

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

IN THE MATTER OF	§	PETITION FOR OBJECTION
	§	
Clean Air Act Title V Permit No. O3336	§	
	§	
Issued to Sandy Creek Services, LLC	§	Permit No. O3336
	§	
Issued by the Texas Commission on	§	
Environmental Quality	§	
	§	
	§	

**PETITION TO OBJECT TO TITLE V PERMIT NO. O3336 ISSUED BY THE TEXAS
COMMISSION ON ENVIRONMENTAL QUALITY**

Pursuant to section 42 U.S.C. § 7661d(b)(2), the Environmental Integrity Project and Sierra Club (“Petitioners”) hereby petition the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) to object to Proposed Title V Operating Permit No. O3336 issued by the Texas Commission on Environmental Quality (“TCEQ”) authorizing operation of the Sandy Creek Energy Station, located in McLennan 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 corporations accountable for failing to enforce or comply with environmental laws; and (3) to help communities obtain protections guaranteed by environmental laws. The Environmental Integrity Project has offices and programs in Austin, Texas and Washington D.C.

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 pollution from the Sandy Creek Energy Station.

II. PROCEDURAL BACKGROUND

This petition addresses the TCEQ's initial issuance of Title V Permit No. O3336 authorizing operation of the Sandy Creek Energy Station. The Executive Director completed his technical review of Sandy Creek's application on August 3, 2016. Notice of the Draft Permit was published on September 26, 2016 and the public comment period for the Draft Permit ended on October 26, 2016. On October 26, 2016, Environmental Integrity Project and Sierra Club timely-filed public comments on the Draft Permit. (Exhibit 1), Public Comments Regarding Draft Title V Permit No. O3336 ("Public Comments"). On September 29, 2017, the TCEQ's Executive Director issued his response to public comments and provided notice of the Proposed Permit. (Exhibit 2), Notice of Proposed Permit and Executive Director's Response to Public Comment on Permit No. O3336 ("Response to Comments"); (Exhibit 3), Proposed Permit No. O3336; (Exhibit 4), Statement of Basis for Permit No. O3336 ("Statement of Basis").

The Executive Director forwarded the Proposed Permit and his Response to Comments to EPA for review. EPA's 45-day review period ran from October 3, 2017 to November 17, 2017. Because EPA failed to object to the Proposed Permit during its 45-day review period, members of the public have 60-days from the end of EPA's review period to petition the Administrator to object to the Proposed Permit. This petition is timely-filed and requests that the Administrator object to the Proposed Permit.

III. LEGAL REQUIREMENTS

Title V permits are the primary method for enforcing the Clean Air Act's pollution control requirements for major sources. *Operating Permit Program*, 57 Fed. Reg. 32250, 32258 (July 21, 1992). Prior to enactment of Title V, regulators, operators, and members of the public often had difficulty determining which requirements applied to each major source of air pollution and whether sources were complying with applicable requirements. This was a problem because the applicable requirements 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 of air pollution to obtain an operating permit that lists each applicable federally-enforceable requirement, contains enough information for readers to determine how applicable requirements apply to units at the permitted source, and establishes monitoring requirements that assure compliance with all applicable requirements. 42 U.S.C. § 7661c(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.”).

Because federal courts are often unwilling to enforce otherwise applicable requirements that have been improperly omitted from a Title V permit, state permitting agencies and EPA must ensure that Title V permits accurately and clearly explain 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 Sierra Club could not enforce New Source Performance Standard requirements that had been omitted from the Defendant's Title V permit).

EPA must object to a state issued Title V permit if it fails to include and assure compliance with all applicable requirements. 40 C.F.R. § 70.8(c). If EPA 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). The Administrator must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2).

IV. PERMIT DEFICIENCIES

A. The Proposed Permit Fails to Incorporate Sandy Creek’s Certified Permit by Rule Registrations as Applicable Requirements

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

The Proposed Permit is deficient because it omits source-specific applicable requirements for the Sandy Creek Energy Station. Texas’s rule at 30 Texas Administrative Code § 106.6 allows operators to certify emission rates for Permit by Rule (“PBR”) projects that are more stringent than the generic limits established by Texas’s general PBR rule at § 106.4(a)(1). 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[.]”). Sandy Creek

has certified the following source-specific emission rates for units authorized by PBR at the Sandy Creek Energy Station:¹

Certificate No.	Date	PBR(s) Claimed	EPN/Unit Name	Pollutant	Certified Hourly Rate (lb/hr)	Certified Annual Rate (TPY)
97212	9/26/2011	106.144, 106.261, 106.262	No Units Specified	VOC	N/A	0.40
				PM ₁₀	N/A	0.67
				PM _{2.5}	N/A	0.41
129417	2/12/2015	106.144, 106.183	S90 Silo and Loading	PM	0.0061	0.0032
				PM ₁₀	0.0029	0.0015
				PM _{2.5}	0.0004	0.0002
			S91 Silo and Loading	PM	0.0119	0.0064
				PM ₁₀	0.0057	0.0030
				PM _{2.5}	0.0009	0.0005
			Feed Hopper S92 to Water Tank	PM	0.018	0.010
				PM ₁₀	0.008	0.005
				PM _{2.5}	0.001	6.8E-04
			S95 P1 Heater	PM	0.002	0.004
				PM ₁₀	0.002	0.004
				PM _{2.5}	0.002	0.004
				NO _x	0.007	0.01
				SO ₂	0.0001	0.0001
				CO	0.02	0.04
				VOC	0.003	0.005
			S96 P2 Heater	PM	0.002	0.004
				PM ₁₀	0.002	0.004
				PM _{2.5}	0.002	0.004
				NO _x	0.007	0.01
				SO ₂	0.0001	0.0001
CO	0.02	0.04				
VOC	0.003	0.005				

¹ Copies of Sandy Creek’s certified PBR registrations are included with this petition as Exhibits 5 and 6.

The Proposed Permit, however, does not contain any condition or table that identifies Sandy Creek's certified PBR registrations or the source-specific emission limits that they establish as applicable requirements.

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. 30 Tex. Admin. Code § 122.10(2)(H).

3. Inadequacy of the Permit Term

While the Proposed Permit incorporates by reference the TCEQ's general PBR rules and identifies various PBRs claimed by Sandy Creek, it does not indicate that Sandy Creek has certified emission rates lower than those established by Texas's PBR rules, incorporate the applicable source-specific emission limits established by the 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 and assure compliance with applicable source-specific emission limits and representations established through the PBR certification process. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a) and (c).

4. Issue Raised in Public Comments

Petitioners raised this issue on pages 11-13 of their Public Comments.

5. Analysis of State's Response

The Executive Director purports to respond to Petitioners' comments on this issue on pages 12-14 of his Response to Comments. The Executive Director's response consists of copied text from the Proposed Permit's Statement of Basis explaining, generally, how the TCEQ's PBR

program works. The Executive Director's response, however, fails (1) to explain where source-specific applicable requirements in Sandy Creek's certified PBR registrations are incorporated by reference into the Proposed Permit or, in the alternative, (2) to identify legal authority supporting his omission of these requirements from the Proposed Permit. The Executive Director failed to rebut Petitioners' demonstration that the Proposed Permit is incomplete and the Administrator must object to it.

B. The Proposed Permit Fails to Include Monitoring, Recordkeeping, and Reporting Requirements that Assure Compliance with Incorporated PBR Requirements

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

The Proposed Permit is deficient because it fails to establish monitoring, testing, and recordkeeping conditions that assure compliance with emission limits in PBRs that it incorporates by reference and because the permit record does not contain a reasoned explanation supporting the Executive Director's determination that monitoring, testing, and recordkeeping conditions in the Proposed Permit assure compliance with these requirements.

Proposed Permit, Special Condition No. 8 provides that PBRs listed in the Proposed Permit's New Source Review Authorization References attachment are incorporated by reference into the Proposed Permit as applicable requirements.

The Proposed Permit's New Source Review Authorization References attachment lists 12 current and outdate Chapter 106 PBRs that are incorporated by reference into the Proposed Permit. Proposed Permit at 80.

Proposed Permit, Special Condition No. 9 incorporates the general PBR requirements in 30 Texas Administrative Code Chapter 106, Subchapter A—including the recordkeeping requirements at 30 Tex. Admin. Code § 106.8—as applicable requirements. The Proposed Permit

also includes Special Condition No. 10, which establishes the following recordkeeping requirement for PBRs:

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 data 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).

The Statement of Basis provides the following statement regarding the sufficiency of monitoring conditions 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 22.

None of the Periodic Monitoring or CAM summaries in the Proposed Permit address requirements in Sandy Creek's PBRs and the Statement of Basis does not provide a reasoned justification for the Executive Director's determination that existing provisions in PBRs claimed by Sandy Creek, the TCEQ's PBR rules, and Proposed Permit, Special Condition No. 10 assure compliance with applicable emission limits.

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* ("Weelabrator Order"), Permit No. 24-510-01886 at 10 (April 14, 2010). Emission limits in PBRs incorporated by reference into the Proposed Permit are applicable requirements. 40 C.F.R. § 70.2; Proposed Permit, Special Condition No. 8. The rationale for the selected monitoring methods must be clear and documented in the permit record. 40 C.F.R. § 70.5(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, testing, and recordkeeping conditions that assure compliance with emission limits and operating requirements PBRs incorporated by reference into the Proposed Permit; and (2) the permit record does not contain a reasoned justification for the Executive Director's determination that monitoring, testing, and recordkeeping conditions in the Proposed Permit assure compliance with emission limits and operating requirements in PBRs claimed by Sandy Creek.

3. Inadequacy of the Permit Term

The Proposed Permit incorporates by reference the following PBRs as applicable requirements: 106.144, 106.183, 106.227, 106.261, 106.262, 106.263, 106.265, 106.371, 106.454,

106.472, 106.473, and 106.511. Proposed Permit at 80. Facilities authorized by these PBRs must comply with general requirements listed at 30 Tex. Admin. Code § 106.4(a)(1), as well as the prohibition on use of PBRs to authorize construction of major modifications. *Id.* at §106.4(a)(2) and (3). Because the NO_x, CO, H₂SO₄, and TRS emission limits established by § 106.4(a)(1) exceed the netting trigger to determine major NSR applicability for modifications to the Sandy Creek Energy Station, and because PBRs may be used to authorize increases of other pollutants at multiple units within the power plant at levels that exceed applicable netting thresholds, projects authorized by PBR may trigger PSD netting requirements. *See Id.* at § 116.160(b).

In addition to these general PBR requirements, the following emission limits and standards contained in PBRs claimed by Sandy Creek are applicable requirements of the Proposed Permit:

PBRs 106.261 and 106.262 establish hourly and annual emission limits for various contaminants, *id.* at §§ 106.261(a)(2) and (3); 106.262(a)(2) and prohibit visible emissions exceeding five percent. *Id.* at §§ 106.261(a)(5); 106.262(a)(5). Additionally, 106.262(a)(4) limits the amount of certain chemicals that may be stored on property.

PBR 106.263 authorizes routine maintenance, startup, and shutdown of facilities, so long as 24-hour emissions remain below reportable quantities, as defined by 30 Tex. Admin. Code § 106.101.1 and facilities comply with requirements in other PBRs listed at 106.263(e).

PBR 106.473 authorizes organic liquid loading and unloading, so long as uncontrolled emissions calculated using the version of AP-42 in effect at the time are less than 25 tons per year of organic compounds or any other air contaminant. 30 Tex. Admin. Code § 106.473(1).

Though the Draft Permit and Texas's rules require Sandy Creek to maintain records demonstrating compliance with applicable PBR requirements, *see, e.g.*, 30 Tex. Admin. Code § 106.8(c); Proposed Permit, Special Condition No. 10, the Proposed Permit is deficient because

neither it nor the applicable rules specify the monitoring methods that assure compliance with PBR requirements. *Wheelabrator Order* at 10. Instead, the Proposed Permit outsources the TCEQ's obligation to specify the monitoring method(s) that assure compliance with each applicable requirement to Sandy Creek. Proposed Permit, Special Condition No. 10 (establishing non-exhaustive list of data Sandy Creek may consider, at its discretion, to determine compliance with PBR requirements). This outsourcing renders the Proposed Permit deficient for three reasons: First, the Proposed Permit fails to specify monitoring methods that assure compliance with each applicable requirement. Second, the Proposed Permit permitting record does not explain how the Proposed Permit assures compliance with incorporated PBRs. Third, the Executive Director's failure to specify monitoring methods for applicable PBR requirements or to identify the monitoring methods Sandy Creek has selected prevented the public from evaluating whether Title V monitoring requirements have been met. *See In the Matter of United States Steel-Granite City Work*, Order on Petition No. V-2011-2 ("Granite City II Order") at 9-12 (December 3, 2012) (granting petition for objection, because the "permit fails to specify the monitoring methodology and also fails to provide a mechanism for review of the methodology by IEPA, the public, and EPA after the permit is issued. *It is impossible to know whether the periodic monitoring chosen by the source assures compliance* with the permit terms and conditions as required by 40 C.F.R. § 70.1(b) and 70.6(c)(1) because that monitoring has not been determined yet.") (emphasis added).

The Proposed Permit's Special Condition No. 10 recordkeeping requirement is deficient for an additional reason: It fails to require permit records demonstrating compliance to be made available to the public as required by Texas's Title V program. *In the Matter of Shell Chemical LP and Shell Oil Co.* ("Deer Park Order"), Order on Petition Nos. VI-2014-04 and VI-2014-05 at

15 (September 24, 2015) (“[T]he permit records for demonstrating compliance with PBRs must be available to the public as required under the approved Texas title V program.”).

4. Issues Raised in Public Comments

Petitioners raised these issues on pages 12-15 of their Public Comments.

5. Analysis of the State’s Response

The Executive Director begins his response with the false claim that all applicable monitoring methods and recordkeeping requirements are listed in the claimed PBRs or in the general PBR rule at 30 Tex. Admin. Code § 106.4(a)(1). Response to Comments at 15. Neither the incorporated PBRs nor the general PBR rule at § 106.4(a)(1) identifies monitoring methods that assure compliance with PBR emission limits and operating requirements. Because the specified rules do not identify monitoring methods that assure compliance with incorporated PBR emission limits and operating requirements, the Executive Director’s initial remarks fail to rebut Petitioners’ demonstration that the Proposed Permit is deficient.

Next, the Executive Director relies on Proposed Permit, Special Condition No. 10—which is a non-exclusive list of records that Sandy Creek may (or may not) choose to use to demonstrate compliance with applicable PBR limits—to claim that “the Proposed Permit assures that *the Applicant must* comply with its certified maximum emission rates from facilities permitted by rule.” Response to Comments at 16 (emphasis added). But whether or not the Applicant is required to comply with applicable requirements is not the relevant standard for evaluating the sufficiency of monitoring provisions in the Proposed Permit. Instead, the Proposed Permit must specify monitoring methods that assure compliance by providing reliable information establishing compliance or noncompliance with applicable requirements. The cited special condition falls short

of this standard because it does not specify minimum mandatory monitoring methods that assure compliance with applicable PBR requirements.

Finally, the Executive Director contends that Petitioners' concerns about the public availability of Sandy Creek's compliance demonstrations are misplaced because "the annual PCCs [or "permit compliance certifications] are available for public viewing at either the affected TCEQ Regional Office . . . or the TCEQ Central File Room[.]" Response to Comments at 16. This is not responsive to Petitioners' comments, because Petitioners' comments and EPA's Deer Park Order, which Petitioners rely on, directed the TCEQ to ensure that records like those required by Proposed Permit, Special Condition No. 10, are made publicly available. *Deer Park Order* at 15 (citing Shell's Proposed Permit PBR recordkeeping special conditions and stating that "the permit records for demonstrating compliance with PBRs must be available to the public[.]"). This kind of detailed information is not contained in Sandy Creek's PCCs.

Because applicable requirements in the Proposed Permit are enforceable by the public, 40 C.F.R. § 70.6(c)(1), members of the public must be able to review and evaluate the information that Sandy Creek relies upon to certify compliance with such requirements. The Executive Director has not explained how members of the public may obtain this information nor has he identified any provision in the Proposed Permit or Texas's PBR regulations that provides members of the public access to such information. His response, therefore, is incomplete and the Administrator must object to the Proposed Permit.

V. CONCLUSION

For the foregoing reasons, and as explained in Petitioners' 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,

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