to explain how the cited rules assure compliance with the site-wide benzene limit established by the Nonattainment Permit, he has also failed to identify units at the Galena Park Terminal that are subject to requirements in the cited rules.

With respect to the emission caps for Kinder Morgan's two heaters, the Executive Director states:

Permit No. 101199/N158, Special Conditions 8, 9, 10 and 11 also contain various monitoring, testing[,] recordkeeping and reporting requirements to demonstrate compliance with annual emission caps for heater units (EPNs F-101 and F-201). Specifically, Special Conditions 10 and 11 require a continuous emission

² The General Provisions and Monitoring Requirements rules at 40 C.F.R. §§ 61.13 and 61.14 require testing and monitoring as required by applicable Part 61 subparts. They do not identify specific monitoring and testing requirements that assure compliance with the site-wide benzene limit established by Kinder Morgan's Nonattainment Permit.

monitoring system (CEMS) to monitor NO_x, CO and ammonia emissions from EPNs F-101 and F-201.

Response to Comments at 8.

If these monitoring and testing requirements assure compliance with heater annual emission caps, they should be listed as applicable compliance determination method for the heater caps in the Proposed Permit's Major NSR Summary table. The fact that the Proposed Permit's Major NSR Summary table states that there are no applicable monitoring, testing, recordkeeping, or reporting requirements that apply to the heater annual emission caps suggests that the special conditions identified by the Executive Director do not necessarily apply to the heater annual emission caps. To clarify that the listed special conditions do in fact establish compliance determination requirements for the Nonattainment Permit's heater annual emission caps, all the Executive Director needed to do in response to the public comments on this issue is to revise the Proposed Permit's Major NSR Summary table to identify the relevant special conditions.³ He declined to do so, and his decision to issue the Proposed Permit with an incomplete and misleading Major NSR Summary table undermines the enforceability of the caps. *Deer Park Order* at 25.

Moreover, none of the special conditions listed in the Executive Director's Response to Comments identifies monitoring or testing requirements that assure compliance with the VOC, PM, PM₁₀, and PM_{2.5} heater emission caps established by Kinder Morgan's Nonattainment Permit. Accordingly, even if the Proposed Permit tacitly requires Kinder Morgan to apply special conditions listed in the Executive Director's Response to Comments to determine compliance with the Nonattainment Permit's heater emission caps, the Proposed Permit still fails to assure compliance with the VOC, PM, PM₁₀, and PM_{2.5} caps.

³ Indeed, the Public Comments requested that the Executive Director revise the Draft Permit to do just this. Public Comments at 7 ("The Executive Director must revise the Draft Permit to identify monitoring, recordkeeping, and reporting requirements that assure compliance with Permit No. 101199/N158 heater emission caps and site-wide benzene limit.").

Finally, with respect to both the site-wide benzene limit and the heater annual emission caps, the Executive Director argues:

In addition, the Applicant must periodically submit the Permit Compliance Certification (PCC) form (TCEQ 10490) and deviation reports to assure compliance with the requirements of the Proposed Permit, Special Term and Condition 17 at page 10; including Permit No. 101199/N158 and all PBRs listed in the Proposed Permit at page 68. The annual PCCs are available for public viewing at either the affected TCEQ Regional Office (Air Section), or the TCEQ Central File Room (TCEQ Main Campus, Bldg E, Rm 103). Non-confidential portions may also be provided in response to a public information request. Therefore, compliance and enforceability of the Proposed Permit requirements (including Permit No. 101199/N158 and all PBRs listed in the Proposed Permit at page 68) is assured.

Id. at 8.

The Executive Director, however, does not explain how the compliance certification process satisfies the requirement that each Title V permit specify monitoring sufficient to assure compliance with applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1). While Title V's monitoring requirements and compliance certification requirements are clearly related, they are separate requirements that must be independently met, and one does not obviate the need for the other. *Compare Id.* at § 70.6 (a)(3) and (c)(1) (monitoring requirements) with § 70.6(c)(5) (compliance certification requirements).

The Proposed Permit's compliance certification requirement cannot assure compliance with the site-wide benzene limit and heater emission caps established by Kinder Morgan's Nonattainment Permit, because, as explained above, the Proposed Permit indicates that there are no applicable monitoring or testing requirements for these limits and the special conditions identified in the Executive Director's response fail to address benzene emissions from process activities and do not identify any monitoring or testing for VOC, PM, PM₁₀, and PM_{2.5} emissions from Kinder Morgan's heaters.

The Executive Director's response is incomplete, misconstrues Title V permitting requirements, and fails to rebut Petitioners' demonstration. Accordingly, the Administrator must object to the Proposed Permit.

B. The Proposed Permit Fails to Assure Compliance with Emission Limits and Operating Requirements Established by Permits by Rule Claimed by Kinder Morgan

1. Specific Grounds for Objection, Including Citation to Permit Term

The Proposed Permit is deficient because it fails to establish monitoring, reporting, and recordkeeping requirements that assure ongoing compliance with emission limits and operating requirements in Permits by Rule ("PBRs") claimed by Kinder Morgan.

Proposed Permit, Special Condition No. 14 provides that NSR permits—including PBRs—listed in the Proposed Permit's New Source Review Authorization References attachment are incorporated by reference into the Proposed Permit as applicable requirements.

Incorporated PBRs establish emission limits and operating requirements that apply for equipment and projects authorized by PBR at the Galena Park facility. Texas's general PBR rule at 30 Tex. Admin. Code § 106.4(a) also establishes emission limits that apply to the Galena Park facility.

Proposed Permit, New Source Authorization References attachment incorporates the following four PBRs claimed by Kinder Morgan to authorize emissions from five units in the permit area: 106.261 (11/01/2003), 106.263 (11/01/2001), 106.454 (11/01/2001), and 106.472 (09/04/2000). Proposed Permit at 72-74.

The PBRs at 106.261 and 106.472 do not specify any monitoring or testing requirements that operators must apply to demonstrate compliance with emission limits and operating requirements for projects authorized under those PBRs.

The PBR at 106.263 establishes general recordkeeping requirements consistent with Proposed Permit, Special Condition No. 16 (discussed below), but does not identify any specific monitoring or testing that Kinder Morgan must use to assure compliance with emission limits and operating requirements for projects authorized under that PBR. *See*, 30 Tex. Admin. Code § 106.263(g).

The PBR at 106.454 incorporates by reference testing methods required for degreasers under 30 Tex. Admin. Code § 115.415. *Id.* at § 106.454(1)(F). According to § 115.415(1) and (2), compliance with applicable Chapter 115 control requirements must be determined using one of several listed methods. 30 Tex. Admin. Code § 115.415(3) also allows the Executive Director to authorize an alternative method for determining compliance with applicable requirements. The Proposed Permit does not specify which of the testing methods, if any, identified in § 115.415(1) and (2) that Kinder Morgan must use to assure compliance with emission limits and operating requirements for projects authorized under the PBR at 106.454.

The Proposed Permit also includes the following recordkeeping requirement for emission units authorized by PBR:

The permit holder shall maintain records to demonstrate compliance with any emission limitation or standard that is specified in a permit by rule (PBR) or Standard Permit listed in the New Source Review Authorizations attachment. The records shall yield reliable data from the relevant time period that are representative of the emission unit's compliance with the PBR or Standard Permit. These records may include, but are not limited to, production capacity and throughput, hours of operation, safety data sheets (SDS), chemical composition of raw materials, speciation of air contaminant data, engineering calculations, maintenance records, fugitive data, performance tests, capture/control device efficiencies, direct pollutant monitoring (CEMS, COMS, or PEMS), or control device parametric monitoring. These records shall be made readily accessible and available as required by 30 TAC § 122.144. Any monitoring or recordkeeping data indicating noncompliance with the PBR or Standard Permit shall be considered and reported as a deviation according to 30 TAC § 122.145 (Reporting Terms and Conditions).

Proposed Permit, Special Condition No. 16.

The Proposed Permit also incorporates by reference “the general requirements of 30 TAC Chapter 106, subchapter A or the general requirements, if any, in effect at the time of the claim of any PBR. *Id.* at Special Condition No. 15. While 30 Tex. Admin. Code § 106.8 establishes general recordkeeping requirements consistent with Proposed Permit, Special Condition No. 16, the rule does not specify any particular monitoring or testing requirements a source must use to determine and demonstrate compliance with applicable PBR emission limits and operating requirements.

The Statement of Basis provides the following statement regarding the sufficiency of monitoring in the Proposed Permit:

Federal and state rules, 40 CFR § 70.6(a)(3)(i)(B) and 30 TAC § 122.142(c) respectively, require that each federal operating permit include additional monitoring for applicable requirements that lack periodic or instrumental monitoring (which may include recordkeeping that serves as monitoring) that yields reliable data from a relevant time period that are representative of the emission unit’s compliance with the applicable emission limitation or standard. Furthermore, the federal operating permit must include compliance assurance monitoring (CAM) requirements for emission sources that meet the applicability criteria of 40 CFR Part 64 in accordance with 40 CFR § 70.6(a)(3)(i)(A) and 30 TAC § 122.604(b).

With the exception of any emission units listed in the Periodic Monitoring or CAM Summaries in the FOP, the TCEQ Executive Director has determined that the permit contains sufficient monitoring, testing, recordkeeping, and reporting requirements that assure compliance with the applicable requirements. If applicable, each emission unit that requires additional monitoring in the form of periodic monitoring or CAM is described in further detail under the Rationale for CAM/PM Methods Selected section following this paragraph.

Statement of Basis at 26.

None of the Periodic Monitoring or CAM Summaries in the Proposed Permit address requirements in PBRs claimed by Kinder Morgan, *see* Proposed Permit at 62-63, and the Statement of Basis does not provide a reasoned justification for the Executive Director’s determination that

existing provisions in PBRs claimed by Kinder Morgan assure compliance with applicable emission limits and operating requirements.

2. Applicable Requirement or Part 70 Requirement Not Met

Each Title V permit must contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1); *Wheelabrator Order* at 10. Emission limits and operating requirements in PBRs incorporated by reference into the Proposed Permit are applicable requirements. 40 C.F.R. § 70.2. The rationale for selected monitoring requirements must be clear and documented in the permit record. 40 C.F.R. § 70.7(a)(5); *Granite City I Order* at 7-8.

As explained below, the Proposed Permit is deficient because (1) it fails to specify monitoring methods that assure compliance with emission limits and operating requirements established by PBRs claimed by Kinder Morgan; and (2) the permit record does not contain a reasoned justification for the Executive Director's determination that monitoring methods included in the Proposed Permit assure compliance with emission limits and operating requirements in PBRs claimed by Kinder Morgan.

3. Inadequacy of the Permit Term

Neither the Proposed Permit nor the PBR rules listed in the Proposed Permit's New Source Review Authorization References attachment specify monitoring methods that assure compliance with applicable PBR emission limits and operating requirements. While the Proposed Permit does identify the TCEQ's general PBR rules at 30 Tex. Admin. Code, Subchapter A as applicable requirements, and includes Special Condition Nos. 15 and 16, which are related to PBR recordkeeping, these provisions do not specify which monitoring methods—*if any*—are necessary to assure compliance with PBR emission limits and operating requirements. Rather, these provisions provide a non-exhaustive menu of options that Kinder Morgan may pick at choose from

at its discretion to demonstrate compliance with PBR emission limits and operating requirements. The laundry list of option for monitoring compliance contained in Proposed Permit, Special Condition No. 16 is so vague as to be meaningless.

The Proposed Permit allows Kinder Morgan to determine which records and monitoring provide sufficiently “reliable data,” effectively outsourcing the Executive Director’s obligation to specify the monitoring method(s) that will assure compliance with each emission limit or standard established by PBRs incorporated by reference into the Proposed Permit. This vagueness also prevents EPA and the public from effectively evaluating whether the monitoring methods—if any—that Kinder Morgan uses to determine compliance with PBR requirements are consistent with Title V. For example, Petitioners would likely challenge monitoring that relies upon undefined “engineering calculations” to determine compliance, unless the permit record contained information show that such calculations actually assure compliance with applicable PBR emission limits and operating requirements.

Neither the Proposed Permit, nor the accompanying Statement of Basis provide support for the Executive Director’s determination that the Proposed Permit specifies monitoring methods that assure compliance with PBR requirements. Because this is so, the Proposed Permit is deficient. *Wheelabrator Order* at 10.

4. Issues Raised in Public Comments

Commenters raised this issue on pages 8-10 of the Public Comments.

5. Analysis of State’s Response

Petitioners demonstrated that the Proposed Permit fails to comply with 42 U.S.C. § 7661c(a) and (c) and 40 C.F.R. § 70.6(a) and (c) because it fails to specify monitoring methods that assure compliance with emission limits and operating requirements established by PBRs claimed by Kinder Morgan. The Executive Director responds (1) that he “disagrees that specific

monitoring has to be included for every PBR held at the site to assure compliance” and (2) that provisions in the Proposed Permit and other actions taken by Kinder Morgan are sufficient to assure compliance with PBR emission limits and operating requirements, even though the Proposed Permit does not identify specific monitoring and/or testing methods that assure compliance with those requirements. Response to Comments at 12-13. This response does not rebut Petitioners’ demonstration that the Proposed Permit is deficient.

The Executive Director’s blunt contention that the Proposed Permit needn’t include monitoring methods that assure compliance with each PBR claimed by Kinder Morgan is incorrect. The Executive Director “does not have discretion to issue a permit without specifying the monitoring methodology needed to assure compliance with applicable requirements in the title V permit.” *Wheelabrator Order* at 10; *see also*, 40 C.F.R. § 70.6(a)(3)(i).

Next, the Executive Director contends “that a combination of monitoring, recordkeeping, and reporting requirements (and not monitoring requirements by themselves) are often used to assure compliance with applicable state and federal regulations and terms and conditions of the permit. Response to Comments at 12. While it is true that monitoring and testing requirements may not assure compliance with applicable requirements in the absence of recordkeeping and reporting practices, it does not follow that monitoring and/or testing conditions are merely optional components of a Title V permit. The Clean Air Act is clear that Title V permits must contain monitoring and testing provisions that assure compliance with applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1). Moreover, the Executive Director has not demonstrated that the provisions he identifies in his Response to Comments assure compliance with emission limits and operating requirements in PBRs claimed by Kinder Morgan.

The first provision in the Proposed Permit that the Executive Director points to in support of his determination that the Proposed Permit assures compliance with PBR emission limits and operating requirements is Proposed Permit, Special Condition No. 16. Response to Comments at 12. As Commenters explained in their Public Comments and as Petitioners explain again above, Special Condition No. 16 fails to assure compliance with applicable PBR emission limits and operating requirements, because it gives Kinder Morgan complete discretion to decide how to demonstrate compliance with such requirements. Special Condition No. 16 does not identify monitoring and testing methods Kinder Morgan must use to assure compliance with PBR emission limits and operating requirements and the Executive Director has not explained how this special condition—on its own or in conjunction with other provisions in the Proposed Permit—assures compliance with these requirements.

Next, the Executive Director argues:

Assurance of compliance and federal enforceability of units authorized under PBRs . . . is demonstrated by listed the PBR as a pre-construction authorization for one or more units in the New Source Review Authorization References by Emissions Unit table, Proposed Permit at pages 69-70, or by using a PBR registration and certification to make the emissions authorized by the PBR federally enforceable.

Id. at 12.

This response improperly conflates two different requirements. Because PBRs are federally-enforceable authorizations and are identified as “applicable requirements” in Texas’s Title V rules, the Proposed Permit must include applicable PBR requirements. 40 C.F.R. § 70.6(a)(1). Because PBR emission limits and operating requirements are federally enforceable applicable requirements, the Proposed Permit must also include monitoring and testing provisions that assure compliance with PBR emission limits and operating requirements. *Id.* at § 70.6(a)(3) and (c)(1). The Executive Director’s statement that listing claimed PBRs in the Proposed Permit assures compliance with applicable requirements addresses his § 70.6(a)(1) obligation to include

all applicable requirements in the Proposed Permit, but it does not address the issue that Petitioners have raised: that the Proposed Permit fails to specify monitoring and testing requirements that assure compliance with PBR emission limits and operating requirements, as required by § 70.6(a)(3) and (c)(1).

Next, the Executive Director argues that Kinder Morgan's submission of certified PBR registrations for projects authorized under the 106.261 and 106.263 PBRs is, by itself, sufficient to "assure[] federal enforceability of units authorized under PBRs in §§ 106.261 (11/01/2003) and 106.263 (11/01/2001)." Response to Comments at 13. This response is puzzling for two reasons. First, as Commenters explained in their Public Comments on the Draft Permit, the Proposed Permit actually fails to properly incorporate requirements in Kinder Morgan's certified PBR registrations. Public Comments at 17-19.⁴ Second, the fact that Kinder Morgan submitted certified PBR registrations to the TCEQ has no bearing on the question at issue here: whether, consistent with 40 C.F.R. § 70.6(a)(3) and (c)(1), the Proposed Permit specifies monitoring methods that assure compliance with PBR requirements.

Finally, the Executive Director mentions that Kinder Morgan must submit annual compliance certifications, "which provides the vehicle for certifying compliance with all Title V permit requirements, including the requirements of all PBRs listed in the Proposed Permit[.]" Response to Comments at 13. The Executive Director, however, does not explain how the compliance certification process satisfies the requirement that each Title V permit specify monitoring sufficient to assure compliance with applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1). While Title V's monitoring requirements and compliance certification requirements are clearly related, they are separate requirements that must

⁴ This issue is addressed directly on pages 27-39 of this Petition.

be independently met, and one does not obviate the need for the other. *Compare Id.* at § 70.6(a)(3) and (c)(1) (monitoring requirements) with § 70.6(c)(5) (compliance certification requirements). The Executive Director also fails to explain how Kinder Morgan’s obligation to submit an annual compliance certification rebuts Petitioners’ demonstration that the Proposed Permit fails to specify monitoring and testing methods that assure compliance with applicable PBR emission limits and operating requirements.

The Executive Director’s response to Petitioners’ demonstration is incorrect, incomplete, and incoherent. Accordingly, the Administrator must object to the Proposed Permit.

C. The Proposed Permit Fails to Specify How Kinder Morgan Should Quantify Emissions from Various Units at the Galena Park Terminal to Assure Compliance with Emission Limits in the Nonattainment Permit

1. Specific Grounds for Objection, Including Citation to Permit Term

The Proposed Permit is deficient because it fails to sufficiently identify the methods for calculating emissions from various units at the Galena Park Terminal that assure compliance with hourly and annual emission limits established by Kinder Morgan’s Nonattainment Permit. The Proposed Permit special conditions relevant to Petitioners’ demonstration of this deficiency are the same as listed above in Section IV(A)(1) of this Petition.

2. Applicable Requirement or Part 70 Requirement Not Met

Each Title V permit must contain conditions “necessary to assure compliance with applicable requirements[.]” 42 U.S.C § 7661c(a); 40 C.F.R. § 70.6(a)(3) and (c)(1). Where an applicable requirement, like Kinder Morgan’s Nonattainment Permit, establishes monitoring and analysis procedures that a permitting authority relies upon to assure compliance with emission limits, such procedures must be included in the source’s Title V permit. 40 C.F.R § 70.6(a)(3)(A). The permit record for each Title V permit must also explain how monitoring and testing procedures

included in the Title V permit assure compliance with applicable emission limits. 40 C.F.R. § 70.7(a)(5).

3. Inadequacy of the Permit Term

The Proposed Permit is deficient because it fails to specify and sufficiently incorporate requirements necessary to assure compliance with emission limits established by Kinder Morgan's Nonattainment Permit.

a. Tank Emissions

Nonattainment Permit, Special Condition No. 18 provides that “[e]missions for tanks shall be calculated using the methods used to determine the MAERT limits in the permit application for the facilities authorized by this permit.” This special condition does not assure compliance with hourly and annual VOC limits listed in the Nonattainment Permit's MAERT, because it does not identify the methods Kinder Morgan used to calculate tank emissions in its application(s), does not identify the application(s) that contains the relevant information, does not describe how this information should be applied to determine emissions from Kinder Morgan's storage tanks, and because the Executive Director has not explained how emission calculation methods described in Kinder Morgan's application(s) assure compliance with applicable emission limits. *Granite City I Order* at 43 (“In order for incorporation by reference to be used in a way that fosters public participation and results in a title V permit that assures compliance with the Act, it is important that: (1) referenced documents be specifically identified; (2) descriptive information such as the title or number of the document and the date of the document be included so that there is no ambiguity as to which version of a document is being referenced; and (3) citations, cross references, and incorporations by reference are detailed enough that the manner in which any

referenced material applies to a facility is clear and is not reasonably subject to misinterpretation.”).

b. Loading Emissions

Nonattainment Permit, Special Condition Nos. 25(G) and 28 require Kinder Morgan to maintain records calculating emissions and tracking various operational parameters related to loading activities at the Galena Park Terminal. These special conditions do not, however, explain how Kinder Morgan is to calculate loading emissions or how the parametric information should be used to assure compliance with hourly and annual emission limits in the Nonattainment Permit. Instead, the special conditions only state that “emissions shall be calculated using the methods used to determine the MAERT limits in the permit application for the facilities authorized by this permit” without identifying the relevant methods or application(s).

These special conditions do not assure compliance with the Nonattainment Permit’s emission limits and conditions for loading operations, because they do not identify the methods Kinder Morgan used to calculate loading emissions in its application(s), do not identify the application(s) that contain the relevant information, do not describe how this information should be applied to determine actual emissions from loading operations, and because the Executive Director has not explained how emission calculation methods described in Kinder Morgan’s application(s) or the recordkeeping requirements in the Nonattainment Permit assure compliance with emission limits and conditions for loading operations. *Granite City I Order* at 43.

c. Tank Landing Emissions

Nonattainment Permit, Special Condition No. 37(G) requires Kinder Morgan to maintain records regarding tank landings at the Galena Park Terminal and to estimate emissions from these activities. According to the Nonattainment Permit, “[t]he emissions associated with roof landing

activities shall be calculated using the methods described in Section 7.1.3.2 of AP-42 ‘Compilation of Air Pollution Emission Factors, Chapter 7—Storage of Organic Liquids’ dated November 2006 and the permit application.” Emissions from tank landings must be calculated to determine compliance with limits in the Nonattainment Permit’s MAERT as well as the 5 ton per year limit on tank transfer emissions established by Special Condition No. 20 of the same permit.

Special Condition No. 37 does not assure compliance with the Nonattainment Permit’s emission limits and conditions, because it does not identify the methods Kinder Morgan used to calculate tank landing emissions in its application(s), does not identify the application(s) that contain the relevant information, does not describe how this information should be applied to determine actual emissions from loading operations, does not describe how application information should be used with the identified AP-42 method, and because the Executive Director has not explained how emission calculation methods described in Kinder Morgan’s application(s) or the recordkeeping requirement in Nonattainment Permit, Special Condition No. 37 assures compliance with the applicable conditions and emission limits. *Granite City I Order* at 43.

d. Tank Transfer Emissions

Nonattainment Permit, Special Condition No. 20 provides that “[e]missions associated with the transfer between storage tanks authorized in this permit and other storage tanks at this site . . . is limited such that the annual emissions from these activities shall not exceed 5.0 tons in any rolling 12 month period.” To demonstrate compliance with this limit, the Nonattainment Permit requires Kinder Morgan to quantify emissions associated with working losses from filling, refilling, and loading. According to the Nonattainment Permit, “[t]ank emissions shall be determined and documented in accordance with Special Conditions 18 and 37, as applicable. Loading emissions shall be determined and documented in accordance with Special Condition 28.”

These provisions fail to assure compliance with this limit, because, as explained above, the Proposed Permit does not identify the calculation methods required by Special Condition Nos. 18, 28, and 37, and because the permit record does not demonstrate that these methods reliably indicate actual emissions from units at the Galena Park Terminal over any of the relevant averaging periods.

e. Planned Maintenance, Startup, and Shutdown Emissions

Nonattainment Permit, Special Condition Nos. 34-40 authorize and establish various requirements related to emissions during planned maintenance, startup, and shutdown (“MSS”) activities at the Galena Park Terminal. These special conditions require Kinder Morgan to calculate emissions from planned MSS activities to demonstrate compliance with the Nonattainment Permit’s emission limits and operating requirements. The Nonattainment Permit, however, does not explain how Kinder Morgan must calculate planned MSS emissions to assure compliance with the applicable limits, and instead refers to methods and information contained in Kinder Morgan’s Nonattainment Permit application(s).

These special conditions do not assure compliance with the Nonattainment Permit’s emission limits and operating requirements for planned MSS activities, because they do not identify the methods and information that Kinder Morgan used in its application(s), do not identify the application(s) that contains the relevant information, do not describe how this information should be applied to determine emissions from planned MSS activities, and because the Executive Director has not explained how emission calculation methods described in Kinder Morgan’s application(s) or the recordkeeping requirements in the Proposed Permit assure compliance with the applicable operating requirements and emission limits established by the Nonattainment Permit. *Granite City I Order* at 43.

4. Issues Raised in Public Comments

Commenters raised this issue on pages 10-12 of the Public Comments.

5. Analysis of State's Response

The Executive Director's Response to Comments fails to rebut Petitioners' demonstration that the Proposed Permit is deficient. First the Executive Director simply lists the special conditions in the Nonattainment Permit that establish monitoring requirements for various units at the Galena Park Terminal. Response to Comments at 13. This list of special conditions does not shed any light on the question of how Kinder Morgan must calculate emissions from storage tanks, loading activities, tank roof landings, tank transfers, or planned MSS activities; it does not explain where the applicable calculation methodologies can be found; and it does not explain why the Proposed Permit need not identify relevant emission calculation methods that assure compliance with emission limits and operating requirements for these units and activities. Nor does the Executive Director's response explain why emission calculation methods used to derive emission limits in the Nonattainment Permit are also reliable indicators of actual emissions from units at the Galena Park Terminal that assure compliance with applicable emission limits and operating requirements.

Second, the Executive Director mentions that Kinder Morgan must submit annual compliance certifications, "which provides the vehicle for certifying compliance with all Title V permit requirements." Response to Comments at 13. The Executive Director, however, does not explain how Kinder Morgan's obligation to submit an annual compliance certification rebuts Petitioners' demonstration that the Proposed Permit fails to identify the emission calculation methods Kinder Morgan must use to assure compliance with emission limits and operating requirements established by the Nonattainment Permit.

The Executive Director failed to engage Petitioners' demonstration and did not explain how monitoring and testing requirements listed in his Response to Comments assure compliance with emission limits and operating requirements in the Nonattainment Permit. The Proposed

Permit is deficient, the Executive Director’s Response to Comments is incomplete, and the Administrator must object to the Proposed Permit.

D. The Proposed Permit Fails to Identify and Incorporate Certified PBR Registrations as Applicable Requirements

1. Specific Grounds for Objection, Including Citation to Permit Term

The Proposed Permit is deficient because it fails to include source-specific applicable requirements for the Galena Park Terminal. Texas’s rule at 30 Tex. Admin. Code § 106.6 allows operators to certify emission rates for PBR projects that are more stringent than the generic limits established by Texas’s general PBR rule at 30 Tex. Admin. Code § 106.4. Certified PBR emission rates and representations in a certified PBR registration are federally enforceable requirements. 30 Tex. Admin. Code § 106.6(a) (“An owner or operator may certify and register the maximum emission rates from facilities permitted by rule . . . in order to establish federally-enforceable emission rates which are below the limitations in § 106.4 of this title[.]”). Kinder Morgan has certified the following source-specific emission rates for units authorized by PBR at the Galena Park Terminal:⁵

Certified Registration Number 105434, PBR 106.261, 106.263, and 106.478

EPN / Emission Source	VOC		NO _x		CO		SO ₂	
	lbs/hr	tpy	lbs/hr	tpy	lbs/hr	tpy	lbs/hr	Tpy
12-26/Storage Tank	0.63	0.74						
12-27/Storage Tank	0.63	0.74						
12-4/Storage Tank	0.63	0.74						
TR-10/TT/RC Rack	1.31	0.14						
VCU-1a/VCU1b/Barge and Truck Loading VCU	4.93	0.53	1.43	0.16	2.85	0.32	<0.01	<0.01

⁵ The Certified PBR Registration Letters issued by the TCEQ for these authorizations are included in Public Comments, Attachment 3.

FUG	0.05	0.24						
TK-ATMDEGAS/Post Control Degassing	0.68	0.01						
Port TO/Portable Thermal Oxidizer	2.73	0.01	0.75	<0.01	1.51	0.01		
TOTAL EMISSIONS:	11.60	3.16	2.18	0.16	4.35	0.33	<0.01	<0.01

Certified Registration number 118052, PBR 106.261 and 106.262 (October 3, 2014)

EPN / Emission Source	VOC	
	lbs/hr	Tpy
12-29	0.04	0.027
25-18	0.068	0.027
25-4	0.023	0.027
12-05	0.047	0.044
25-13	0.031	0.044
12-12	0.052	0.055
12-09	0.015	0.001
80-13	0.039	0.084
TOTAL EMISSIONS:	0.32	0.31

Certified Registration Number 114179, PBR 106.261, 106.262, 106.472 (January 2, 2014)

EPN / Emission Source	VOC	
	lbs/hr	Tpy
RRACK (106.492)	47.68	2.69
FUG (106.261/262)	0.06	0.27
TOTAL EMISSIONS:		2.96

Certified Registration Number 130986, PBR 106.261 (April 28, 2015)

EPN / Emission Source	VOC	
	lbs/hr	Tpy
Fugitives/Truck Rack #14	0.074	0.325
TOTAL EMISSIONS:	0.074	0.325

Certified Registration Number 112072, PBR 106.262 (October 11, 2013)

EPN / Emission Source	VOC	
	lbs/hr	Tpy
Tank 25-11	0.00072	0.001415
TOTAL EMISSIONS:		<0.01

Certified Registration Number 131940, PBR 106.261 (June 12, 2015)

EPN / Emission Source	VOC	
	lbs/hr	Tpy
Fug/Fugitives	0.01	0.06
TOTAL EMISSIONS:		0.06

Certified Registration Number 101674, PBR 106.261, 106.262, 106.263, and 106.478 (May 8, 2012)

Represented Emissions:	
VOCs	0.07 tpy
Acetone	0.90 tpy
NO _x	0.05 tpy
CO	0.10 tpy
SO ₂	<0.01 tpy

Certified Registration Number 103829, PBR 106.261, 106.263, and 106.478 (July 19, 2012)

Represented Emissions:	
VOC	0.61 tpy
NO_x	0.31 tpy
CO	0.61 tpy
SO₂	<0.01 tpy

Certified Registration Number 136126, PBR 106.261 (February 5, 2016) (Exhibit F):

EPN / Emission Source	VOC	
	lbs/hr	tpy
FU1G-BLS / Fugitives-Butane Loading and Storage	0.03	0.13
TOTAL EMISSIONS:	0.03	0.13

The Proposed Permit, however, does not contain any condition or table that identifies Kinder Morgan’s certified PBR registrations as applicable requirements. The Statement of Basis for the Proposed Permit is also silent about certified PBR registrations claimed by Kinder Morgan and does not even explain what a certified PBR registration is.

2. Applicable Requirement or Part 70 Requirement Not Met

Title V permits must include and assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a) and (c). “Applicable requirements” include certified PBR registrations established under 30 Tex. Admin. Code § 106.6. 30 Tex. Admin. Code § 122.10(2)(H).

The Galena Park Terminal is located in the HGB severe ozone nonattainment area. Accordingly, Kinder Morgan is required to conduct netting to determine major NSR applicability for any construction or modification that has the potential to increase NO_x or VOC emissions more

than 5 tons per year. *Id.* at § 116.150(c).⁶ Certified PBR emission limits established under 30 Tex. Admin. Code § 106.6 to avoid NNSR netting requirements must be practicably enforceable to effectively limit facility potential to emit and assure compliance with NNSR requirements.

3. Inadequacy of the Permit Term

a. The Proposed Permit Fails to Include All Applicable Requirements

While the Proposed Permit incorporates by reference TCEQ's general PBR rules and identifies four PBRs claimed by Kinder Morgan, it does not indicate that Kinder Morgan has certified emission rates lower than those established by Texas's PBR rules, incorporate the applicable source-specific emission limits established by applicable certified PBR registrations, explain which units are subject to source-specific certified PBR limits, or specify how compliance with these source-specific limits is assured. The Proposed Permit is deficient because it fails to identify applicable source-specific emission limits established through the PBR certification process. 42 U.S.C. § 7661c(a); 40 C.F.R. 70.6(a).

b. The Proposed Permit Does Not Assure Compliance with Major New Source Review Requirements

The Galena Park Terminal is a major source of air pollution located in the HGB severe ozone nonattainment area. Accordingly, the TCEQ's preconstruction permitting requirements for major sources in attainment or unclassified areas, 30 Tex. Admin. Code § 116, Division 6, and nonattainment areas, *Id.* at Division 5, are applicable requirements. The TCEQ's nonattainment preconstruction permitting rules require Kinder Morgan to conduct netting to determine projects that have the potential to increase NO_x or VOC emissions from the Terminal by more than 5 tons per year to determine whether the projects trigger nonattainment NSR preconstruction permitting

⁶ If and when Harris County is designated as attainment for the revoked 1-hour ozone standard, the netting trigger will increase to 40 tpy of NO_x or VOC, because the County is also designated as a marginal nonattainment area for the 2008 eight-hour ozone standard. *Id.* at § 116.150(c)(2).

requirements. *Id.* at § 116.150(c). Texas’s general PBR requirements provide that facilities authorized by PBR may emit up to 250 tpy of NO_x and 25 tpy of VOC. *Id.* at § 106.4(a)(1). These limits exceed the applicable netting threshold for NO_x and VOC. *Id.* at § 116.150(c). To avoid netting requirements that would otherwise be triggered by potential VOC and NO_x increases authorized for PBR projects subject only to the § 106.4(a)(1) limits, Kinder Morgan has certified PBR emission rates at levels lower than the general limits.

To effectively limit the units’ potential to emit, Kinder Morgan’s certified PBR registrations must be federally and practicably enforceable. *Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits*, Katie A. Stein, Director, Air Enforcement Division (“Enforceability Guidance”) (January 25, 1995). The Enforceability Guidance contains the following statement clarifying EPA’s policy concerning rules, like § 106.6, which allow operators claiming a general permit to accept limits lower than provided by the general permit to avoid NNSR netting requirements:

A rule that allows sources to submit the specific parameters and associated limits to be monitored may not be enforceable because the rule itself does not set specific technical limits. The submission of these voluntarily accepted limits on parameters or monitoring requirements would need to be federally enforceable. Absent a source-specific permit and appropriate review and public participation of the limits, such a rule is not consistent with EPA’s enforceability principles.

Id. at 8.

Thus, to ensure that certified PBR registrations limiting the potential to emit of units at the Galena Park Terminal are enforceable, the Executive Director must incorporate the certified limits and operating requirements into the Proposed Permit as source-specific NSR requirements. Otherwise, the only clearly-enforceable limits for PBR units at the Galena Park Terminal under the Proposed Permit will be those established by 30 Tex. Admin. Code § 106.4(a)(1) and the claimed PBR rules (*e.g.*, §§ 106.261, 106.262, 106.263, 106.474), which are not low enough to

prevent PBR facilities from triggering major NSR netting and preconstruction permitting requirements.

4. Issues Raised in Public Comments

Commenters raised this issue on pages 17-19 of their Public Comments. Copies of applicable certified PBR registrations are included in Public Comments, Attachment 3. Commenters did not specifically identify Registration No. 136126 in their Public Comments, because this registration was issued after the close of the public comment period. Because the Proposed Permit's failure to incorporate this certified PBR registration is a deficiency that arose after the close of the public comment period, it may be raised in this Petition for the first time. 42 U.S.C. § 7661d(b)(2).

5. Analysis of State's Response

The Executive Director's Response to Comments includes an extended discussion of the TCEQ's PBR permitting practices that addresses Commenters' demonstration that the Draft Permit was deficient because it failed to incorporate Kinder Morgan's certified PBR registrations along with other concerns that Petitioners declined to include in this Petition. Response to Comments at 18-21. Because the Executive Director's response lumps different issues together without clear headings, it was difficult for Petitioners to determine which sections of the response are intended to address the present point. To ensure that Petitioners' analysis of the State's response is comprehensive, this section will address the Executive Director's entire response, point by point.

First, the Executive Director explains that Texas's Chapter 106, Subchapter A PBR rules are part of Texas's federally-approved State Implementation Plan ("SIP") and that all current and historical PBRs are available on the TCEQ website for review. *Id.* at 18-19. Petitioners do not dispute either of these claims. Texas's Chapter 106 rules, however, do not contain any information

about the source-specific certified PBR registration requirements that apply to units at the Galena Park Terminal.

Next, the Executive Director explains that a PBR is only available to sources that belong to categories for which the Commission has adopted a PBR and that a PBR cannot be used to amend an NSR permit. *Id.* at 19. While these claims are misleading, they do not—even if true—rebut Petitioners’ demonstration that the Proposed Permit is deficient. The first claim—that PBRs may only be claimed for a limited category of sources—is misleading, because (1) the TCEQ allows major sources, which are not a category of source for which the TCEQ has adopted a PBR, to claim PBRs to authorize construction or modification of equipment; and (2) the TCEQ’s Chapter 106, Subchapter K General PBRs are catchall permits that may be used to authorize virtually any kind of project, so long as emissions remain below the § 106.4(a)(1) limits.

The Executive Director’s second claim—that PBRs may not be used to amend an NSR permit—is misleading because § 116.116(d) allows operators to obtain a PBR “in lieu of permit amendment or alteration.” So, while a PBR may not be used to directly change language in an existing NSR permit, a PBR *may* be used to change requirements in an existing permit. The claim that revising permit requirements without revising the existing permit is not a “permit amendment” is a distinction without a difference.

Next, the Executive Director explains that it has “been longstanding TCEQ policy to not list specific emission units in the Title V permit where the sole applicable requirement is the underlying NSR authorization as stated under the Reading State of Texas’s Federal Operating Permit section of the Statement of Basis,” and that “EPA has approved the incorporation by reference for minor NSR requirements including PBRs[.]” *Id.* at 19. These claims have no bearing on Petitioners’ demonstration that the Proposed Permit is deficient because it fails to incorporate

Kinder Morgan's certified PBR registrations. Nonetheless, it worth mention that EPA has already rejected the TCEQ's policy of omitting emission units subject to NSR requirements as contrary to Title V requirements. *Deer Park Order* at 15 ("The EPA does not agree with the TCEQ's interpretation that *White Paper Number 1* and *White Paper Number 2* support the practice of not listing in the title V permit those emission units to which generic requirements apply."). Additionally, while EPA has not objected to Texas's policy of incorporating minor NSR permits into Title V permits by reference, EPA *has* objected to incorporation by reference where a Title V permit fails to provide enough information to all the reader to determine how incorporated requirements apply to units at the permitted source. *Id.* at 11-16. In this case, the Proposed Permit does not actually incorporate Kinder Morgan's certified PBR registrations by reference, so EPA's tacit acceptance of the TCEQ's use of incorporation by reference has no bearing on Petitioners' demonstration.

Next, the Executive Director explains:

However, the Proposed Permit was revised to clarify which emission units at the facility are subject to limits in the claimed PBRs and to delete unused PBRs. Specifically, the New Source Review Authorization References table (Proposed Permit at page 68), was revised to delete permit by rules (PBRs) in §§ 106.262, 106.263 (09/04/2000) and 106.511 since units authorized by these PBRs were not installed. The New Source Review Authorization References by Emissions Unit table, Proposed Permit at pages 69-70 table states which emission units at the facility are subject to limits in registered PBRs. Therefore, the New Source Review Authorization Reference table identifies all PBRs that apply to the facility, and includes PBRs that apply to specific units listed in the Proposed Permit as required. The table incorporates the requirements of all of KMCC's NSR Permits, including PBRs, by reference. All emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance are specified in the PBR, incorporated by reference, or cited in the Proposed Permit. If the emission limitation or standard is not specified in the referenced PBR, then the emissions authorized under permit by rule from the facility are specified in § 106.4(a)(1).

Response to Comments at 19.

The Executive Director's decision to remove PBRs 106.262 and 106.263 is not supported by the fact that equipment authorized by these PBRs has not been installed. As indicated above, certified PBR registrations for 106.262 and 106.263 projects remain active authorizations for the Galena Park Terminal. Whether or not the authorized equipment has been installed, the PBRs establish applicable requirements that must be included in the Proposed Permit. *In the Matter of EME Homer City Generation*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-023, at 30-31 (July 30, 2014) (finding that SO₂ limits in preconstruction authorization that would become applicable after completion of construction projects could not be omitted from Title V permit on ground that construction project was ongoing at the time of issuance).

The Executive Director's claim that all applicable PBR emission limits are cited in the Proposed Permit is incorrect. While the Proposed Permit does identify various rules that establish generic limits for PBR projects, it does not cite, incorporate, or identify Kinder Morgan's certified PBR registrations that establish source-specific emission limits that are lower than the emission limits in the incorporated rules.

Next, the Executive Director takes aim at Petitioners' demonstration that the Proposed Permit fails to assure compliance with major NSR requirements:

In regards to the Commenter's assertion "Matters are even more complicated than this, because Texas's rules allow Kinder Morgan to certify and register PBR emissions at levels that are lower than the limits specified by the applicable rules to avoid triggering NNSR and/or PSD netting requirements" is without merit since 30 TAC § 106.4 requires the Applicant to certify that: 1) the permitted facility qualifies for the use of the PBR, and 2) compliance with 30 TAC §§ 106.4(a)(2) and (3) prevents the use of PBRs if the project triggers federal (PSD or NA) review. Specifically, Applicant must "ensure that any applicable netting requirements have been satisfied" and must keep records according to 30 TAC § 106.8 to be able to demonstrate compliance with the PBR requirements. Additionally, the Applicant certifies in a registered and/or certified PBR that the application will not in any way

violate any provision of the Texas Water Code (TWC), Chapter 7; the Texas Health and Safety Code, Chapter 382, the Texas Clean Air Act (TCAA); the air quality rules of the Texas Commission on Environmental Quality; or any local governmental ordinance or resolution enacted pursuant to the TCAA. Furthermore, Applicant must file annual emissions inventory (EI) report for the site that is publicly accessible. The EI report may be used by the public to determine if there are any significant emission changes at the site that may potentially trigger NA and/or PSD netting requirements.

Response to Comments at 19.

The Executive Director's reliance on Kinder Morgan's representation that certified PBR projects at the Galena Park Terminal will not violate any TCEQ requirement incorrectly presumes that the representation is practicably enforceable, even if the certified PBR registrations including that statement are not incorporated by the Proposed Permit. Petitioners respond that the Proposed Permit's failure to identify Kinder Morgan's certified PBR registrations as applicable requirements undermines the enforceability of Kinder Morgan's representation, just as it undermines the enforceability of emission limits and representations made as part of the certified PBR registration process. Kinder Morgan's certified PBR registrations establish limits necessary to avoid triggering NNSR netting requirements. These limits are applicable requirements that must be included in the Proposed Permit. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a) and (c). Kinder Morgan's promise that it will not break any laws or rules does not relieve the Executive Director of his duty to include all applicable requirements in the Proposed Permit.

While the Executive Director's claim that members of the public may use EI data to determine whether Kinder Morgan has violated NNSR requirements has no bearing on the question of whether the Proposed Permit must include Kinder Morgan's certified PBR registrations, it is worth noting that the Executive Director has taken the position that EI data may *not* be used to demonstrate that projects at a major source have violated NNSR requirements. *See, An Order*

Concerning the Application of ExxonMobil for Issuance of Air Quality Permit No. 102982, TCEQ Docket No. 2013-0657-AIR, Findings of Fact 88-92.⁷

Specifically, when parties opposing issuance of ExxonMobil's NSR permit argued that EI data demonstrated that ExxonMobil had already exceeded the major modification applicability threshold for PM established by its PAL permit, the Executive Director and the TCEQ Commissioners took the position that EI data was irrelevant to the question of whether major NSR requirements had been triggered. *Id.*

Next, the Executive Director provides a lengthy explanation of how the TCEQ's PBR program works, including an explanation of the Proposed Permit's PBR incorporation by reference and recordkeeping special conditions, and an acknowledgement that operators may certify PBR emission limits. Response to Comments at 20-21. Proposed Permit, Special Condition No. 14—which incorporates PBRs listed in the Proposed Permit's New Source Review Authorization References attachment, however, does not actually incorporate any of Kinder Morgan's certified PBR registrations, *because the certified registrations are not listed in the Proposed Permit's New Source Review Authorization References attachment. See, Proposed Permit at 72.* The same problem applies to the Executive Director's reliance on the Proposed Permit's PBR recordkeeping requirement, Special Condition No. 16, because that requirement only applies to PBRs "listed in the New Source Review Authorizations attachment."

After this scattered discussion of various elements of the TCEQ's PBR permitting program that does not actually address Petitioners' demonstration, the Executive Director concludes:

Therefore, the Proposed Permit assures that the Applicant must comply with any applicable emission limitation or standard for facilities that are permitted by PBRs

⁷ Available electronically at:

http://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.download&doc_id=220514422014050&doc_name=OrderPermit%202013%2D0657%2DAIR%2Epdf&requesttimeout=5000

and SEs. These requirements assure compliance and enforceability of PBRs and SEs. In addition, the Applicant must periodically submit permit compliance certification (PCC) and deviation reports to assure compliance with the requirements of the Proposed Permit, including Permit No. 101199/N158 and all PBRs and SEs listed on the Proposed Permit at page 68. The annual PCCs are available for public viewing at either the affected TCEQ Regional Office (Air Section), or the TCEQ Central File Room (TCEQ Main Campus, Bldg E, Rm 103). Non-confidential portions may also be provided in response to a public information request. Therefore, compliance and enforceability of the Proposed Permit requirements, including PBRs is assured.

The Executive Director's conclusion does not follow because requirements in Kinder Morgan's certified PBR registrations are not actually incorporated into the Proposed Permit. While Kinder Morgan is required to certify compliance "with the requirements of the Proposed Permit, including Permit No. 101199/N158 and all the PBRs and SEs listed on Proposed Permit at page 68," Kinder Morgan's certified PBR registrations are not listed on page 68 or anywhere else in the Proposed Permit. The Proposed Permit is deficient because it fails to incorporate Kinder Morgan's certified PBR registrations and because the Executive Director has not explained how the Proposed Permit assures compliance with the omitted certified PBR requirements. Accordingly, the Administrator must object to the Proposed Permit.

V. CONCLUSION

For the foregoing reasons, and as explained in Commenters' timely-filed public comments, the Proposed Permit is deficient. The Executive Director's Response to Comments also failed to address Commenters' significant comments. Accordingly, the Clean Air Act requires the Administrator to object to the Proposed Permit.

Sincerely,

/s/ Gabriel Clark-Leach

Gabriel Clark-Leach

Environmental Integrity Project

1206 San Antonio Street

Austin, TX 78701

(512) 637-9478 (phone)

(512) 584-8019 (fax)

gclark-leach@environmentalintegrity.org