

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)	PETITION No. VI-2016-23
)	
MOTIVA ENTERPRISES LLC)	
PORT ARTHUR REFINERY)	ORDER RESPONDING TO
JEFFERSON COUNTY, TEXAS)	PETITION REQUESTING
)	OBJECTION TO THE ISSUANCE OF
PERMIT No. O1386)	A TITLE V OPERATING PERMIT
)	
ISSUED BY THE TEXAS COMMISSION ON)	
ENVIRONMENTAL QUALITY)	
)	

ORDER GRANTING IN PART AND DENYING IN PART
A PETITION FOR OBJECTION TO PERMIT

I. INTRODUCTION

The U.S. Environmental Protection Agency (the EPA) received a petition dated November 8, 2016, (the Petition) from the Environmental Integrity Project (EIP), Sierra Club, and Air Alliance Houston (the Petitioners), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7661d(b)(2). The Petition requests that the EPA object to the proposed operating permit No. O1386 (the Proposed Permit) issued by the Texas Commission on Environmental Quality (TCEQ) to the Motiva Enterprises LLC, Port Arthur Refinery (Motiva or the facility) in Jefferson County, Texas. The operating permit was proposed pursuant to title V of the CAA, CAA §§ 501–507, 42 U.S.C. §§ 7661–7661f, and Title 30, Chapter 122 of the Texas Administrative Code (TAC). *See also* 40 C.F.R. part 70 (title V implementing regulations). This type of operating permit is also referred to as a title V permit or part 70 permit.

Based on a review of the Petition and other relevant materials, including the Proposed Permit, the permit record, and relevant statutory and regulatory authorities, and as explained further below, the EPA grants in part and denies in part the Petition requesting that the EPA object to the Proposed Permit. The EPA recognizes that TCEQ and Motiva are already working to resolve most of the issues raised in the claims the EPA is granting in this order. For example, TCEQ recently published notice for a pending permit amendment to address miscellaneous permit changes including, but not limited to, the monitoring, recordkeeping, and reporting requirements related to the units raised in Claim 1 of the Petition as identified below. In this order, the EPA identifies possible options available to TCEQ for addressing the issues identified in the grants pursuant to Claims 1, 2, 6, and 7.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to the EPA an operating permit program to meet the requirements of title V of the CAA and the EPA's implementing regulations at 40 C.F.R. part 70. The state of Texas submitted a title V program governing the issuance of operating permits on September 17, 1993. The EPA granted interim approval of Texas's title V operating permit program in 1996, and granted full approval in 2001. *See* 61 Fed. Reg. 32693 (June 25, 1996) (interim approval effective July 25, 1996); 66 Fed. Reg. 63318 (December 6, 2001) (full approval effective November 30, 2001). This program is codified in 30 TAC Chapter 122.

All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan. CAA §§ 502(a), 504(a), 42 U.S.C. §§ 7661a(a), 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting, and other requirements to assure source's compliance with applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992); *see* CAA § 504(c), 42 U.S.C. § 7661c(c). One purpose of the title V program is to "enable the source, States, the EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." 57 Fed. Reg. at 32251. Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they apply to the source's emission units and for providing adequate monitoring, recordkeeping, and reporting to assure compliance with such requirements.

B. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V programs. Under CAA § 505(a), 42 U.S.C. § 7661d(a), and the relevant implementing regulations found at 40 C.F.R. § 70.8(a), states are required to submit each proposed title V operating permit to the EPA for review. Upon receipt of a proposed permit, the EPA has 45 days to object to final issuance of the proposed permit if the EPA determines that the proposed permit is not in compliance with applicable requirements under the Act. CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If the EPA does not object to a permit on its own initiative, any person may, within 60 days of the expiration of the EPA's 45-day review period, petition the Administrator to object to the permit. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period).

CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act. CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1).¹ Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to the EPA.²

The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains both a "discretionary component," under which the Administrator determines whether a petition demonstrates that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty on the Administrator's part to object where such a demonstration is made. *Sierra Club v. Johnson*, 541 F.3d at 1265–66 ("[I]t is undeniable [that CAA § 505(b)(2)] also contains a discretionary component: it requires the Administrator to make a judgment of whether a petition demonstrates a permit does not comply with clean air requirements."); *NYPIRG*, 321 F.3d at 333. Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA § 505(b)(2) if the Administrator determines that the petitioner has demonstrated that the permit is not in compliance with requirements of the Act. *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that § 505(b)(2) "clearly obligates the Administrator to (1) determine whether the petition demonstrates noncompliance and (2) object *if* such a demonstration is made" (emphasis added)).³ When courts have reviewed the EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made, they have applied a deferential standard of review. *See, e.g., MacClarence*, 596 F.3d at 1130–31.⁴ Certain aspects of the petitioner's demonstration burden are discussed below. A more detailed discussion can be found in *In the Matter of Consolidated Environmental Management, Inc., Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 4–7 (June 19, 2013) (*Nucor II Order*).

The EPA considers a number of criteria in determining whether a petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order* at 7. For example, one such criterion is whether the petitioner has addressed the state or local permitting authority's decision and reasoning. The EPA expects the petitioner to address the permitting authority's final decision, and the permitting authority's final reasoning (including the state's response to comments), where these documents were available during the timeframe for filing the petition. *See MacClarence*, 596 F.3d at 1132–33.⁵ Another factor the EPA examines is whether a petitioner

¹ *See also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).

² *WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081–82 (10th Cir. 2013); *MacClarence v. EPA*, 596 F.3d 1123, 1130–33 (9th Cir. 2010); *Sierra Club v. EPA*, 557 F.3d 401, 405–07 (6th Cir. 2009); *Sierra Club v. Johnson*, 541 F.3d 1257, 1266–67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677–78 (7th Cir. 2008); *cf. NYPIRG*, 321 F.3d at 333 n.11.

³ *See also Sierra Club v. Johnson*, 541 F.3d at 1265 ("Congress's use of the word 'shall' . . . plainly mandates an objection *whenever* a petitioner demonstrates noncompliance." (emphasis added)).

⁴ *See also Sierra Club v. Johnson*, 541 F.3d at 1265–66; *Citizens Against Ruining the Environment*, 535 F.3d at 678.

⁵ *See also, e.g., In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (December 14, 2012) (denying a title V petition issue where petitioners did not respond to the state's explanation in response to comments or explain why the state erred or the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 at 41 (June 22, 2012) (denying a title V petition issue where petitioners did not

has provided the relevant analyses and citations to support its claims. If a petitioner does not, the EPA is left to work out the basis for the petitioner's objection, contrary to Congress's express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 (“[T]he Administrator’s requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.”).⁶ Relatedly, the EPA has pointed out in numerous previous orders that general assertions or allegations did not meet the demonstration standard. *See, e.g., In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 at 9 (January 15, 2013).⁷ Also, the failure to address a key element of a particular issue presents further grounds for the EPA to determine that a petitioner has not demonstrated a flaw in the permit. *See, e.g., In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014) (*Homer City Order*).⁸

The information that the EPA considers in making a determination whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) on a proposed permit generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the petition. The administrative record for a particular proposed permit includes the draft and proposed permits; any permit applications that relate to the draft or proposed permits; the statement of basis for the draft and proposed permits; the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; relevant supporting materials made available to the public according to 40 C.F.R. § 70.7(h)(2); and all other materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2). If a final permit and a statement of basis for the final permit are available during the agency's review of a petition on a proposed permit, those documents may also be considered as part of making a determination whether to grant or deny the petition.

If the EPA grants an objection in response to a title V petition, a permitting authority may address the EPA's objection by, among other things, providing the EPA with a revised permit. *See, e.g.,* 40 C.F.R. § 70.7(g)(4). However, as explained in the *Nucor II Order*, a new proposed permit in response to an objection will not always need to include new permit terms and conditions. For example, when the EPA has issued a title V objection on the ground that the

acknowledge or reply to the state's response to comments or provide a particularized rationale for why the state erred or the permit was deficient); *In the Matter of Georgia Power Company*, Order on Petitions at 9–13 (January 8, 2007) (*Georgia Power Plants Order*) (denying a title V petition issue where petitioners did not address a potential defense that the state had pointed out in the response to comments).

⁶ *See also In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 at 12 (September 21, 2011) (denying a title V petition claim where petitioners did not cite any specific applicable requirement that lacked required monitoring); *In the Matter of Portland Generating Station*, Order on Petition at 7 (June 20, 2007) (*Portland Generating Station Order*).

⁷ *See also Portland Generating Station Order* at 7 (“[C]onclusory statements alone are insufficient to establish the applicability of [an applicable requirement.]”); *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition Number VII-2004-02 at 8 (April 20, 2007); *Georgia Power Plants Order* at 9–13; *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004–10 at 12, 24 (March 15, 2005).

⁸ *See also In the Matter of Hu Honua Bioenergy*, Order on Petition No. IX-2011-1 at 19–20 (February 7, 2014); *Georgia Power Plants Order* at 10.

permit record does not adequately support the permitting decision, it may be acceptable for the permitting authority to respond only by providing additional rationale to support its permitting decision. *Id.* at 14 n.10. In any case, whether the permitting authority submits revised permit terms, a revised permit record, or other revisions to the permit, the permitting authority's response is generally treated as a new proposed permit for purposes of CAA § 505(b) and 40 C.F.R. § 70.8(c) and (d). *See Nucor II Order* at 14. As such, it would be subject to the EPA's opportunity to conduct a 45-day review per CAA § 505(b)(1) and 40 C.F.R. § 70.8(c), and an opportunity to petition under CAA § 505(b)(2) and 40 C.F.R. § 70.8(d) if the EPA does not object. The EPA has explained that treating a state's response to an EPA objection as triggering a new EPA review period and a new petition opportunity is consistent with the statutory and regulatory process for addressing objections by the EPA. *Nucor II Order* at 14–15. The EPA's view that the state's response to an EPA objection is generally treated as a new proposed permit does not alter the procedures for the permitting authority to make the changes to the permit terms or condition or permit record that are intended to resolve the EPA's objection, however. When the permitting authority modifies a permit in order to resolve an EPA objection, it must go through the appropriate procedures for that modification. For example, when the permitting authority's response to an objection is a change to the permit terms or conditions or a revision to the permit record, the permitting authority should determine whether its response is a minor modification or a significant modification to the title V permit, as described in 40 C.F.R. § 70.7(e)(2) and (4) or the corresponding regulations in the state's EPA-approved title V program. If the permitting authority determines that the modification is a significant modification, then the permitting authority must provide for notice and opportunity for public comment for the significant modification consistent with 40 C.F.R. § 70.7(h) or the state's corresponding regulations.

When a permitting authority responds to an EPA objection, it may choose to do so by modifying the permit terms or conditions or the permit record with respect to the specific deficiencies that the EPA identified; permitting authorities need not address elements of the permit terms or conditions or the permit record that are unrelated to the EPA's objection. As described in various title V petition orders, the scope of the EPA's review (and accordingly, the appropriate scope of a petition) of such a response would be limited to the specific permit terms or conditions or elements of the permit record modified in that permit action. *See In The Matter of Hu Honua Bioenergy, LLC*, Order on Petition No. VI-2014-10 at 38–40 (September 14, 2016); *In the Matter of WPSC, Weston*, Order on Petition No. V-2006-4 at 5–6, 10 (December 19, 2007).

C. New Source Review

The major New Source Review (NSR) program is comprised of two core types of preconstruction permit requirements for major stationary sources. Part C of title I of the CAA establishes the Prevention of Significant Deterioration (PSD) program, which applies to new major stationary sources and major modifications of existing major stationary sources for pollutants for which an area is designated as attainment or unclassifiable for the national ambient air quality standards (NAAQS) and other pollutants regulated under the CAA. CAA §§ 160–169, 42 U.S.C. §§ 7470–7479. Part D of title I of the Act establishes the major nonattainment NSR (NNSR) program, which applies to new major stationary sources and major modifications of existing major stationary sources for those NAAQS pollutants for which an area is designated as

nonattainment. CAA §§ 171–193, 42 U.S.C. §§ 7501–7515. The EPA has two largely identical sets of regulations implementing the PSD program. One set, found at 40 C.F.R. § 51.166, contains the requirements that state PSD programs must meet to be approved as part of a state implementation plan (SIP). The other set of regulations, found at 40 C.F.R. § 52.21, contains the EPA’s federal PSD program, which applies in areas without a SIP-approved PSD program. The EPA’s regulations specifying requirements for state NNSR programs are contained in 40 C.F.R. § 51.165.

While parts C and D of title I of the Act address the major NSR program for major sources, section 110(a)(2)(C) addresses the permitting program for new and modified minor sources and for minor modifications to major sources. The EPA commonly refers to the latter program as the “minor NSR” program. States must also develop minor NSR programs to attain and maintain the NAAQS. The federal requirements for state minor NSR programs are outlined in 40 C.F.R. §§ 51.160 through 51.164. These federal requirements for minor NSR programs are less prescriptive than those for major sources, and, as a result, there is a larger variation of requirements in EPA-approved state minor NSR programs than in major source programs.

Where the EPA has approved a state’s title I permitting program (whether PSD, NNSR, or minor NSR), duly issued preconstruction permits will establish the NSR-related “applicable requirements,” and the terms and conditions of those permits should be incorporated into a source’s title V permit without a further round of substantive review as part of the title V process. *See generally In the Matter of PacifiCorp Energy, Hunter Power Plant*, Order on Petition No. VIII-2016-4 at 8–21 (October 16, 2017) (*PacifiCorp-Hunter Order*); *In the Matter of Big River Steel, LLC*, Order On Petition No. VI-2013-10 at 8–20 (October 31, 2017) (*Big River Steel Order*); 56 Fed. Reg. 21712, 21738–39 (May 10, 1991).⁹ The legality of a permitting authority’s decisions undertaken in the course of preconstruction permitting is not a subject the EPA will consider in a petition to object to a source’s title V permit. *See PacifiCorp-Hunter Order* at 8, 13–19; *Big River Steel Order* at 8–9, 14–20.¹⁰ Rather, any such challenges should be raised through the appropriate title I permitting procedures or enforcement authorities.

The EPA has approved Texas’s PSD, NNSR, and minor NSR programs as part of its SIP. *See* 40 C.F.R. § 52.2270(c) (identifying EPA-approved regulations in the Texas SIP). Texas’s major and

⁹ As the EPA has explained, “[A] decision by the EPA not to object to a title V permit that includes the terms and conditions of a title I permit does not indicate that the EPA has concluded that those terms and conditions comply with the applicable SIP or the CAA. However, until the terms and conditions of the title I permit are revised, reopened, suspended, revoked, reissued, terminated, augmented, or invalidated through some other mechanism, such as a state court appeal, the ‘applicable requirement’ remains the terms and conditions of the issued preconstruction permit and they should be included in the source’s title V permit.” *Big River Steel Order* at 19; *see PacifiCorp-Hunter Order* at 19; *id.* at 20 (“That the EPA views the incorporation of the terms and conditions of these preconstruction permits into the title V operating permit as proper for purposes of title V does not indicate that the EPA agrees that the state reached the proper decision when setting terms and conditions in the preconstruction permits. . . . The EPA’s lack of objection to the inclusion of that requirement in the title V permit does not indicate that the EPA agrees that it is legal or complies with the Act; it merely indicates that a title V permit is not the appropriate venue to correct any such flaws in the preconstruction permit.”).

¹⁰ The EPA does view monitoring, recordkeeping, and reporting to be part of the title V permitting process and will therefore continue to review whether a title V permit contains monitoring, recordkeeping, and reporting provisions sufficient to assure compliance with the terms and conditions established in the preconstruction permit. *See PacifiCorp-Hunter Order* at 16, 17, 18, 18 n.33, 19; *Big River Steel Order* at 17, 17 n.30, 19 n.32, 20.

minor NSR provisions, as approved by the EPA into Texas's SIP, are contained in portions of 30 TAC Chapters 116 and 106.

III. BACKGROUND

A. The Motiva Port Arthur Refinery Facility

The Motiva Port Arthur Refinery, located in Jefferson County, Texas, has the capability to process up to 603,000 barrels of crude oil per day and features numerous emission units related to its petroleum refining operations. The facility is a major source of particulate matter (PM), sulfur dioxide (SO₂), nitrogen oxides (NO_x), carbon monoxide (CO), volatile organic compounds (VOC), and hazardous air pollutants (HAPs), and is subject to title V of the CAA. Emission units within the facility are also subject to the PSD program, other preconstruction permitting requirements, and various New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP).

B. Permitting History

Motiva first obtained a title V permit for the Motiva Port Arthur Refinery in 2004. On April 6, 2009, Motiva submitted an application for a renewal title V permit. TCEQ issued a draft permit on October 5, 2014, subject to a public comment period from October 5, 2014, until November 4, 2014. On September 6, 2016, TCEQ submitted the Proposed Permit, along with its Response to Comments (RTC), to the EPA for its 45-day review. The EPA's 45-day review period ended on October 21, 2016, during which time the EPA did not object to the Proposed Permit. TCEQ issued the final title V renewal permit for the Motiva Port Arthur Refinery on November 10, 2016.

C. Timeliness of Petition

Pursuant to the CAA, if the EPA does not object to a proposed permit during its 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object. 42 U.S.C § 7661d(b)(2). The EPA's 45-day review period expired on October 21, 2016. Thus, any petition seeking the EPA's objection to the Proposed Permit was due on or before December 20, 2016. The Petition was received December 20, 2016, and, therefore, the EPA finds that the Petitioners timely filed the Petition.

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONERS

In this section, the EPA will respond to all the issues raised in the Petition. Due to the disjointed organizational structure of the Petition, the EPA has reorganized the Petitioners' claims under a new numbering nomenclature (i.e., Claim 1, Claim 2, etc.). Claim 1 covers the issues raised on pages 5–8 and 20–22 of the Petition relating to NSR Permit No. 3415. Claim 2 covers the issues raised on pages 8–9 and 22–24 of the Petition relating to NSR Permit No. 56287. Claim 3 covers the issues raised on pages 9–10 and 24–26 of the Petition relating to the flares authorized by NSR Permit No. 6056/PSDTX1062M1. Claim 4 covers the issues raised on pages 10–11 and 26 relating to the tanks authorized by NSR Permit No. 6056/PSDTX1062M1 and to the issues

raised on pages 13 and 28 relating to tanks authorized by NSR Permit No. 8404/PSDTX1062M1. Claim 5 covers the issues raised on pages 11–13 and 27–28 relating to the combustion units authorized by NSR Permit No. 6056/PSDTX1062M1 and to the issues raised on pages 13–14 and 28–29 relating to combustion units authorized by NSR Permit No. 8404/PSDTX1062M1. Claim 6 covers the issues raised on pages 14–16 and 29–30 of the Petition relating to monitoring, recordkeeping, and reporting for Permits by Rules (PBRs). Claim 7 covers the issues raised on pages 30–43 of the Petition relating to incorporation of PBRs. Claim 8 covers the issues raised on pages 43–46 relating to incorporation of NSPS and NESHAP regulations.

Claims 1–6: The Petitioners Claim That the Proposed Permit Fails to Require Monitoring, Recordkeeping, and Reporting Requirements That Assure Compliance With Various Emission Limits and Operational Requirements for Units Authorized by NSR Permits and PBRs.

Petitioners’ Claim: With regard to Claims 1–6, the Petitioners generally claim that “[e]ach Title V permit must contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements.” Petition at 6–8 (citing 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3), (c)(1); *In the Matter of Wheelabrator Baltimore, L.P.*, Order on Petition, Permit No. 24-510-01886, at 10 (April 14, 2010) (*Wheelabrator Order*); *In the Matter of United States Steel, Granite City Works*, Order on Petition No. V-2009-03 (January 31, 2011) (*2011 Granite City Order*) at 42–43). The Petitioners contend that the title V permit “is deficient because (1) it fails to specify monitoring methods that assure compliance with emission limits in incorporated NSR permits, including PBRs and (2) the permit record does not contain a reasoned justification for the monitoring methods included in the permit.” *Id.* at 7.

Claim 1: The Petitioners Claim That the Proposed Permit Fails to Require Monitoring, Recordkeeping, and Reporting Requirements That Assure Compliance With the Hourly and Annual Emission Limits for Particular Matter 10 Micrometers or Less in Diameter (PM₁₀) and the Opacity Limit for Boilers 34 and 35 Authorized by NSR Permit No. 3415.

Petitioners’ Claim: The Petitioners claim that the title V permit is deficient because it does not establish monitoring requirements that assure compliance with the hourly and annual PM₁₀ emission limits for Boilers 34 and 35 (SPS3-4 and SPS3-5) authorized by NSR Permit No. 3415 and incorporated by reference into the title V permit. Petition at 7–8. The Petitioners assert that neither the title V permit, the Statement of Basis, nor NSR Permit No. 3415 contain monitoring that assure compliance with the hourly and annual PM₁₀ emission limits for Boilers 34 and 35. *Id.* The Petitioners acknowledge that TCEQ explained in the RTC that the technical review summary (TRV) for NSR Permit No. 3415 states that the PM₁₀ limits are determined by monitoring for opacity emissions in special condition 6 and fuel consumption special condition 7. *Id.* at 20 (citing RTC at 8). The Petitioners contend that the TRV is not enforceable. *Id.* at 21. The Petitioners claim that if opacity and fuel consumption is sufficient to assure compliance with the PM₁₀ emission limits, the title V permit must require this monitoring data to assure compliance with the PM₁₀ limits. *Id.*

In addition, the Petitioners assert that the permit record does not provide any basis for the determination that monitoring opacity, fuel consumption, and maintaining a fuel sulfur content below 0.05 percent will assure compliance with the hourly and annual PM₁₀ limits. *Id.* at 21–22. Specifically, the Petitioners assert that the annual fuel consumption limit has no bearing on short-term fuel consumption or the hourly PM₁₀ emission limit. *Id.* at 21. Further, the Petitioners claim that quarterly Method 9 observations of opacity are insufficient to assure compliance with hourly and annual PM₁₀ limits. *Id.* (citing *Homer City Order* at 44).

EPA’s Response: For the following reasons, the EPA grants the Petitioners’ request for an objection on this claim.

In responding to comments regarding the issues raised in these claims, TCEQ stated, in part:

[TCEQ] disagrees that the NSR permit lacks monitoring requirements to demonstrate compliance with the emission limits in the Maximum Allowable Emission Rate table for the two boilers. As stated in the NSR technical review for NSR Permit 3415, compliance with the PM₁₀ limits for these boilers, SPS3-4 and SPS3-5, is determined by monitoring for opacity of emissions, as required in Special Condition 6, and continuously monitoring fuel consumption, as required in Special Condition 7.

Special Condition 6 provides compliance flexibility for Motiva to either conduct opacity readings under subparagraph 6.A. or installing a COMS for continuously monitoring opacity under subparagraph 6.B. [TCEQ] disagrees that the opacity readings specified in Special Condition 6.A. do not specify a monitoring frequency. The condition explicitly requires observations to be conducted once per calendar quarter. Periodic monitoring does not necessarily have to be conducted continuously, but only to the extent that a reasonable assurance of compliance is provided by the monitoring frequency. EPA previously stated that TCEQ may consider several factors in determining the adequacy of monitoring including the likelihood of exceeding the emission limits, past compliance history, and monitoring requirements for similar units. It is not expected that Motiva will exceed the PM limits when burning refinery fuel gas or fuel oil limited to less than 0.05 percent by weight sulfur.

RTC at 8.

In addition, the Statement of Basis for the Motiva title V permit states:

When necessary, periodic monitoring (PM) requirements are specified for certain parameters (i.e. feed rates, flow rates, temperature, fuel type and consumption, etc.) to determine if a term and condition or emission unit is operating within specified limits to control emissions. These additional monitoring approaches may be required for two reasons. First, the applicable rules do not adequately specify monitoring requirements (exception- Maximum Achievable Control Technology Standards (MACTs) generally have sufficient monitoring), and *second*,

monitoring may be required to fill gaps in the monitoring requirements of certain applicable requirements. In situations where the NSR permit is the applicable requirement requiring extra monitoring for a specific emission unit, the preferred solution is to have the monitoring requirements in the NSR permit updated so that all NSR requirements are consolidated in the NSR permit. . . .

The Federal Clean Air Act requires that each federal operating permit include monitoring sufficient to assure compliance with the terms and conditions of the permit. Most of the emission limits and standards applicable to emission units at Title V sources include adequate monitoring to show that the units meet the limits and standards. For those requirements that do not include monitoring, or *where the monitoring is not sufficient to assure compliance, the federal operating permit must include such monitoring for the emission units affected.*

Motiva Port Arthur Statement of Basis of the Federal Operating Permit, O1386, at 4, 207 (October 5, 2014) (emphasis added).

With regard to the hourly and annual PM₁₀ emission limits for Boilers 34 and 35 authorized by NSR Permit No. 3415, the Petitioners have demonstrated that the permit record is unclear as to what monitoring, recordkeeping, and reporting requirements assure compliance with these limits. The CAA requires, “Each permit issued under [title V] shall set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions.” CAA § 504(c), 42 U.S.C. § 7661c(c); *see also* 40 C.F.R. § 70.6(a)(3)(i)(A)–(B), (c)(1); 30 TAC § 122.142(c). While TCEQ identified the opacity requirements in special condition 6 and the fuel consumption limit in special condition 7 as the terms that assure compliance with the PM₁₀ limits, the permit record does not explain how quarterly Method 9 observations and an annual fuel consumption limit assure compliance with the hourly and annual PM₁₀ emission limits. In addition, TCEQ states that it “is not expected that Motiva will exceed the PM limits when burning refinery fuel gas or fuel oil limited to less than 0.05 percent by weight sulfur.” However, TCEQ has not identified support for this determination in the record. Further, the EPA was unable to locate any information in the record, including the TRV, that explains how the fuel usage limit and opacity are used to assure compliance with the hourly and annual PM₁₀ emission limits. As a result, the EPA cannot determine from the permit or permit record what monitoring, recordkeeping, and reporting requirements assure compliance with the hourly and annual PM₁₀ emission limits for Boilers 34 and 35.¹¹

¹¹ To the extent the Petitioners are claiming that quarterly opacity observations are always insufficient to assure compliance with the PM emission limits, the Petitioners have not demonstrated that quarterly Method 9 observations, in conjunction with other requirements, inherently could not assure compliance with the emission limits in Permit 3415. The Petitioners only cite to the *2014 Homer City Order* for support of their argument and fail to provide any analysis as to why quarterly Method 9 opacity observations would be insufficient based on the facts related to Motiva. Further, the Petitioners improperly suggest, in citing the *2014 Homer City Order*, that the EPA concluded that *weekly* Method 9 opacity observations were insufficient in that order. *2014 Homer City Order* at 44–46. In fact, the EPA concluded that the record for the Homer City permit did not establish why the Homer City permit should be exempt for COMS and could rely on weekly Method 9 opacity observations. The EPA objected because of this lack of explanation, much as we do here; the EPA *did not* decide that weekly opacity monitoring was insufficient to assure compliance. Similarly, here, the EPA is not objecting because the monitoring indicated by

Direction to TCEQ: In responding to this order, TCEQ should amend the permit and permit record as necessary to specify the monitoring, recordkeeping, and reporting requirements that assure compliance with the PM₁₀ hourly and annual emission limits for Boilers 34 and 35. If the title V permit, the underlying NSR permit, or the enforceable representations in the application already contain adequate terms to assure compliance with these emission limits, then TCEQ should amend the permit and/or permit record to identify such terms and explain how these requirements assure compliance with these emission limits.

The EPA notes that TCEQ has identified some permit terms (special condition 6 and 7) that could assure compliance with the PM₁₀ emission limits when combined with other information, such as emission factors and data establishing a relationship between the opacity limit and the PM₁₀ emission limits. However, neither the permit nor permit record identify the additional information, such as enforceable emission factors, in the permit and/or enforceable application representations that would be required to determine compliance with those emission limits. In addition, the EPA notes that the title V permit contains some monitoring, recordkeeping, and reporting requirements in the *Applicable Requirements Summary Table*, such as NSPS, NESHAP, and SIP requirements, that might assure compliance with the limits raised in the Petition. However, the permit does not associate these requirements with the emission limits raised in the Petition, nor did TCEQ explain in the Statement of Basis how the requirements in the table for opacity monitoring and fuel consumption would assure compliance with the emission limits raised in the Petition. Based on this information, TCEQ may find that, for some emission limits, the permit already requires Motiva to collect the information necessary to assure compliance with these emission limits. If this is the situation, TCEQ would need to amend the permit or Statement of Basis, as necessary, to clarify how these requirements assure compliance with the PM₁₀ hourly and annual emission limits.

For the foregoing reasons, the EPA grants the Petitioners' request for an objection on this claim.

Claim 2: The Petitioners Claim That the Proposed Permit Fails to Require Monitoring, Recordkeeping, and Reporting Requirements That Assure Compliance With the Hourly and Annual Emission Limits for NO_x and PM₁₀ and the NO_x Performance Standard for Gas Turbine 34 in NSR Permit No. 56287.

Petitioners' Claim: The Petitioners claim that the title V permit is deficient because it does not establish monitoring requirements that assure compliance with the hourly and annual PM₁₀ and NO_x emission limits listed in the maximum allowable emission rates table and the NO_x concentration limit (referred to as a performance standard in the petition) in special condition 3 for Gas Turbine 34 (SPS3-7) authorized by NSR Permit No. 56287 and incorporated by reference into the title V permit. Petition at 8–9. The Petitioners assert that neither the title V permit, the Statement of Basis, nor NSR Permit No. 56287 contain monitoring that assure

TCEQ *is in fact* insufficient, and makes no finding with regard to that question; the EPA grants this claim for an objection only on the grounds that TCEQ's *explanation* is insufficient to evaluate whether the monitoring, recordkeeping, and reporting requirements assure compliance with the hourly and annual PM₁₀ limits for Boiler 34 and 35.

compliance with the hourly and annual PM₁₀ and NO_x emission limits and the NO_x concentration limit. *Id.* In addition, the Petitioners contend that the TRV for NSR Permit No. 56287 does not provide information about how NO_x and PM₁₀ emissions are calculated using fuel usage and engineering calculations as TCEQ claimed in the RTC. *Id.* at 23.

With regard to the hourly and annual PM₁₀ emission limits of 3.21 lb/hr and 14.1 tons per year (tpy), respectively, the Petitioners acknowledge that TCEQ explained in the RTC that opacity is used as a surrogate for demonstrating compliance with the PM₁₀ emission limits. *Id.* at 22 (citing RTC at 8). The Petitioners contend, however, that neither the title V permit nor NSR Permit No. 56287 requires Motiva to demonstrate compliance with the PM₁₀ limits using opacity as a surrogate. *Id.* at 24. Moreover, the Petitioners assert that the permit record does not contain information showing that compliance with the applicable opacity limit correlates to compliance with the PM₁₀ limits. *Id.*

With regard to the hourly and annual NO_x emission limits of 31.8 lb/hr and 139.3 tpy, respectively, and the NO_x concentration limit of maintaining NO_x emissions below 25 parts per million (ppm) on a one-hour average, the Petitioners acknowledge that TCEQ asserted in the RTC and TRV that a water-to-fuel ratio assures compliance with the NO_x emission limits. *Id.* at 23. However, the Petitioners assert that the permit record does not explain “how this monitoring should be used to calculate emissions or to determine compliance with hourly and annual NO_x emission limits.” *Id.*

In addition, the Petitioners claim that the permit does not specify a ratio or range of ratios for fuel-to-water indicative of compliance with the 25 ppm NO_x concentration limit in special condition 3 or explain how the fuel-to-water ratio monitoring data should be used to determine compliance with the standard. *Id.* at 9 (citing *Wheelabrator Order* at 10–11). The Petitioners contend that the permit does not support TCEQ’s contention that the permit holder is responsible for keeping records to show that the NO_x concentration limits correspond to the NO_x emission limit as established at the last performance test. *Id.* (citing *In the Matter of Shell Chemical LP and Shell Oil Company, Shell Deer Park Chemical Plant and Shell Deer Park Refinery*, Order on Petition Nos. VI-2014-04 & VI-2014-05 at 22 (September 24, 2015) (*Shell Deer Park*)).

EPA’s Response: For the following reasons, the EPA grants in part and denies in part the Petitioners’ request for an objection on this claim.

In responding to comments regarding the issues raised in these claims, TCEQ stated, in part:

[TCEQ] disagrees that permit 56287 does not specify monitoring requirements to demonstrate compliance with conditions of the permit. As stated in the technical review for this permit, engineering calculations and fuel usage are used to calculate emissions. The water-to-fuel ratio is used to calculate NO_x emissions and opacity is used as a surrogate for demonstrating compliance with PM emissions.

The turbines use water injection to control NO_x emissions. The permit specifies the use of a continuous water to fuel ratio monitoring system to monitor the ratio of water injected to the fuel fired in the turbine in order to demonstrate continuous compliance

with the NOx limits. It is not practical to specify a range for the water-to-fuel ratios since this value will vary depending on the water injected and fuel fired at various turbine load rates. The permit holder is responsible for keeping records to show that these rates correspond to the values established at the last performance test.

RTC at 8.

In addition, the Statement of Basis for the Motiva title V permit contains various statements explaining when TCEQ will supplement or add monitoring to the title V permit to assure compliance with the applicable requirements. *See supra* 9–10; Motiva Port Arthur Statement of Basis, Operating Permit No. O1386, at 4, 207 (October 5, 2014).

With regard to the hourly and annual PM₁₀ and NOx emission limits for Gas Turbine 34 authorized by NSR Permit No. 56287 in the maximum allowable emission rates table, the Petitioners have demonstrated that the permit record is unclear as to what monitoring, recordkeeping, and reporting requirements assure compliance with these limits. The CAA requires, “Each permit issued under [title V] shall set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions.” CAA § 504(c), 42 U.S.C. § 7661c(c); *see also*, 40 C.F.R. § 70.6(a)(3)(i)(A)–(B), (c)(1); 30 TAC § 122.142(c). While TCEQ explained that engineering calculations and fuel usage assure compliance with the PM₁₀ and NOx limits, TCEQ did not identify which permit terms require Motiva to calculate PM₁₀ and NOx emissions-based on fuel usage. Further, TCEQ did not explain what engineering calculations are used to assure compliance with the PM₁₀ and NOx emission limits. The EPA was unable to locate any information in the TRV that explains how fuel usage is used to calculate, and, therefore, assure compliance with, the PM₁₀ and NOx emission limits. *See* TRV, NSR Permit No. 56287 (September 19, 2009) (version of NSR Permit No. 56287 that is incorporated by reference into Motiva’s title V permit).

In addition, while TCEQ explained in the RTC that the water-to-fuel ratio, which is used to show compliance with the NOx concentration limits in special condition 3, is also used to calculate NOx emissions, TCEQ did not identify which permit terms require Motiva to calculate hourly and annual NOx emissions based on the measured water-to-fuel ratio. The EPA notes that special condition 11 does require Motiva to determine compliance with the NOx concentration limit in special condition 3 based on the water-to-fuel ratio established by the initial performance test in special condition 10. However, the permit and permit record are unclear as to how Motiva could use those same calculations to determine and assure compliance with the hourly and annual NOx emission limits in the maximum allowable emissions rate table. Further, neither the permit nor permit record explain what engineering calculations will be used with the water-to-fuel ratio measurements to determine compliance with the NOx emission limits and special condition 3. As a result, the EPA cannot determine from the permit or permit record what monitoring, recordkeeping, and reporting requirements assure compliance with the hourly and annual PM₁₀ and NOx emission limits and the NOx concentration limit.

With regard to the Petitioners’ specific contention that neither the title V permit nor the NSR permit require Motiva to keep records related to the NOx concentration limit in special condition 3, the EPA finds that the Petitioners have not demonstrated a flaw in the permit. Special

condition 16.B specifically requires TCEQ to keep records of the water-to-fuel ratio to demonstrate compliance with the water-to-fuel ratio standards established in special condition 11 and from the performance test required by special condition 10. The Petitioners have not acknowledged or analyzed these requirements to keep records.¹² Thus, the Petitioners have not demonstrated a flaw in the title V permit with respect to this specific issue.

Direction to TCEQ: In responding to this order, TCEQ should amend the permit and permit record as necessary to add monitoring, recordkeeping, and reporting requirements that assure compliance with the hourly and annual PM₁₀ and NO_x emission limits and the NO_x concentration limit in special condition 3. If the title V permit, the underlying NSR permit, or the enforceable representations in the application already contain adequate terms to assure compliance with these emission limits, then TCEQ should amend the permit and/or permit record to identify such terms and explain how these requirements assure compliance with these emission limits. As discussed in the partial denial of this claim, the permit already appears to contain some recordkeeping requirements in special condition 16.B related to the NO_x concentration limit.

In addition, the EPA notes that NSR Permit No. 56287 contains requirements related to the water-to-fuel ratio (special conditions 10, 11, 12, 16.B), the fuel usage limit (special conditions 13 and 16.C), and opacity (special condition 5). However, the permit itself does not identify these requirements as the terms that Motiva will use to assure compliance with the hourly and annual PM₁₀ and NO_x emission limits. Currently, only the RTC for the title V permit, which is not enforceable, seems to draw a connection between these special conditions and the PM₁₀ and NO_x emission limits. In addition, neither the permit nor permit record contain sufficient information, such as emission factors, to demonstrate that the fuel usage limit and opacity are adequate to assure compliance with the PM₁₀ emission limits or that the fuel usage limit and water-to-fuel ratio are adequate to assure compliance with the and NO_x emission limits and the NO_x concentration limit. Finally, the title V permit contains some monitoring, recordkeeping, and reporting requirements in the *Applicable Requirements Summary Table*, such as NSPS, NESHAP, and SIP requirements, that might assure compliance with the limits raised in the Petition. However, this table does not appear to associate these requirements with the emission limits raised in the petition, nor did TCEQ explain in the permit record how the requirements in the table would assure compliance with the emission limits raised in the Petition. Based on this information, TCEQ may find that, for some emission limits, the permit may already require Motiva to collect the information necessary to assure compliance with these emission limits. If this is the situation, TCEQ would need to amend the permit or permit record, as necessary, to clarify how these requirements assure compliance with the hourly and annual PM₁₀ and NO_x emission limits and the NO_x concentration limit.

For the foregoing reasons, the EPA grants in part and denies in part the Petitioners' request for an objection on this claim.

¹² See *supra* notes 6, 7, and accompanying text.

Claim 3: The Petitioners Claim That the Proposed Permit Fails to Require Monitoring, Recordkeeping, and Reporting Requirements That Assure Compliance With the VOC Emission Limits from Flares Authorized by NSR Permit No. 6056/PSDTX1062M1.

Petitioners' Claim: The Petitioners claim that the title V permit is deficient because it does not establish monitoring requirements that assure compliance with the 98-percent VOC destruction efficiency requirement in special condition 54 of NSR Permit No. 6056/PSDTX1062M1. Petition at 9–10. The Petitioners assert that the continuous monitoring to determine the presence of a pilot flame does not assure compliance with the 98-percent destruction efficiency. *Id.* at 10. For support, the Petitioners cite an EPA study, which found that flares complying with requirements allegedly equivalent to those in the Proposed Permit only achieved an average destruction efficiency of 93-percent. *Id.* (citing EIP Public Comments at 4–5; Parameters for Properly Designed and Operated Flares, Report for Flare Review Panel prepared by U.S. EPA Office of Air Quality Planning and Standards (April 2012), available at <http://www.epa.gov/ttn/atw/flare/2012flaretechreport.pdf>; U.S. EPA Petroleum Refinery Sector Rule: Flare Impact Estimates, EPA-HQ-OAR-2010-0682-0209 (January 16, 2014) at 9; Petroleum Refinery Risk and Technology Review and New Source Performance Standards; Proposed Rule, 79 Fed. Reg. 36880 (Jun. 30, 2014). The Petitioners also assert that TCEQ conducted analyses that confirmed the findings in the EPA's study. *Id.* (citing TCEQ, 2015 Emission Inventory Guidelines, RG-360/15, A-43 (January 2016)). Further, the Petitioners contend that additional monitoring is necessary to “prevent over-steaming that frequently interferes with flare performance and to assure compliance with the applicable flare emission limits.” *Id.*

The Petitioners challenge TCEQ's contention that there are no currently-available EPA-approved mechanisms for testing or monitoring emissions from a flare, and assert that the “EPA has approved monitoring requirements that ‘ensure that refinery flares meet 98-percent destruction efficiency at all times.’” *Id.* at 25 (quoting Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards, 80 Fed. Reg. 75178, 75211 (December 1, 2015)).

EPA's Response: For the following reasons, the EPA denies the Petitioners' request for an objection on this claim.

The Petitioners challenge the 98-percent destruction efficiency assumption embodied in special condition 54 of NSR Permit No. 6056/PSDTX1062M1, and allege that “the continuous monitoring to determine presence of a pilot flame—does not assure that Motiva's flares will continuously achieve the required level of control.” Petition at 9–10. However, as discussed further below, the Petitioners arguments are general, conclusory, and unsupported, and the Petitioners accordingly have not met their burden of demonstrating noncompliance with the CAA.¹³

¹³ See *supra* notes 6, 7, and accompanying text. The EPA's determination that the Petitioners have not demonstrated a flaw in the Permit should not be interpreted as a judgment regarding the adequacy of the permit terms at issue here (i.e., whether the current permit terms or the requirements in 40 C.F.R. § 60.18 are sufficient to assure that the flares

Specifically, the Petitioners provide no analysis explaining why the Permit's requirements may be inadequate, beyond a brief reference to an EPA study.¹⁴ Although the Petitioners briefly mention over-steaming, excess aeration, high winds, and flame liftoff in their public comments, neither the Petition nor the public comments explain why these concerns would necessarily apply to the Motiva Port Arthur Refinery. Moreover, the Petitioners do not provide any discussion of the EPA studies they cite, including the variables and considerations underlying the EPA's conclusions in this study, and whether and how the same concerns (and, thus, the EPA's conclusions in that study) would necessarily apply to any of the flares at the Motiva Port Arthur Refinery. The Petitioners assert equivalency between the monitoring requirements in NSR Permit No. 6056/PSDTX1062M1 and those at issue in the cited EPA study, but provide no analysis to demonstrate such equivalency. For example, the Petitioners do not acknowledge or evaluate any of the specific permit terms currently contained in the Permit that are relevant to flare performance.¹⁵ See NSR Permit No. 6056/PSDTX1062M1, special condition 4 (establishing various operating limits and monitoring requirements for the flares). In failing to evaluate the current permit terms, the Petitioners do not support their assertion that this study involved "flares using the kind of monitoring required" by the Motiva permit. Petition at 10; see *In the Matter of Pasadena Refining System, Pasadena Refinery*, Order on Petition No. VI-2016-20, at 24–26 (May 1, 2018) (*Pasadena Order*); *In the Matter of ExxonMobil Baytown Refinery*, Order on Petition No. VI-2016-14 at 28–31 (April 2, 2018) (*ExxonMobil Baytown Refinery Order*). Such conclusory allegations do not demonstrate that the permit does not contain monitoring sufficient to assure this destruction efficiency.

Although the Petitioners do not suggest any specific monitoring methodology to resolve their concerns, they do allege that the "EPA has approved monitoring requirements that 'ensure that refinery flares meet 98-percent destruction efficiency at all times.'" Petition at 25 (citing 40 C.F.R. § 63.670; 80 Fed. Reg. 75178, 75211 (December 1, 2015)). These new standards establish a suite of requirements (including operating limits and monitoring requirements) designed to ensure that flares achieve a 98-percent destruction efficiency. See 80 Fed. Reg. at 75211. These standards become effective for affected sources on January 30, 2019. 40 C.F.R. §§ 63.670, 63.640(s). The concerns raised in the Petition regarding the ability of the facility to achieve a 98-percent flare destruction efficiency should, therefore, be remedied when the requirements of 40 C.F.R. § 63.670 become applicable to individual flares at the Motiva Port Arthur Refinery. The EPA notes that subsequent to the filing of the Petition, the Motiva Port Arthur Refinery has several pending permit amendments and/or alterations in the queue at TCEQ related to NSR Permit No. 6056/PSDTX1062M1.¹⁶ As an affected source under 40 C.F.R. part 63 subpart CC, the Motiva Port Arthur Refinery would be expected to comply with the requirements of 40 C.F.R. § 63.670 by January 30, 2019. The requirements of 40 C.F.R. § 63.670 are arguably more prescriptive than the monitoring that the Petitioners seek through title V authorities.¹⁷

at the Motiva Port Arthur Refinery in fact achieve a 98 percent destruction efficiency).

¹⁴ See *supra* notes 6, 7, and accompanying text.

¹⁵ See *supra* note 8 and accompanying text.

¹⁶ Motiva Port Arthur Application for Plant-Wide Applicability and Flexible Permit, Project No. 278971 (January 5, 2018).

¹⁷ The Petitioners correctly assert that title V provides the authority to supplement monitoring that is inadequate or nonexistent. 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6(a)(3)(i)(B) & 70.6(c)(1). However, the title V permitting

Additionally, even if the Petition had demonstrated a flaw in the Permit, the relief that the Petitioners seek—an EPA objection to the source’s title V permit, potentially followed by an additional permit action by TCEQ to supplement the title V permit with additional flare monitoring requirements—is unlikely to occur before these new standards and permit terms become applicable.¹⁸ An EPA objection would, therefore, have no practical effect. Thus, in addition to the fact that the Petitioners have failed to demonstrate that the current permit fails to satisfy the CAA (thus, presenting no grounds for an EPA objection), the EPA also believes that the Petitioners’ concerns have been sufficiently resolved as a practical matter.

For the foregoing reasons, the EPA denies the Petitioners’ request for an objection on this claim.

Claim 4: The Petitioners Claim That the Proposed Permit Fails to Require Monitoring, Recordkeeping, and Reporting Requirements That Assure Compliance With Various Tanks Authorized by NSR Permit Nos. 6056/PSDTX1062M1 and 8404/PSDTX1062M1.

Petitioners’ Claim: The Petitioners claim that the title V permit does not contain adequate monitoring, recordkeeping, and reporting to assure compliance with the VOC emission limits for tanks authorized by NSR Permit No. 6056/PSDTX1062M1 and the VOC and benzene emission limits authorized by NSR Permit No. 8404/PSDTX1062M1. Petition 10–11, 13. Specifically, the Petitioners assert that special condition 58.A in NSR permit 6056/PSDTX1062M1 and special conditions 2.G and 37.A require annual emissions of tanks to be calculated using AP-42, which the Petitioners claim does not assure compliance with the applicable emission limits.

The Petitioners contend that the permit’s requirements to calculate annual emissions using AP-42 factors and to conduct visual inspections of vapor collection systems once a year are not sufficient to assure compliance with the VOC and benzene limits. Petition at 11, 13. The Petitioners assert that the EPA has explained that “AP-42 emission factors should not usually be used to determine compliance with permit requirements.” *Id.* at 11 (citing *In the Matter of Tesoro Refining and Marketing*, Order on Petition No. IX-2004-6, at 32 (March 15, 2005) (*Tesoro Order*)). Further, the Petitioners claim that direct monitoring at petroleum refineries “show that AP-42 emission factors can drastically underestimate actual tank emissions.” Petition at 11 (citing EIP Public Comments at 6).¹⁹ The Petitioners conclude that the permit record must demonstrate why AP-42 factors are appropriate in this case. *Id.* at 26.

process generally cannot be used to establish substantive requirements, such as operating limits (or to advance the applicability date of these additional substantive requirements established by the EPA through rulemaking). *See, e.g.*, 57 Fed. Reg. 32250, 32284 (July 21, 1992). Thus, while an EPA title V objection could result in additional monitoring requirements being added to the title V permit, the EPA notes that the updated terms in NSR Permit No. 6056/PSDTX1062M1 already require both monitoring requirements as well as enforceable operating limits based on 40 C.F.R. § 63.670, effective January 30, 2019.

¹⁸ Even if an EPA objection and subsequent TCEQ permit action were to be completed before January 30, 2019, it is not clear that Motiva would be able to begin implementing these additional monitoring requirements immediately. The EPA, through rulemaking, and TCEQ, through issuing NSR Permit No. 6056/PSDTX1062M1, both previously determined that January 30, 2019, would be a reasonable applicability date by which refinery flares should become subject to the new flare requirements.

¹⁹ EIP’s Public Comments cite to a variety of studies and presentations. *See* Alex Cuclis, Why Emission Factors Don’t Work at Refineries and What to do about it, Presentation/Paper for the EPA at the Emissions Inventory

EPA's Response: For the following reasons, the EPA denies the Petitioners' request for an objection on this claim.

The Petitioners challenge the permit's reliance on AP-42 emission factors in conjunction with visual inspections to assure compliance with VOC and benzene emissions from tanks. Petition at 10–11, 13. However, as discussed further below, the Petitioners' arguments are general, conclusory, and unsupported, and the Petitioners accordingly have not met their burden of demonstrating noncompliance with the CAA.²⁰

Specifically, the Petitioners provide no analysis explaining why the Permit's requirements may be inadequate, beyond a brief reference in their public comments to a few studies, presentations, and the EPA's *Tesoro Order*.²¹ Although the Petitioners briefly mention that the *Tesoro Order* and these studies support the determination that AP-42 emission factors are not necessarily indicative of emissions, the Petitioners do not explain why AP-42 emission factors are not representative of emissions for the tanks at the Motiva Port Arthur Refinery. Moreover, the Petitioners do not provide any discussion of the EPA studies they cite, including the variables and considerations underlying the EPA's conclusions, and whether and how the same concerns (and, thus, the EPA's conclusions in that study) would necessarily apply to any of the tanks at the Motiva Port Arthur Refinery.

In addition, the Petitioners have failed to identify any particular units or emission limits and failed to acknowledge or evaluate specific permit terms currently contained in the permit that are relevant to assuring compliance with tank emissions. The Petitioners have failed to even identify any specific emission limits or emission units they are concerned with. NSR Permit Nos. 6056/PSDTX1062M1 and 8404/PSDTX1062M1 contain numerous units that could be categorized as tanks and the Petition is unclear as to which units do not allegedly contain monitoring and recordkeeping. The Petitioners only generally claim that these permit conditions requiring the use of AP-42 are not enough to assure compliance with tank emission limits. However, depending on the type of tank, there are also other requirements that apply.

With regard to NSR Permit No. 6056/PSDTX1062M1, the NSR permit contains the following conditions that apply to tanks: 1) special condition 2.C requires visual inspections according to 40 CFR § 60.113b; 2) special condition 2.G requires recordkeeping of emissions, temperature, pressure, material, and capacity; 3) special conditions 2.A, B, D, E, and F all contain operational requirements that apply depending on the type of tank; 4) special conditions 23 and 24 contain a

Conference in Tampa, Florida on August 13–16, 2012, available at <http://www.epa.gov/ttnchie1/conference/ei20/session7/acuclis.pdf>; EPA, Critical Review of DIAL Emissions Test Data for BP Petroleum Refinery in Texas City, Texas, EPA 453/R-10-002, ES-2, Table 1 (November 2010), available at http://www.epa.gov/airtoxics/bp_dial_review_report_12-3-10.pdf; Loren Raun and Dan W. Hoyt, City of Houston, Bureau of Pollution Control and Prevention, Measurement and Analysis of Benzene and VOC Emissions in the Houston Ship Channel Area and Selected Surrounding Major Stationary Sources Using DIAL Technology to Support Ambient HAP Concentrations Reductions in the Community, 92–93, Table 4.4(a) (July 2011), available at <http://www.greenhoustontx.gov/dial20110720.pdf>.

²⁰ See *supra* notes 6, 7, and accompanying text.

²¹ See *supra* notes 6, 7, and accompanying text.

variety of requirements that apply to rich amine charge tanks; 5) special conditions 25, 26, and 27 contain a variety of requirements that apply to sour water tanks; 6) special conditions 56 and 57 contain a variety of requirements that apply to the refilling of tanks; 7) special condition 58.A requires the use of AP-42 emission factors to calculate emissions; and 8) special condition 63 contains requirements that apply to tanks during maintenance, startup, and shutdown. Aside from asserting that special condition 58.A relies on AP-42 emission factors, the Petitioners have not addressed these permit terms or attempted to demonstrate why all of these operational requirements, monitoring, and recordkeeping do not assure compliance with the limits on tank emissions.²² In failing to evaluate the current permit terms, the Petitioners have failed to consider or evaluate the monitoring requirements as a whole and have ignored key permit terms.²³ Such conclusory allegations do not demonstrate that the permit does not contain monitoring sufficient to assure this destruction efficiency.

With regard to NSR Permit No. 8404/PSDTX1062M1 the NSR permit contains the following conditions that apply to tanks: 1) special condition 2.C requires visual inspections according to 40 CFR § 60.113b; 2) special condition 2.G requires recordkeeping of emissions, temperature, pressure, material, and capacity; 3) special conditions 2.A, B, D, E, and F all contain various requirements that apply depending on the type of tank; 4) special condition 21 contains requirements that apply specifically to sulfuric acid tanks; and 5) special condition 37.A requires the use of AP-42 emission factors to calculate emissions. Aside from asserting that special conditions 2.G and 37.A rely on AP-42 emission factors, the Petitioners have not addressed these other permit terms or attempted to demonstrate why all of these other operational requirements, monitoring, and recordkeeping do not assure compliance with the limits on tank emissions.²⁴ In failing to evaluate all the relevant and current permit terms, the Petitioners have failed to consider or evaluate the monitoring requirements as a whole and have ignored key permit terms.²⁵ In failing to specifically identify any particular unit, as noted above, it is impossible to determine whether these other permit terms apply or what emission limits apply to the units the Petitioners are concerned with. Such conclusory allegations do not demonstrate that the permit does not contain monitoring sufficient to assure this destruction efficiency.

The Petitioners also argue that the permit and permit record fail to demonstrate that AP-42 emission factors are appropriate in this case to assure compliance with emissions from unspecified tanks. Petition at 26. In so doing, the Petitioners have effectively attempted to shift

²² In concluding that the Petitioners have not met their burden to demonstrate a flaw in the title V permit, the EPA is not making any judgment regarding the sufficiency of the special conditions and the application representations for assuring compliance with these limits. The EPA is merely determining that the Petitioners have failed to consider key terms in the NSR permit and enforceable application representations, which the EPA has historically considered grounds to determine that the Petitioners have not met their demonstration burden. *See supra* notes 6, 7, 8, and accompanying text; *see, e.g., Homer City Order* at 48.

²³ *See In the Matter of Raven Power, Fort Smallwood*, Order on Petition No. 111-2017-3 at 20–24 (January 17, 2018) (*Raven Power Order*); *In the Matter of Yuhuang Chemical Inc. Methanol Plant, St. James Parish, Louisiana*, Order on Petition No. VI-2015-03 at 18 n.16 (August 31, 2016) (*2016 Yuhuang Order*); *In the Matter of Public Service of New Hampshire, Schiller*, Order on Petition No. VI-2014-04 at 13–16 (July 28, 2015) (*Schiller Order*); *supra* note 8 and accompanying text.

²⁴ *See supra* note 22.

²⁵ *See Pasadena Order* at 19; *Raven Power Order* at 20–24; *2016 Yuhuang Order* at 18 n.16; *Schiller Order* at 13–16; *supra* note 8 and accompanying text.

the burden to TCEQ to demonstrate the adequacy of the monitoring and recordkeeping, rather than themselves demonstrating why AP-42 emission factors in conjunction with other permit terms, such as special conditions noted above, are not sufficient. *See, e.g., Pasadena Order* at 18–20; *ExxonMobil Baytown Refinery Order* at 25. However, the CAA places the burden on petitioners to demonstrate to the EPA that the title V permit does not comply with the Act. 42 U.S.C. § 7661d(b)(2). Here, the Petitioners’ generalized claims, unsupported by any analysis of specific permit terms, have failed to satisfy this burden.²⁶

For the foregoing reasons, the EPA denies the Petitioners’ request for an objection on this claim

Claim 5: The Petitioners Claim That the Proposed Permit Fails to Require Monitoring, Recordkeeping, and Reporting Requirements That Assure Compliance With Various Combustion Units Authorized by NSR Permit Nos. 6056/PSDTX1062M1 and 8404/PSDTX1062M1.

Petitioners’ Claim: The Petitioners claim that the title V permit does not contain adequate monitoring, recordkeeping, and reporting to assure compliance with emission limits for various “combustion units” authorized by NSR Permit Nos. 6056/PSDTX1062M1 and 8404/PSDTX1062M1. Petition at 11–14.

With regard to NSR Permit No. 6056/PSDTX1062M1, the Petitioners claim that the monitoring and recordkeeping in special condition 58.D and E do not assure compliance with the emission limits from the following units: SCRU5-1, SCRU5-2, SNHTU2-1, SHCU2-2, SHCU2-3, SHTU6-1, SHTU6-2, SHCU2-6, SHCU2-5, SDCU2-1, SDCU2-2, SDCU2-3, SVPS5-1, SVPS5-2, SNHTU2-2, SNHTU2-3, STGTU1-2, STGTU2-2, CGNGRP, SRUGRP, SPS4-1, SPS4-2, SPS4-3, SPS4-4, SPS4-6, STGTU5-1, STGTU6-1, STGTU7-1. Petition at 11–12; Petition Exhibit 8. The Petitioners claim that the title V permit does not assure compliance with these emission limits because the permit is not clear as to which units are subject to stack testing and how stack tests will be used to demonstrate compliance. Further, the Petitioners claims that the permit does not identify which emission factors are used and the basis for those emission factors. Petition at 12–13 (citing *2011 Granite City Order*).

With regard to NSR Permit No. 8404/PSDTX1062M1, the Petitioners generally point back to their arguments regarding raised for NSR Permit No. 6056/PSDTX1062M1. Petition at 14. The Petitioners assert that special conditions 37.D, E, and H requires Motiva to calculate emissions based on continuous emissions monitoring systems (CEMS), stack testing, and emission factors but does not identify which method applies for each pollutant and unit.

EPA’s Response: For the following reasons, the EPA denies the Petitioners’ request for an objection on this claim.

The Petitioners generally claim that the permit is unclear as to when stack testing and emission factors are used instead of CEMS and that the permit does not specify how stack testing or which emission factors are used to determine compliance. Petition at 11–14. However, as discussed further below, the Petitioners have ignored key permit terms and failed to consider or evaluate

²⁶ *See supra* notes 6, 7, and accompanying text.

the monitoring requirements as a whole, and the Petitioners accordingly have not met their burden of demonstrating noncompliance with the CAA.²⁷

With regard to the list of units authorized by NSR Permit No. 6056/PSDTX1062M1, the Petitioners provided a list of 26 units and 2 unit groups for which the Petitioners claim they cannot identify the applicable monitoring or how the monitoring assures compliance with the emissions limits in Petition Exhibit 8. Petition at 11–12. Specifically, the Petitioners contend that special conditions 58.D and E are unclear as to how CEMS, stack testing, and emission factors assure compliance for the 26 units and 2 unit groups. *Id.* However, NSR Permit No. 6056/PSDTX1062M1 contains the following conditions that the Petitioners have failed to consider or analyze: 1) special condition 6 specifies that there will be no visible emissions during normal operations as outlined in 30 TAC § 111.111(a); 2) special condition 7 establishes CO and NOx performance standards and fuel firing rates; 3) special condition 31 establishes monitoring of temperature for cogeneration units; 4) special condition 42 establishes stack testing port and platform specifications; 5) special condition 43, spanning 2 pages, requires initial stack tests for 18 units and a variety of pollutants depending on the type of unit; 6) special condition 44, spanning 2 pages, requires periodic stack testing for 12 units and a variety of pollutants depending on the unit; 7) special condition 45 requires additional stack testing when certain combustion units exceed a capacity threshold; 8) special condition 46 requires use of a scrubber for hydrochloric acid (HCl); and 8) special conditions 47 and 48, spanning 3 pages, specifically require CEMS for 21 units and a variety of pollutants depending on the unit. The Petitioners have failed to acknowledge or provide any analysis of these terms because the Petition only considers special conditions 58.D and E. Further, the Petitioners have not provided *any* analysis to demonstrate why the requirements in special conditions 6, 7, 31, 42, 43, 44, 45, 46, 47, and 48 do not assure compliance with the emission limits.

In addition, the Petitioners claim that they cannot tell whether CEMS, stack tests, or emission factors apply to a given unit. However, the permit clearly specifies which units rely on CEMS or stack testing to assure compliance (*see* special conditions 43, 44, and 45), and the Petitioners have failed to explain what is otherwise unclear in the permit. Where Petitioners have failed to even consider key permit terms related to monitoring and recordkeeping for those emission limits, the CAA does not obligate the EPA to investigate issues not directly raised in the petition or engage in fact-finding to determine the basis for the Petitioners' objection.²⁸ CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131. To the extent these units also rely on emission factors to calculate emissions, the Petitioners have not demonstrated that the use of any emission factors in conjunction with the requirements in special conditions 6, 7, 31, 42, 43, 44, 45, 46, 47, 48, Attachment 2 of the NSR permit (containing emissions calculations), and the information in the enforceable application representations, do not assure compliance with the emission limits that apply to these units.²⁹ In failing to evaluate the current permit terms, the Petitioners have failed to consider or evaluate the monitoring requirements as a whole, and have ignored key permit

²⁷ *See Pasadena Order* at 19; *Raven Power Order* at 20–24; *2016 Yuhuang Order* at 18 n.16; *Schiller Order* at 13–16; *supra* note 8 and accompanying text.

²⁸ *See supra* notes 6, 7, and accompanying text.

²⁹ *See supra* note 22.

terms. Such conclusory allegations do not demonstrate that the permit does not contain monitoring sufficient to assure compliance with any applicable emission limit.³⁰

With regard to these same claims raised for the “boilers, heaters, and [fluid catalytic cracking unit (FCCU)]” and “combustion units” authorized by NSR Permit No. 8404/PSDTX1062M1, the EPA notes that the Petitioners have failed to even identify any specific emission limits or emission units with which they are concerned. NSR Permit No. 8404/PSDTX1062M1 contains numerous units that could be categorized as combustion units and the Petition is unclear as to which units do not allegedly contain monitoring and recordkeeping. Moreover, the Petitioners stated that special conditions 37.D, E, and H are not adequate to assure compliance with these unspecified units. Petition at 13-14. However, the EPA notes that NSR Permit No. 8404/PSDTX1062M1 as incorporated into the title V does not contain a special condition 37.H. *See* NSR Permit No. 8404/PSDTX1062M1 (October 16, 2013).

In addition, the Petitioners have failed to consider relevant, key terms that apply to a variety of combustion units authorized by NSR Permit No. 8404/PSDTX1062M1: 1) special condition 6 specifies the type of fuel and its sulfur content; 2) special condition 7 specifies that there will be no visible emissions during normal operations as outlined in 30 TAC § 111.111(a); 3) special condition 7 establishes NOx performance standards and fuel firing rates; 4) special condition 31, spanning 2 pages, requires periodic stack testing for a variety of pollutants depending on the unit; 5) special condition 32 requires additional stack testing when certain combustion units exceed a capacity threshold; 6) special condition 33 requires use of a scrubber for HCl; 7) special conditions 34 and 35, spanning 3 pages, specifically require CEMS for a variety of pollutants depending on the unit; and 8) special condition 36 requires a continuous opacity monitoring system (COMS). Of note, special condition 31 requires stack testing and sampling for specific units and special condition 34 requires CEMS for other units and both these conditions identify the emission limits for which these stack tests and CEMS will be used to demonstrate compliance. In failing to specifically identify any particular unit, as noted above, it is impossible for the EPA to determine whether these permit terms apply to the units with which the Petitioners are concerned or to evaluate whether they may assure compliance with some applicable emission limit not identified by the Petition. In addition to special conditions 31 and 34, the Petitioners have failed to acknowledge special conditions 6, 7, 32, 33, 34, 35, 36, and the information in Attachments 3 and 6 of the permit, which all apply to various combustion units authorized by this NSR permit. In failing to evaluate the current permit terms, the Petitioners have failed to consider or evaluate the monitoring requirements as a whole, and have ignored key permit terms. Such conclusory allegations do not demonstrate that the permit does not contain monitoring sufficient to assure compliance with any applicable emission limit.³¹

The Petitioners also contend that TCEQ failed to demonstrate the basis for the emission factors and stack testing and how these requirements will assure compliance with the various emission limits for combustion units authorized under both NSR permits. Petition at 11, 13, 26. In so doing, the Petitioners have effectively attempted to shift the burden to TCEQ to demonstrate the adequacy of the monitoring and recordkeeping, rather than demonstrating themselves why the emission factors and stack testing, in conjunction with the various special conditions referenced

³⁰ *See supra* note 6, 7, 8 and accompanying text.

³¹ *See supra* note 6, 7, 8 and accompanying text.

above, are not sufficient. However, the CAA places the burden on petitioners to demonstrate to the EPA that the title V permit does not comply with the Act. 42 U.S.C. § 7661d(b)(2). Here, the Petitioners' generalized claims, unsupported by any analysis of specific permit terms, have failed to satisfy this burden.³²

For the foregoing reasons, the EPA denies the Petitioners' request for an objection on this claim.

Claim 6: The Petitioners Claim That the Proposed Permit Fails to Require Monitoring, Recordkeeping, and Reporting Requirements That Assure Compliance With the Emission Limits Authorized by PBRs.

Petitioners' Claim: The Petitioners claim that the title V permit does not assure compliance with applicable PBRs because it does not include specific monitoring for these requirements as required by 42 U.S.C. § 7661c(a), (c); 40 C.F.R. § 70.6(a)(3), (c)(1). Petition at 14–15. Specifically, the Petitioners claim that when a PBR does not contain specific monitoring in the rule, the only monitoring or recordkeeping that applies is contained in special conditions 20 and 21 of the title V permit, which is a “non-exhaustive menu of options that Motiva may pick and choose from at its discretion to demonstrate compliance.” *Id.* at 15. The Petitioners contend that special conditions 20 and 21 alone do not satisfy the requirement for all title V permits to “contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements.” *Id.* at 16, 30 (*Wheelabrator Order* at 10). For support, the Petitioners quote special condition 21 of the title V permit:

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, material safety data sheets chemical composition of raw materials, speciation of air contaminants data, engineer calculations, maintenance records, fugitive data, performance tests, capture/control device efficiencies, direct pollutant monitoring (CEMS, COMS, PEMS), or control device parametric monitoring.

A. If applicable, monitoring of control device performance or general work practice standards shall be made in accordance with the TCEQ Periodic Monitoring Guidance document.

B. 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 at 19.

³² See *supra* notes 6, 7, and accompanying text.

In particular, the Petitioners contend that PBR 30 TAC § 106.472 (9/4/2000) authorizes emissions from more than 150 tanks and loading facilities at Motiva. Petition at 15. The Petitions assert that this PBR contains nothing more than a list of chemicals and does not contain any specific monitoring. Further, the Petitioners claim that neither the title V permit nor the Statement of Basis identifies monitoring that assures compliance with the emission limits established under 30 TAC § 106.4(a)(1). *Id.* at 30. The Petitioners contend that the only monitoring or recordkeeping that does apply would be special conditions 20 and 21, which are so vague that the EPA and the public cannot evaluate “whether the monitoring methods Motiva actually uses to determine compliance with PBR requirements are consistent with Title V.” *Id.* at 16.

EPA’s Response: For the following reasons, the EPA grants in part and denies in part the Petitioners’ request for an objection on this claim.

In responding to comments regarding the issues raised in these claims, TCEQ stated, in part:

[TCEQ] disagrees that specific monitoring has to be included for every PBR held at the site. As stated in Special Terms and Condition 21, Motiva is required to keep records that include, but are not limited to, production capacity and throughput, hours of operation, material safety data sheets (MSDS), 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. Motiva is required to keep these records for demonstrating compliance in the annual permit compliance certification report for the Title V permit.

With regard to PBR 30 TAC § 106.472 (9/4/2000), the Petitioners have demonstrated that the permit record is inadequate for the EPA to determine what monitoring and recordkeeping assures compliance with the requirements of PBR 30 TAC § 106.472 (9/4/2000) and the limits under 30 TAC § 106.4(a)(1) as they apply to the units authorized by PBR 30 TAC § 106.472 (9/4/2000) (such as visible emissions and records of the types of materials stored in the tanks). The Petitioners have demonstrated that this particular PBR does not contain any recordkeeping or monitoring requirements itself. Further, the Petitioners have demonstrated that the permit record is unclear as to whether PBR 30 TAC 106.4(a)(1) establishes emission limits (discussed further in the Claim 7 Response below), and, if so, what monitoring and recordkeeping requirements assure compliance with those emission limits as they apply to units authorized under PBR 30 TAC 106.472 (9/4/2000).

With regard to the remainder of the Petitioners’ claim not specifically related to PBR 30 TAC 106.472 (9/4/2000), the Petitioners claim only generally that the only monitoring, recordkeeping, and reporting requirements that applies to all PBRs at Motiva are special conditions 20 and 21 of the title V permit, which the Petitioners assert are inadequate to satisfy title V. However, the Petitioners did not consider or analyze the conditions and terms in the approved PBRs themselves; they assert without any support that none of these PBRs incorporated by reference contain any specific monitoring requirements. While the Petitioners claim that special condition

21 is a non-exhaustive list of monitoring requirements, the Petitioners have not evaluated any of the conditions in the underlying PBRs to determine whether or not the PBRs provide for more specific monitoring, recordkeeping, and reporting requirements. Further, the Petitioners do not identify any specific PBRs (aside from PBR 30 TAC 106.472 (9/4/2000)) with which they are concerned or explain and analyze why special condition 21 does not constitute adequate monitoring for any specific PBR requirement. The Petitioners did not actually demonstrate why special condition 21 is not adequate for any actual specific emission limit or condition contained in a PBR that apply to Motiva. *See Pasadena Order* at 18–20. These generalized allegations are insufficient to demonstrate a flaw in the permit, and the Petitioners have failed to provide the requisite citation and analysis to demonstrate that the permit does not assure compliance with specific applicable requirements or permit terms.³³

The Petitioners also argue that the permit and permit record fail to demonstrate that monitoring and recordkeeping in special condition 21 is adequate to assure compliance with applicable emission limits. *See* Petition at 28. Even if special condition 21 was the only monitoring and recordkeeping required, the Petitioners have impermissibly attempted to shift the burden to TCEQ to demonstrate the adequacy of the monitoring, rather than demonstrating themselves why the specific monitoring requirements included in the permit are not sufficient to assure compliance with a particular applicable requirement. *See Pasadena Order* at 18–20; *ExxonMobil Baytown Refinery Order* at 25. However, the CAA places the burden on petitioners to demonstrate to the EPA that the title V permit does not comply with the Act. 42 U.S.C. § 7661d(b)(2). Here, the Petitioners’ generalized claims, unsupported by any analysis of specific PBRs, including any monitoring, recordkeeping, or reporting terms, have failed to satisfy this burden.³⁴

Direction to TCEQ: In responding to this order, TCEQ should specify the monitoring, recordkeeping, and reporting requirements that assure compliance with the requirements of PBR 30 TAC 106.472 (9/4/2000) and the limits in 30 TAC 106.4(a)(1) as they apply to units authorized by PBR 30 TAC 106.472 (9/4/2000). If the title V permit, Chapter 116 NSR permits, NSPSSs, NESHAPs, or the enforceable representations in the application already contain adequate terms to assure compliance with PBR 30 TAC 106.472 (9/4/2000) and the emission limits, then TCEQ should amend the permit and/or permit record to identify such terms and explain how these requirements assure compliance with the requirements and limits raised in the Petition. However, if the title V permit and all enforceable, incorporated documents do not contain adequate monitoring, recordkeeping, and reporting that assure compliance with the requirements and limits identified, then TCEQ should add such terms to the permit.

To the extent that any units authorized by PBR 30 TAC 106.472 (9/4/2000) are insignificant units for title V purposes, TCEQ should make those clarifications in the permit and permit record, as necessary, and evaluate whether the general monitoring conditions are or are not sufficient. If TCEQ determines that some or all units authorized by PBR 30 TAC 106.472 are insignificant units, then TCEQ should evaluate whether the general monitoring conditions contained in special condition 21 are adequate monitoring, recordkeeping, and reporting. The EPA has explained that if a regular program of monitoring, recordkeeping, and reporting for

³³ *See supra* notes 6, 7, and accompanying text.

³⁴ *See supra* notes 6, 7, and accompanying text.

insignificant units would not significantly enhance the ability of the permit to assure compliance with the applicable requirements, no monitoring can sometimes satisfy title V and 40 CFR § 70.6(a)(3)(i). White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program, 32 (March 5, 1996) (*White Paper Number 2*). In addition, if TCEQ still believes monitoring is necessary for insignificant units subject to a generally applicable requirements, a streamlined approach to periodic monitoring, recordkeeping, and reporting may be appropriate. *Id.* If TCEQ amends the record or title V permit to identify those PBRs that only apply to insignificant units and determines that the permit contains adequate monitoring for those PBR requirements that apply to those insignificant units, the EPA anticipates such an approach would be consistent with our guidance and the requirements of title V of the CAA.

For the foregoing reasons, the EPA grants in part and denies in part the Petitioners' request for an objection on this claim.

Claim 7: The Petitioners Claim That the Proposed Permit's Defective Method of Incorporating Permit by Rule Requirements by Reference Fails to Assure Compliance With Applicable Requirements.

Petitioners' Claim: The Petitioners raise three main points regarding the use of incorporation by reference (IBR) of PBRs: 1) the title V permit does not identify how much pollution Motiva is authorized to emit from each unit under claimed PBRs; 2) the title V permit does not identify which pollutants Motiva may emit from each unit under claimed PBRs; and 3) the title V permit does not identify which emission units at Motiva are subject to limits in the claimed PBRs. Petition at 32.

First, the Petitioners claim that the title V permit is unclear as to how much pollution Motiva is authorized to emit for each unit under claimed PBRs because the title V permit is unclear as to how the emission limits from 30 TAC § 106.4 apply when multiple units are authorized by the same PBR. *Id.* at 32–36. For support, the Petitioners identify 151 units as being authorized by PBR 30 TAC § 106.472 (9/4/2000) and claim that the permit does not identify which units were authorized as part of the same project or as part of different projects. *Id.* at 34. Therefore, the Petitioners contend that “if construction or modification of each unit was separately authorized—i.e., meaning the PBR has been claimed 151 times—each unit may emit up to the 30 [TAC] § 106.4(a)(1) limits, while the units' combined emissions must remain below those same limits if construction of or modifications to all of those units was authorized as part of the same [project].” *Id.* Further, the Petitioners assert that if all the units were “authorized as part of the same [project], then their combined VOC emissions must remain below 25 tons per year. 30 [TAC] § 106.4(a)(1)(A). If each unit was individually authorized, then the combined VOC emissions from the units allowed under § 106.4 would be 3,775 tons per year (25 tons per year * 151 emission units).” *Id.* Therefore, the Petitioners conclude that because the title V permit “is ambiguous as to whether these units are authorized to emit 25 tons per year of VOC, 3,775 tons per year of VOC, or some other amount, it fails to specify and assure compliance with applicable emission limits.” *Id.* at 34. The Petitioners also provide other examples of multiple emission units being authorized by other PBRs. *Id.* at 35.

In responding to TCEQ's RTC related to this issue, the Petitioners also claim that the title V permit is unclear as to which emission units are authorized by certified PBR registrations established under 30 TAC § 106.6. *Id.* at 33, 40–41. The Petitioners claim that the title V permit does not list which units authorized by PBRs are subject to federally enforceable limits in certified PBR registrations. *Id.* at 41. Therefore, the Petitioners claim that even if the title V permit was clear about how many times Motiva has claimed each PBR listed in the Proposed Permit and which units were included in each such project, the permit could still be unclear as to whether the limits for each such project are the generic limits listed in 30 TAC 106.4(a)(1) or lower case-specific limits established by a certified PBR registration. *Id.*

Second, the Petitioners claim that the title V permit does not identify which pollutants listed in 30 TAC § 106.4 Motiva is authorized to emit for each unit under claimed PBRs. *Id.* at 36. The Petitioners claim that a PBR may be used to authorize emissions of 250 tpy NO_x, 250 tpy CO, 25 tpy VOC, 25 tpy SO₂, 15 tpy PM₁₀, 10 tpy PM_{2.5}, and 25 tpy of any other air contaminant except water, nitrogen, ethane, hydrogen, oxygen, and greenhouse gases. *Id.* (citing 30 TAC § 106.4(a)(1)). The Petitioners assert that if every PBR authorized emissions of all pollutants under 30 TAC § 106.4, it would “completely undermine the integrity of Texas’s PSD and NNSR programs” because each “claimed PBR would authorize allowable emission increases exceeding applicable major source and major modification thresholds.” *Id.* at 37. The Petitioners contend that Texas does not read its rules to authorize all pollutants for each claimed PBR. *Id.* The Petitioners note that TCEQ reads 30 TAC § 106.4 to only authorize emissions of the pollutants “as applicable” to the particular construction project for which the PBR was claimed. *Id.* (quoting 30 TAC § 106.4(a)(1)). Further, the Petitioners claim that TCEQ limits PBRs such that the “cumulative authorized emissions for each PBR project [(group of units)] must remain below major modification thresholds.” *Id.* (citing TCEQ PBR Applicability Checklist, Section 1). While the Petitioners acknowledge these safeguards in the PBR program, the Petitioners claim that the title V permit still does not identify which of the many different pollutants under 30 TAC § 106.4 are authorized for each unit under a claimed PBR or SE. *Id.* Therefore, the Petitioners assert that the title V permit fails to assure compliance because, as written, the permit incorrectly suggests that all pollutants under 30 TAC § 106.4 are authorized for each PBR. *Id.* at 38.

Third and finally, the Petitioners claim that the title V permit does not identify any emission unit or group of units for the following PBRs listed in the title V permit: 106.262 (11/1/2003), 106.263 (11/1/2001), 106.264 (9/4/2000), 106.355 (11/1/2001), 106.473 (9/4/2000). *Id.* at 38. Therefore, the Petitioners contend that the title V permit is unclear as to how the PBRs apply to emission units at the Motiva facility and thereby undermines the enforceability of PBR and SE requirements. *Id.* (citing *Objection to Title V Permit No. O2164, Chevron Phillips Chemical Company, Philtex Plant* (August 6, 2010) at ¶ 7;³⁵ *Shell Deer Park Order* at 11–15).

EPA's Response: For the following reasons, the EPA grants the Petitioners' request for an objection on this claim.

In responding to comments, TCEQ explained that it has a longstanding policy to not list specific emission units in the title V permit where the sole applicable requirement is the underlying NSR

³⁵ The EPA notes that this objection is an objection issued under authority delegated by the Administrator to Region 6 to object during EPA's 45-day review period.

Authorization. RTC at 13. TCEQ also stated that the “EPA has approved the incorporation by reference (IBR) for minor NSR requirements including PBRs in the Title V permit.” *Id.* TCEQ then explained that PBRs often apply to units “with emissions that do not meet de minimis criteria but will not make a significant contribution of air contaminants to the atmosphere may be permitted by rule (PBR).” *Id.* TCEQ noted that all PBRs, historical and current, are available on TCEQ’s website for review.³⁶ *Id.*

To the question of what emission limits apply to units authorized by PBRs, TCEQ stated:

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 draft Title V permit. When 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 30 TAC § 106.4(a)(1).

Id. TCEQ explained that some PBRs require registration and that sources “may be certified to demonstrate that emission allowables for each facility claimed under the PBR are less than the netting or major source trigger levels under the PSD and NNSR programs.” *Id.* at 13–14.

Under title V of the CAA, the EPA’s part 70 regulations, and Texas’s EPA-approved title V program rules, every title V permit must include all applicable requirements that apply to a source, as well as any permit terms necessary to assure compliance with these requirements. *See, e.g.*, 42 U.S.C. § 7661c(a).³⁷ “Applicable requirements,” as defined in the EPA’s and TCEQ’s rules, include the terms and conditions of preconstruction permits issued by TCEQ, including requirements contained in a PBR that is claimed by a source, as well as source-specific emission limits established through certified registrations associated with PBRs. *See* 40 C.F.R. § 70.2; 30 TAC § 122.10(2)(H).

The CAA requirement to include all applicable requirements in a title V permit can be satisfied through the use of IBR in certain circumstances. *See, e.g., White Paper Number 2* at 40 (explaining how IBR can satisfy CAA § 504 requirements).³⁸ When the EPA approved the Texas

³⁶ Historical PBRs are available at

www.tceq.texas.gov/permitting/air/permitbyrule/historical_rules/old106list/index106.html.

³⁷ CAA section 504(a) requires the following: “Each permit issued under this subchapter shall include enforceable emission limitations and standards, . . . and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan.” *Id.*; *see also* 40 C.F.R. § 70.6(a)(1) (“Each permit issued under this part shall include the following elements: (1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.”); *id.* § 70.3(c)(1) (“For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.”); 30 TAC 122.142(2)(B)(i) (“Each permit shall also contain specific terms and conditions for each emission unit regarding the following: . . . the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards.”).

³⁸ In upholding the EPA’s approval of IBR in Texas, the U.S. Court of Appeals for the Fifth Circuit noted: “Nothing in the CAA or its regulations prohibits incorporation of applicable requirements by reference. The Title V and Part 70 provisions specify *what* Title V permits ‘shall include’ but do not state *how* the items must be included.” *Public Citizen, Inc. v. U.S. E.P.A.*, 343 F.3d 449, 460 (5th Cir. 2003).

title V program, the EPA balanced the streamlining benefits of IBR against the value of a more detailed title V permit and approved TCEQ's use of IBR for minor NSR requirements (including PBRs), provided the program was implemented correctly. *See* 66 Fed Reg. 63318, 63321–32 (December 6, 2001). The EPA stated as a condition of program approval that “PBR are incorporated by reference into the title V permit by identifying . . . the PBR by its section number.” *Id.* at 63324. Notably, the EPA and TCEQ also agreed as part of the approval process that “PBRs will be cited to the lowest level of citation necessary to make clear what requirements apply to the facility.” *Id.* at 63322 n.4. This agreement is consistent with TCEQ's regulations approved by the EPA. *See* 30 TAC 122.142(2)(B)(i) (“Each permit shall also contain specific terms and conditions for each emission unit regarding the following: . . . the *specific regulatory citations* in each applicable requirement or state-only requirement *identifying the emission limitations and standards.*” (emphases added)). This is also consistent with the EPA's longstanding position that materials incorporated by reference must be clearly identified in the permit. *See, e.g., White Paper Number 2* at 37 (“Referenced documents must also be specifically identified.”).

With regard to the Petitioners' claim that the title V permit is unclear as to what emission limits apply to the units authorized by PBRs, the Petitioners have demonstrated that neither the title V permit nor the permit record explain what emission limits apply (i.e., how much pollution and which pollutants) to each unit authorized by a PBR. As explained by TCEQ in the RTC, a unit authorized by a PBR assumes emission limits from one of three places: 1) the individual PBR can contain emission limits or standards itself; 2) the emissions authorized under the PBR from the unit can be specified in 30 TAC § 106.4(a)(1); or 3) the source can certify and register specific emission limits below the limits specified in 30 TAC § 106.4(a)(1) or the relevant PBR. The Petitioners' claim is focused on the second and third scenarios, that it is unclear how the public could identify which pollutants a PBR authorizes each unit to emit under 30 TAC § 106.4(a)(1) or which PBRs in the Motiva title V permit were certified at lower emissions thresholds under 30 TAC § 106.6. Further, the permit is unclear as to whether the emission limits under 30 TAC § 106.4(a)(1) apply to each unit or to an entire project (group of units) when multiple units are authorized by the same PBR. *See Pasadena Order* at 10–15.

First, the Petitioners have demonstrated that the title V permit and permit record do not explain whether the emission limits under 30 TAC § 106.4 apply cumulatively to a group of units authorized as one project, or rather to each individual unit. It appears that TCEQ's regulations indicate that each individual unit authorized by a PBR assumes the emission limits in 30 TAC § 106.4(a)(1). 30 TAC § 106.4(a)(1) (“Total actual emissions authorized under permit by rule from the *facility* shall not exceed the following limits, as applicable.” (emphasis added)); *see TCEQ PBR Applicability Checklist, Title 30 TAC § 106.4* (Revised February 2018) (“Are the SO₂, PM₁₀, VOC, or other air contaminant emissions claimed for *each facility* in this PBR submittal less than 25 tpy? . . . Are the NO_x and CO emissions claimed for *each facility* in this PBR submittal less than 250 tpy?” (emphases added)). The EPA notes that TCEQ's regulations define facility as an individual unit. *See* 30 TAC § 116.10(4); 79 Fed. Reg. 40666, 40668 n. 3 (July 14, 2014). If TCEQ interprets the limits from 30 TAC § 106.4 to apply cumulatively to all units under a single project, then the title V permit is not clear as to which groups of units were authorized as single projects under a PBR for. In either case, TCEQ has not explained on the record whether the 30 TAC § 106.4 limits apply to each individual unit, as the regulations

suggest, or cumulatively to one project, as the Petitioners suggest. The EPA notes that the provisions of 30 TAC § 106.4 establish emission threshold limits to qualify for the PBR. While the language of 106.4(a)(1) states, “Total actual emissions authorized under permit by rule from the facility shall not exceed the following limits, as applicable . . . ,” it is unclear whether these terms could be viewed as threshold requirements or emission limits that apply to a unit. If the provisions of 30 TAC § 106.4(a)(1) are only threshold requirements, then there might not be any additional information that needs to be included in the title V permit itself. However, the permit record is unclear as to whether the provisions of 30 TAC § 106.4(a)(1) are emission limits.

Second, assuming 30 TAC § 106.4(a)(1) establishes binding emission limits, the permit and permit record still do not explain how one can identify which pollutants a unit is authorized to emit from the list provided in 30 TAC § 106.4(a)(1). While the Petitioners suggest that a unit is only authorized to emit the pollutants that are “applicable” to the unit, the title V permit and permit record are unclear as to whether each unit is authorized to emit all pollutants at the limits under 30 TAC § 106.4(a)(1) or if only certain pollutants are authorized depending on the unit.³⁹

Third, the Petitioners have demonstrated that the title V permit contains no direct reference to certain source-specific requirements (e.g., certified emission limits) derived from registered PBRs, and, therefore, it is not clear whether the title V permit currently includes or incorporates all requirements that are applicable to the facility, as required by the CAA, the EPA’s regulations, TCEQ’s regulations, the agreements underlying the EPA’s approval of IBR in Texas, and the EPA’s longstanding guidance concerning IBR (citations provided above). As explained in further details in the *Direction to TCEQ* section below, the EPA believes that the specific issue related to certified registrations can, and most likely will, be resolved expeditiously by a straightforward solution that TCEQ is in the process of implementing.

Finally, the Petitioners have demonstrated that the permit record did not establish to which emission units the following PBRs apply: 106.261 (3/14/1997), 106.261 (9/4/2000), 106.262 (3/14/1997), 106.475 (9/4/2000), 14 (6/7/1996), 86 (8/30/1988), 100 (6/7/1996), 106 (9/13/1993), 111 (1/8/1980), 111 (9/12/1989), and 261 (12/24/1988). While the “New Source Review Authorization References by Emission Unit” table identified emission units for most of the PBRs in the title V permit, neither this table nor any other portion of the permits identified the specific emission units to which the aforementioned PBRs apply.

³⁹ The EPA notes that, contrary to the Petitioners’ suggestions, even if all the emission limits in 106.4(a)(1) (i.e., limits for all of the listed pollutants) were to apply to a given unit or group of units, this would not necessarily have any substantive impact on whether or not a particular project would trigger major NSR review. The presence of an emission limit for a pollutant that a unit does not actually emit would not impact the potential to emit (PTE) or projected actual emissions (PAE) of that pollutant for that unit (which would remain at zero if that unit does not actually emit such pollutant). Therefore, even if all the limits listed in 106.4(a)(1)—even those relating to pollutants that a unit does not emit—were to apply to a given unit, some may simply be redundant, irrelevant, or unnecessary for determining the applicability of major NSR. The same logic holds true for the question of whether these limits apply individually or cumulatively: the fact that a unit is *authorized* to emit a certain amount by a generic emission limit in a PBR would not necessarily determine the facility’s PTE or PAE, provided the units were otherwise constrained by their physical or operational design or by other enforceable limits. While these generic limits may be able to be used to provide an enforceable limit to constrain PTE or PAE, it is not required that they serve this purpose. So, while the Petitioners have demonstrated that the title V permit is unclear as to what emission limits apply, the Petitioners have not demonstrated whether these emission limits have any bearing on whether or not the unit or project triggers the applicability of major NSR.

Direction to TCEQ: The EPA understands that TCEQ has begun a process to clarify which PBRs only apply to insignificant units at Motiva and plans to begin identifying PBRs that apply to insignificant units in other title V permits in Texas. To the extent any PBRs in the Motiva title V permit apply to insignificant units, TCEQ should make those clarifications in the permit and permit record, as necessary. If TCEQ makes those changes, the title V permit would likely contain sufficient information on these PBRs to satisfy the requirements of the CAA and TCEQ's approved program. In *White Paper Number 2*, the EPA explained that part 70 allowed "considerable discretion to the permitting authority in tailoring the amount and quality of information required" for insignificant units in title V permits. *White Paper Number 2* at 30. The EPA explained that applicable requirements related to insignificant units can be addressed in title V permits with minimal or no reference to any specific emissions unit, activity, or emissions information. *White Paper Number 2* at 4, 31. If TCEQ amends the record or title V permit to identify those PBRs that only apply to insignificant units, without including any further information on the emissions or direct reference to applicable insignificant emission units, the EPA anticipates such an approach would be consistent with our guidance and the requirements of title V of the CAA.

For the remaining PBRs that do not apply to insignificant units, TCEQ must explain how the emission limits under 30 TAC § 106.4(a)(1) apply to the units authorized by PBR at Motiva. If neither the permit nor permit record contain information to determine what emission limits apply, then TCEQ should amend the permit and permit record as necessary. Specifically, TCEQ must explain whether 30 TAC § 106.4(a)(1) is a threshold requirement or establishes binding emission limits. If 30 TAC § 106.4(a)(1) establishes emission limits, TCEQ must explain whether the emission limits under 30 TAC § 106.4(a)(1) apply to individual units (and identify specifically which limits apply to which units) or to an entire project or other grouping of units (and identify specifically which limits apply to which group(s) of units).

With regard to the question of what pollutants a unit or group of units is authorized to emit, TCEQ must amend the permit and permit record, as necessary, to identify the applicable pollutants for each unit or group of units. If a unit is authorized to emit only certain pollutants for which 30 TAC § 106.4(a)(1) provides emission limits, TCEQ should explain how to identify which pollutants are permitted by PBR authorization for a given unit so that the title V permit is clear as to how the emission limits apply to that unit, and TCEQ should revise the permit as necessary. On the other hand, if TCEQ believes that all units authorized by a PBR are permitted to emit all pollutants at the emission rates provided in 30 TAC § 106.4(a)(1), TCEQ should update the permit and permit record, as necessary, to reflect that.

With regard to the issue of certified registrations, the EPA understands that TCEQ intends, through a currently pending title V minor modification action, to update the "New Source Review Authorization References" table to include a reference to the registration numbers associated with registered PBRs.⁴⁰ These registration numbers function like permit numbers, as they each uniquely identify a specific document that contains the specific requirements that apply to the source, including any certified source-specific emission limits taken under 30 TAC

⁴⁰ Motiva Port Arthur Application for Minor Modification to Title V Permit No. O1386, Project No. 27632 (May 21, 2018).

106.6. Thus, the registration numbers that TCEQ has proposed to include in the title V permit (i.e., those currently included in the draft title V permit modification) point directly to the specific requirements that are applicable to the source. The registered PBR requirements themselves may be found either online or in person at the TCEQ file room. The EPA understands that TCEQ recently updated its online file management system and has provided guidance regarding how to access permit documents (including PBR registrations) on this online database.⁴¹

In addition, TCEQ should explain to which emission units the 12 PBRs identified in the Petition apply. The EPA notes that TCEQ's RTC for the Motiva title V permit suggests that PBRs can sometimes apply to insignificant units. RTC at 13–14. The EPA has previously explained that for insignificant units, permitting authorities have broad discretion to “utilize standard permit conditions with minimal or no reference to any specific emissions unit or activity, provided that the scope of the requirement and its enforcement are clear.” *White Paper Number 2* at 3–4, 30–31. If TCEQ believes that the PBRs raised in the Petition only apply to insignificant units, then TCEQ should provide such explanation on the record and determine if any further information is required in the title V permit. Otherwise, TCEQ should update the title V permit and list these PBRs next to their applicable emission units in the “New Source Review Authorization References by Emission Unit” table. If any of these PBRs apply to insignificant units, then TCEQ should identify those PBRs as applying to insignificant units. It is likely that no additional unit information about emission limits for insignificant units would be necessary. However, if any of these PBRs do not apply to insignificant units, then TCEQ should amend the permit to identify the units to which those PBRs apply.

As explained previously, under title V of the CAA, the EPA's part 70 regulations, and Texas's EPA-approved title V program rules, the title V permit must clearly identify all applicable requirements that apply to a source. The CAA requirement to include all applicable requirements in a title V permit can be satisfied through the use of IBR if the title V permit is clear and unambiguous as to how the emission limits apply to particular emission units. *See* 42 U.S.C. § 7661c(a); 40 C.F.R. §§ 70.6(a)(1), 70.3(c)(1); 30 TAC 122.142(2)(B)(i); 66 Fed. Reg. 63318, 63322 n. 4, 63324; *White Paper Number 2* at 3–4, 9, 35, 37; *Shell Deer Park Order* at 11–15; *In the Matter of CITGO Refining and Chemicals Company L.P. West Plant, Corpus Christi, Texas*, Order on Petition No. VI-2007-01 at 11, 12 n. 5 (May 28, 2009) (*Citgo Order*); *supra* pp. 13–14.

For the foregoing reasons, the EPA grants the Petitioners' request for an objection on this claim.

⁴¹ TCEQ Central File Room Online, available at https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_SEARCH. Several guides for how to find various types of air permitting records are available at https://www.tceq.texas.gov/permitting/air/nav/air_status_permits.html.

Claim 8: The Petitioners Claim That the Proposed Permit Fails to Identify Applicable Emission Limits, Operating Requirements, and Monitoring, Reporting, and Recordkeeping Requirements for Emission Units Subject to NSPS and NESHAP Rules.

Petitioners' Claim: The Petitioners claim that the title V permit's IBR of 40 CFR Part 60, Subpart Ja, and Part 63, Subparts DDDDD, ZZZZ, and EEEE is deficient because the permit fails to identify specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting requirements that apply to each unit. Petition at 44. For support, the Petitioners assert the EPA has objected to many title V permits that, like Motiva's permit, did not specify which requirements in the relevant part 60 and part 63 standards applied to the units at the source. *Id.* at 44 (citing *Citgo Order* at 2–3; *Tesoro Order* at 8–9). The Petitioners claim that the failure to identify specific monitoring and testing requirements renders the title V permit unenforceable. *Id.*

EPA's Response: For the following reasons, the EPA denies the Petitioners' request for an objection on this claim.

The Petitioners cite to the *Tesoro Order* and the *Citgo Order* for their claim that the Motiva title V permit must include further details on the NSPS and NESHAP standards cited in the Petition. However, the Petitioners fail to analyze these NSPS and NESHAP standards as they apply to Motiva under the relevant factors laid out in the *Tesoro Order* and *White Paper Number 2*. As the EPA explained in the *Tesoro Order*, the permitting authority may IBR the NSPS and NESHAP standards so long as i) applicability issues and compliance obligations are clear, and (ii) the permit contains any additional terms and conditions necessary to assure compliance with all applicable requirements. *Tesoro Order* at 8–9; *White Paper Number 2* at 34–38.

The Petitioners have not provided any analysis to explain how applicability or compliance obligations are unclear. Specifically, the Petitions have not provided any analysis of the four federal standards raised in the Petition or attempted to explain why there would be any ambiguity as to how these standards apply at Motiva. Since the Petitioners have not actually analyzed the requirements of these standards, the Petitioners have not demonstrated that the permit would need to contain any additional terms or conditions necessary to assure compliance.

Further, the Petitioners have not demonstrated that TCEQ's practice of referencing these particular NSPS and NESHAP standards generally has led to ambiguity as to how these standards apply at Motiva. In the *Tesoro Order* and the *Citgo Order*, the EPA determined that for certain types of units, certain NSPS and NESHAP standards need to be incorporated in more detail, particularly where there is not enough information on the face of the permit or permit record to determine which specific requirements within those standards apply. However, the Petitioners have not demonstrated that the standards cited in the Petition with respect to the units at Motiva contain the same ambiguity present in the *Tesoro Order* and the *Citgo Order*.⁴²

As explained above, the Petitioners have not demonstrated that there is any ambiguity in the title V permit as to any particular unit authorized under these NSPS and NESHAP standards. When

⁴² See *supra* note 21.

