BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	
LDEQ Title V Air Operating Permit No. 2363-V8	)	
	)	Permit No. 2363-V8
For ExxonMobil Fuels & Lubricant Company's Baton Rouge Refinery – Utilities Unit	)	
	)	
Issued by the Louisiana Department of Environmental Quality	)	

PETITION TO OBJECT TO THE TITLE V OPERATING PERMIT FOR THE UTILITIES UNIT AT EXXONMOBIL FUELS & LUBRICANT COMPANY'S BATON ROUGE REFINERY

Pursuant to section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), Louisiana Bucket Brigade, Earthjustice, Environmental Integrity Project, and Sierra Club ("Petitioners") petition the Administrator of the U.S. Environmental Protection Agency ("EPA") to object to the above-referenced Title V permit issued by the Louisiana Department of Environmental Quality ("LDEQ") for the Utilities Unit at the Baton Rouge, Louisiana refinery owned and operated by ExxonMobil Fuels & Lubricant Company ("Exxon").

The Utilities Unit includes the refinery's wastewater treatment train, which emits massive amounts of volatile organic compounds ("VOCs") and VOC hazardous air pollutants ("HAPs"). As discussed below in more detail, EPA must object because the draft permit's[1] monitoring and reporting requirements are inadequate to ensure compliance with limits for VOCs and particulate matter ("PM") emitted by the wastewater treatment system. Due to acute environmental justice concerns in the communities surrounding the refinery, EPA must pay special attention to the monitoring and reporting requirements for these limits. EPA must also object for the independent reason that LDEQ failed to provide a reasoned explanation for why the draft permit ensures compliance with the VOC and PM limits for the treatment system.

In addition, EPA must object because the draft permit does not comply—and fails to ensure compliance—with chemical accident prevention requirements from 40 C.F.R. Part 68. Further, the permit fails to ensure compliance with certain "general duty" requirements, including requirements from Clean Air Act § 112(r)(1).

[1] Because LDEQ has not addressed Petitioners' significant public comments on the permit, the permit currently under EPA review is not a proposed permit but rather a draft permit, as explained more fully below.

Finally, LDEQ forwarded this permit to EPA for its 45-day review period prior to the conclusion of the public comment period on the draft permit. Petitioners submitted significant and timely comments on the draft permit, but LDEQ has not withdrawn the permit from EPA review or responded to Petitioners' comments. Petitioners therefore protectively submit this petition by the current March 30, 2020 deadline without having received a response to comments. LDEQ's timing of its public comment period concurrent with EPA's review period is contrary to the Clean Air Act and EPA's Title V regulations, and EPA must object on that basis as well.[2]

BACKGROUND

I. THE PROPOSED PERMIT ON WHICH THIS PETITION IS BASED

This petition asks EPA to object to the draft Title V permit for the Utilities Unit at Exxon's Baton Rouge, Louisiana refinery (AI No. 2638, Permit No. 2363-V8). The permit action at issue here is a permit renewal combined with a permit modification.

LDEQ released the draft permit for public comment on December 20, 2019, with a comment deadline of January 23, 2020. LDEQ's Public Notice.[3] Petitioners timely submitted comments on January 23, raising all of the objections discussed below in this petition.[4] *See* Ex. 1, Comments. EPA's 45-day review period ran concurrently with the public comment period, with EPA's review period expiring on January 27, 2020.[5] Petitioners are timely filing this petition by the March 30, 2020 deadline to petition EPA to object to the draft permit.[6]

II. PETITIONERS

Louisiana Bucket Brigade ("LABB") is a non-profit environmental health and justice organization based in the state of Louisiana. LABB works with communities that neighbor Louisiana's oil refineries and chemical plants and uses grassroots action to create an informed, healthy society with a culture that holds the petrochemical industry and government accountable for the true costs of pollution to create a healthy, prosperous, pollution-free, and just state where people and the environment are valued over profit.

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[2] If LDEQ issues a revised permit but fails to correct the problems that Petitioners pointed out in their comments on the draft permit, Petitioners plan to petition EPA again, to object to that revised permit.

[3] The public notice is available on LDEQ's Electronic Document Management System ("EDMS"), at: https://edms.deq.louisiana.gov/app/doc/view.aspx?doc=11977684&ob=yes&child=yes

[4] Petitioners Louisiana Bucket Brigade, Environmental Integrity Project, and Earthjustice filed these comments. Sierra Club was not listed on the comments.

[5] *See* https://www.epa.gov/caa-permitting/operating-permit-timeline-louisiana

[6] EPA Region 6's website lists the deadline as March 30, 2020: https://www.epa.gov/caa-permitting/operating-permit-timeline-louisiana

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

Sierra Club is one of the oldest and largest national nonprofit environmental organizations in the country, with approximately 3.5 million members and supporters dedicated to exploring, enjoying, and protecting the wild places and resources of the earth; practicing and promoting the responsible use of the earth's ecosystems and resources; educating and enlisting humanity to protect and restore the quality of the natural and human environment; and using all lawful means to carry out these objectives. One of Sierra Club's priority national goals is promoting and improving air quality.

III. GENERAL TITLE V PERMIT REQUIREMENTS

To protect public health and the environment, the Clean Air Act prohibits stationary sources of air pollution from operating without or in violation of a valid Title V permit, which must include conditions sufficient to "assure compliance" with all applicable Clean Air Act requirements. 42 U.S.C. §§ 7661c(a), (c); 40 C.F.R. §§ 70.6(a)(1), (c)(1). "Applicable requirements" include all standards, emissions limits, and requirements of the Clean Air Act. 40 C.F.R. § 70.2. Congress intended for Title V to "substantially strengthen enforcement of the Clean Air Act" by "clarify[ing] and mak[ing] more readily enforceable a source's pollution control requirements." S. Rep. at 347, 348, *as reprinted in* A Legislative History of the Clean Air Act Amendments of 1990 (1993), at 8687, 8688. As EPA explained when promulgating its Title V regulations, a Title V permit should "enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." Operating Permit Program, Final Rule, 57 Fed. Reg. 32,250, 32,251 (July 21, 1992).

Among other things, a Title V permit must include compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. 42 U.S.C. § 7661c(c); 40 C.F.R. § 70.6(c)(1). The D.C. Circuit Court has explained that Title V requires that a "monitoring requirement insufficient 'to assure compliance' with emission limits has no place in a permit unless and until it is supplemented by more rigorous standards." *See Sierra Club v. EPA,* 536 F.3d 673, 677 (D.C. Cir. 2008).

If applicable requirements themselves contain no periodic monitoring, EPA's regulations require permitting authorities to add "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." 40 C.F.R. § 70.6(a)(3)(i)(B); *see also In the Matter of Mettiki Coal, LLC*, Order on Petition No. III-2013-1 (Sept. 26, 2014) ("Mettiki Order") at 7. The D.C. Circuit has also acknowledged that the mere existence of periodic monitoring requirements may not be sufficient. 536 F.3d at 676–77.

For example, the court noted that annual testing is unlikely to assure compliance with a daily emission limit. *Id.* at 675. In other words, the frequency of monitoring methods must bear a relationship to the averaging time used to determine compliance. 40 C.F.R. § 70.6(c)(1) of EPA's regulations acts as a "gap filler" and requires that permit writers must supplement a periodic monitoring requirement inadequate to the task of assuring compliance. *Id.* at 675*; see also* Mettiki Order at 7.

In addition to including permit terms sufficient to satisfy EPA's Title V monitoring and reporting requirements, permitting authorities must include a rationale for the monitoring and reporting requirements selected that is clear and documented in the permit record. Mettiki Order at 7-8. *See also* 40 C.F.R. § 70.7(a)(5) ("The permitting authority shall provide a statement that sets for the legal and factual basis for the draft permit conditions ….").

If a state proposes a Title V permit that fails to include and assure compliance with all applicable Clean Air Act requirements, EPA must object to the issuance of the permit before the end of its 45-day review period. 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c). If EPA does not object to a Title V permit, "any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period… to take such action." 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). The Clean Air Act provides that EPA "shall issue an objection … if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the" Act. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1); *see also N.Y. Pub. Interest Group v. Whitman*, 321 F.3d 316, 333 n.12 (2d Cir. 2003) (explaining that under Title V, "EPA's duty to object to non-compliant permits is nondiscretionary"). EPA must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

IV. ENVIRONMENTAL JUSTICE CONCERNS MANDATE INCREASED FOCUS AND ACTION BY EPA TO ENSURE THAT THE PERMIT'S PROVISIONS—ESPECIALLY ITS MONITORING AND REPORTING PROVISIONS—ARE STRONG AND COMPLY WITH TITLE V REQUIREMENTS.

As Petitioners pointed out in their comments to LDEQ (at pages 1-3), the communities surrounding the Exxon Baton Rouge refinery contain a large, dense population that is overburdened by hazardous and other air pollution, including from Exxon's co-located Baton Rouge chemical plant. Together, Exxon's refinery and chemical plant are part of an industrial complex the size of at least 250 Superdomes.[7] Together, they released 1,342.9 tons of toxic air pollution in 2018, consisting of chemicals like benzene, chromium, polycyclic aromatic compounds, and a brew of other hazardous air pollutants, carcinogens, and metals.[8] And the

[7] NPR, Baton Rouge's Corroded, Overpolluting Neighbor: Exxon Mobil (May 2013), https://www.npr.org/2013/05/30/187044721/baton-rouge-s-corroded-overpolluting-neighbor-exxon

[8] *See* United Church of Christ, Breath to the People (Sacred Air and Toxic Pollution) (Feb. 2020) at 22, 24-25, https://d3n8a8pro7vhmx.cloudfront.net/unitedchurchofchrist/pages/24840/attachments/original/1582721312/FINAL_BreathToThePeople_2.26.2020.pdf?1582721312

chemical plant is currently undergoing a $469 million expansion to build a new polypropylene resin unit.[9]

In addition, other nearby sources also emit large amounts of air toxics and criteria pollutants. Those sources include the Formosa Plastics facility, which manufactures polyvinyl chloride resin and has plans for a $332 million expansion that will increase its capacity by 20%,[10] and a Honeywell International facility, which manufactures refrigerant chemicals and may undergo a $40 million expansion.[11] In 2003, in the span of less than a month, three separate accidents at the Honeywell plant collectively forced the hospitalization of five plant workers, caused the death of another worker, and created one instance where residents within a half-mile radius were required to shelter in their homes.[12] A simple Google Maps search shows that only a 1.5 mile drive separates the Exxon refinery from the Formosa plant, and less than a two mile drive separates the refinery from the Honeywell facility. And across the Mississippi River, in West Baton Rouge, sits the Placid Refining refinery, which may soon undergo an $86 million expansion.[13] Further, a search on LDEQ's Emissions Reporting and Inventory Center ("ERIC") website[14] for sources of VOC pollution within three miles of the Exxon refinery also reveals other large nearby industrial air polluters, including Enterprise Products Operating LLC's Baton Rouge fractionator and propylene concentrator unit, Coastal Bridge Company LLC's Port Allen asphalt plant, Shell Catalysts & Technologies LP's Port Allen plant, and Intercontinental Terminals Company LLC's Anchorage chemical terminal. *See* Ex. 2, ERIC Report of Actual VOC Emissions Within Three Miles of Exxon Baton Rouge Refinery.

The state-only limits in the Title V permit for the Exxon refinery's Utilities Unit alone (one of several Title V permits for the refinery) allow the refinery's wastewater treatment facilities and other individual units from the utilities complex to annually emit over 600 tons[15] of

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[9] Greater Baton Rouge Business Report, Plastics is the word for Baton Rouge's petrochemical plants (Feb. 2020), https://www.businessreport.com/business/plastics-baton-rouge-petrochemical-plants

[10] *See* The Advocate, Formosa Plastics plans $332M plant expansion in Baton Rouge (August 2019), https://www.theadvocate.com/baton_rouge/news/business/article_5a44175a-c9a9-11e9-a49f-6794530f51bf.html

[11] *See* The Advocate, Honeywell considering investing $40M in Baton Rouge plant to expand refrigerant capacity (Oct. 2019), https://www.theadvocate.com/baton_rouge/news/business/article_1dccc3c8-f67f-11e9-8af5-873d97bc67d1.html

[12] CSB, Honeywell Chemical Incidents, https://www.csb.gov/honeywell-chemical-incidents/

[13] *See* The Advocate, Crude oil refinery mulls $86M in West Baton Rouge plant upgrades (Oct. 2019), https://www.theadvocate.com/baton_rouge/news/business/article_2cd80436-eba8-11e9-8e2f-3bde22badfe0.html

[14] https://business.deq.louisiana.gov/Eric/EricReports/RadiusReportSelector?

[15] As discussed below, the federally-enforceable VOC limits in this permit for the wastewater treatment facilities alone allow over 400 tons per year of VOCs. When added together, the individual state-only

HAPs. Draft Statement of Basis at 5-6.[16] And state-only limits in the recent draft Title V permit for the refinery's reforming complex, which was issued for comment in late January 2020, allow the facility to emit around 50 tons of HAPs each year. *See* Ex. 3, Excerpts from Draft Statement of Basis for Reforming Complex, at 5-6. Further, over the years, the refinery has experienced multiple major fires, explosions, and other accidents. *See infra* at 21-22.

The communities surrounding the refinery include a significant population of people of color and low-income residents, as well as large numbers of community members who face increased vulnerability to health effects from air pollution due to their age (under 18 or over 65).[17] Specifically, EPA found, based on 2010 U.S. Census and American Community Survey data, that 59,493 people live within a three mile radius of the Exxon refinery—of whom 92% are people of color, 28% are minors under the age of 18, 10% are seniors over the age of 65, and nearly two-thirds (38,763) live below the poverty level.[18] That same data show that 3,890 people live within a one mile radius of refinery—of whom 97% are people of color, 30% are minors under the age of 18, 9% are seniors over the age of 65, and over two-thirds (2,689) live below the poverty level. In addition, ECHO indicates that the area surrounding the refinery is above the 80th percentile for ten different environmental justices indexes, including the National Air Toxics Assessment (NATA) Air Toxics Cancer Risk index (with a percentile ranking of 96.2), the NATA Respiratory Hazard index (with a percentile ranking of 98.5) and the $PM_{2.5}$ index (with a percentile ranking of 89.4). And ECHO lists the refinery as being in a status of "High Priority Violation" in each of the previous 12 quarters. A recent report by EIP and the United Church of Christ, *Breath to the People*, highlighted the environmental injustice and highly toxic air in the area near this refinery.[19]

HAP limits allow even more HAP pollution—over 600 tons per year, as shown in the cited pages (5-6) of the statement of basis. For example, those cited pages show that the permit's state-only limits allow the following tons per year of the following HAPs regulated under Clean Air Act § 112(b)(1), 42 U.S.C. § 7412(b)(1): 98.65 tons/year 2,2,4-trimethylpentane, 18.22 tons/year benzene, 5.77 tons/year biphenyl, 19.82 tons/year ethylbenzene, 43.84 tons/year methanol, 40.90 tons/year methyl ethyl ketone, 7.14 tons/year methyl isobutyl ketone, 155.48 tons/year methyl tert-butyl ether, 12.68 tons/year n-hexane, 22.19 tons/year naphthalene, 5.94 tons/year phenol, 85.05 tons/year toluene, and 101.72 tons/year xylene (mixed isomers). These same pages from the statement of basis explain that VOC HAPs may be emitted up to the individual state-only rates listed to "allow for potential variability of upstream operations" but that the Utilities Unit is limited to total VOCs of 460.78 tons per year.

[16] The draft permit and statement of basis are part of LDEQ's permit package, which can be accessed here on the EDMS site: https://edms.deq.louisiana.gov/app/doc/view.aspx?doc=11980802&ob=yes&child=yes

[17] *See* Envt'l Justice Health Alliance for Chemical Policy Reform *et al.*, Life at the Fenceline: Understanding Cumulative Health Hazards in Environmental Justice Communities (2018), https://new.comingcleaninc.org/assets/media/documents/Life%20at%20the%20Fenceline%20-%20English%20-%20Public.pdf.

[18] The Detailed Facility Report for the refinery from EPA's Enforcement and Compliance History Online (ECHO), which contains this information, is available here: https://echo.epa.gov/detailed-facility-report?fid=110043804185.

[19] United Church of Christ, Breath to the People, *supra* note 8, at 22-25.

In these circumstances, as Petitioners' comments to LDEQ explained (at pages 1-3), which LDEQ has not responded to, there is a compelling need for EPA to devote increased, focused attention to ensure that all Title V requirements have been complied with—especially ensuring that monitoring is adequate to assure compliance with the limits for Exxon's refinery. EPA has recognized this in responding to a prior Title V permit petition. *See, e.g.*, *In the Matter of United States Steel Corp. – Granite City Works*, Order on Petition No. V-2011-2 (Dec. 3, 2012) at 4-6 (because of "potential environmental justice concerns" raised by the fact that "immediate area around the [] facility is home to a high density of low-income and minority populations and a concentration of industrial activity," "[f]ocused attention to the adequacy of monitoring and other compliance assurance provisions [was] warranted") (citing in part to Executive Order 12898 (Feb. 11, 1994)).[20]

Increased attention to the permit's monitoring requirements for VOCs from the refinery's wastewater treatment system is especially important here because the state-only portions of this permit show that the system is capable of emitting over 600 tons of HAPs, almost all of which are VOC HAPs. *See* Draft Permit's Emission Rates for TAP/HAP & Other Pollutants; Draft Statement of Basis at 6.[21] Relatedly, the benzene fenceline data for the Baton Rouge refinery that Exxon has reported to EPA (under the NESHAP requirements from 40 C.F.R. § 63.658) shows that the refinery is emitting large amounts of VOC HAPs. In fact, the data available for the refinery shows that it is dangerously close to the benzene level that triggers corrective action under § 63.658: the action level is an annual average of 9 $\mu g/m^3$, and the most recent data available (from the last quarter of 2019) shows the refinery's annual average was most recently

[20] Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Exec. Order 12898 (Feb. 11, 1994); *see also* EPA, EJ 2020, https://www.epa.gov/environmentaljustice/ej-2020-action-agenda-epas-environmental-justice-strategy; EPA, Plan EJ 2014, Considering Environmental Justice in Permitting (2014), https://nepis.epa.gov/Exe/ZyPDF.cgi/P100ETRR.PDF?Dockey=P100ETRR.PDF.

[21] As noted above, the draft permit and statement of basis are part of LDEQ's permit package, which can be accessed here on the EDMS site: https://edms.deq.louisiana.gov/app/doc/view.aspx?doc=11980802&ob=yes&child=yes

In particular, the draft Title V permit's state-only limits for the WCLA-OFFSITES portion of the wastewater treatment system allow (among others) the following tons/year of the following VOC HAPs regulated under Clean Air Act § 112(b)(1): 27.36 tons/year methanol, 4.14 tons/year 2,2,4-trimethylpentane, 6.85 tons/year methyl ethyl ketone, 6.72 tons/year methyl tert-butyl ether, 5.05 tons/year naphthalene, 4.48 tons/year toluene, and 7.33 tons/year xylene (mixed isomers). Draft Permit's Emission Rates for TAP/HAP & Other Pollutants at 1. And the draft permit's state-only limits for the WCLA-ONSITES portion of the wastewater treatment system allow (among others) the following tons/year of the following VOC HAPs regulated under § 112(b)(1): 94.45 tons/year 2,2,4-trimethylpentane, 16.78 tons/year benzene, 5.65 tons/year biphenyl, 16.22 tons/year ethylbenzene, 16.48 tons/year methanol, 34.05 tons/year methyl ethyl ketone, 6.60 tons/year methyl isobutyl ketone, 148.73 tons/year methyl tert-butyl ether, 11.24 tons/year n-hexane, 17.12 tons/year naphthalene, 5.10 tons/year phenol, 80.10 tons/year toluene, and 94.26 tons/year xylene (mixed isomers). Draft Permit's Emission Rates for TAP/HAP & Other Pollutants at 1-2.

8.5 µg/m^3—and that the annual average was even closer to the action level in September 2019 (reaching as high as 8.9 µg/m^3) and November 2019 (reaching 8.8 µg/m^3). *See* Ex. 4, Table of Fenceline Data.[22] These concentrations are over twice the reference exposure level for inhalation of benzene that indicates chronic health harm to the hematologic system (3 µg/m^3), as determined by the California Office of Environmental Health Hazard Assessment.[23]

In establishing its NESHAP fenceline monitoring requirements, EPA used benzene as an indicator pollutant, which it described as a surrogate, for all of the various fugitive HAPs (including VOC HAPs) emitted by refinery units, including wastewater treatment systems. EPA explained:

> [W]e selected benzene as a surrogate … By selecting a single HAP as a surrogate for all fugitive HAP, we are able to establish a clear action level … As described in the proposal preamble, benzene is ubiquitous at refineries and present in nearly all refinery process streams, including crude oil, gasoline and wastewater.

80 Fed. Reg. 75,178, 75,196 (Dec. 1, 2015). *See also id.* at 75,192-93 (noting that "the sources addressed by the fenceline monitoring standard" include "refinery fugitive emissions sources such as wastewater collection and treatment operations, equipment leaks, heat exchange systems and storage vessels"). Thus, the high fenceline levels for benzene (which is itself a VOC HAP) reported by Exxon for the Baton Rouge refinery demonstrate that the refinery's units are emitting large amounts of fugitive VOC HAPs, and the refinery's wastewater treatment system could very easily be a significant source (or perhaps even the main source) of these VOC HAPs. Without strong monitoring for the VOCs from the treatment system, there is no way to be sure whether this is the case.

In sum, EPA has a responsibility—through the Title V permit at issue here—to protect the surrounding overburdened, minority, and low-income community in Baton Rouge from disproportionate adverse impacts from Exxon's refinery.

GROUNDS FOR OBJECTION

For all of the reasons discussed below, EPA must object to the draft Title V permit for the Utilities Unit because that permit fails to satisfy substantive and procedural requirements of the Clean Air Act and EPA's Title V regulations.

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[22] *See also* EIP, Monitoring for Benzene at Refinery Fencelines (Feb. 2020) at Table 2 (noting Exxon Baton Rouge refinery among those with fenceline values above federal acute minimal risk level), https://environmentalintegrity.org/wp-content/uploads/2020/02/Benzene-Report-2.6.20.pdf

[23] *See* https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary; https://oehha.ca.gov/media/downloads/crnr/benzenerelsjune2014.pdf

I. THE DRAFT PERMIT DOES NOT INCLUDE MONITORING, REPORTING, OR RECORDKEEPING REQUIREMENTS THAT ENSURE COMPLIANCE WITH THE HOURLY AND ANNUAL VOC AND PM LIMITS FOR THE REFINERY'S WASTEWATER TREATMENT SYSTEM.

As Petitioners' comments explained (at pages 3-6), Exxon's draft Title V permit does not include adequate monitoring, reporting, or recordkeeping requirements to ensure compliance with the federally-enforceable hourly and annual VOC and PM limits for the refinery's wastewater treatment system, which the draft Title V permit refers to as Water Clarification ("WCLA") sources. *See* Draft Permit's Air Permit Briefing Sheet at 1. The WCLA sources include both wastewater collected throughout the refinery ("WCLA-OFFSITES") and "onsite" processing units ("WCLA-ONSITES"). *Id.*

Specifically, in violation of the requirements from 40 C.F.R. §§ 70.6(a)(3)(i) and/or 70.6(c)(1), as well as the requirements from 42 U.S.C. §§ 7661c(a) and 7661c(c), the draft permit's monitoring, reporting, and other requirements cannot ensure compliance with the federally-enforceable 23.62 average lb/hour and 103.47 tons/year limits for VOCs from the WCLA-OFFSITES or the 73.29 average lb/hour and 321.00 tons/year limits for VOCs from the WCLA-ONSITES.[24] *See* Draft Permit's Emission Rates for Criteria Pollutants and CO2e at 2. In addition, the draft permit cannot ensure compliance with the following federally-enforceable PM10 and PM2.5 limits for WCLA-ONSITES: 4.05 average lb/hour, 4.95 max lb/hour, and 17.75 tons/year. *See id.* at 1.

Not only are the monitoring, reporting, and recordkeeping requirements inadequate for these limits; we could not find <u>any</u> such requirements—including, importantly, any details on how emissions are to be calculated—for these limits in the draft Title V permit.[25] *See* Draft Title

[24] The draft Title V permit does not specify the source of these VOC limits (or the PM limits discussed in the next sentence), *i.e.*, whether they are limits from a New Source Review or Prevention of Significant Deterioration permit, the Louisiana State Implementation Plan, or some other source. The limits are federally enforceable because nothing in the permit designates the limits as "state only." *See* 40 C.F.R. § 70.6(b)(1)-(2) (all terms and conditions in a Title V permit are federally enforceable, except for those specifically designated as not being federally enforceable). Further, in a January 17, 2020 phone call, LDEQ permit writer Shannon Pusateri confirmed that the limits are federally enforceable.

Because we do not know the source of the limits and LDEQ has not issued a response to comments, it could be that the underlying limits were originally accompanied by monitoring or testing requirements that are not listed in the permit, in violation of § 70.6(a)(3)(i)(A)—or that the limits were never accompanied by any monitoring or testing requirements, in which case § 70.6(a)(3)(i)(B) would mandate that LDEQ add sufficient monitoring, reporting, and recordkeeping requirements into the Title V permit to ensure compliance with the limits. Or, if the limits were originally accompanied by monitoring or other related requirements but those requirements cannot ensure compliance with the limits, then § 70.6(c)(1) would require LDEQ to supplement the original monitoring and other requirements.

[25] Thus, there is no "specific term or condition" containing monitoring, reporting, or recordkeeping requirements to address here. *See* 40 C.F.R. § 70.12(a)(2)(i) (requiring Title V petitions to identify the "specific grounds for an objection, citing to a specific permit term or condition where applicable"). In any event, § 70.12's requirements do not become effective until April 6, 2020—after the date that Petitioners are filing this petition. 85 Fed. Reg. 6431, 6442 (Feb. 5, 2020).

V Permit's Specific Requirements at 1-28. Because the permit does not list any methods for monitoring or calculating these VOC and PM emissions, the public and regulators cannot evaluate how or whether any such methods that may be used by Exxon (but not listed in the permit) ensure compliance with these limits.[26] Nor can the public (or LDEQ or EPA) determine if the refinery's wastewater treatment system is actually meeting these important VOC and PM limits.

In particular, if Exxon is using calculation methods or emission factors to estimate VOC and PM emissions from the treatment system that do not appear on the face of the permit, how can the public and regulators be sure that these calculation methods or emission factors ensure compliance with the treatment system's hourly and annual limits? It may be that any methods/factors are inaccurate in general, inaccurate for this particular source, rely on unsubstantiated assumptions, do not account for variability of emissions or underlying conditions, or are otherwise flawed. Any monitoring or calculation methods for these permit limits must be clear on the face of the Title V permit.

Although at least certain units that appear to be part of the refinery's wastewater treatment system are subject to certain NESHAP, NSPS, and state requirements (*see* Draft Permit's Specific Requirements at 4-13, 15-17, 23-28), these federal and state requirements cannot ensure compliance with the very specific hourly and annual VOC and PM limits for WCLA-OFFSITES and WCLA-ONSITES. In particular, nothing in the permit ties the NSPS, NESHAP, or other requirements to the specific VOC or PM limits for WCLA-OFFSITES and WCLA-ONSITES or explains how any NSPS, NESHAP, or state monitoring or other requirements can be used to determine specific, actual emissions of VOCs and PM from the wastewater treatment system. *See In the Matter of Shell Chemical LP and Shell Oil Co*, Order on Petition Nos. VI-2014-04 and VI-2014-05 (September 24, 2015) at 21-23. Nor does the permit record explain how the NSPS, NESHAP, or other requirements can be used to determine actual hourly or annual VOC or PM emissions from the treatment system.

In addition, although the permit does incorporate certain leak detection and repair requirements ("LDAR") for the WCLA Heavy Liquid Fugitive Emissions (*see* Draft Permit's Specific Requirements at 19-22), it is unclear from the draft permit or statement of basis whether fugitive emissions are even included in the limits for WCLA-OFFSITES and WCLA-ONSITES. Even if fugitive emissions are included in WCLA-OFFSITES and WCLA-ONSITES emissions, these LDAR requirements only apply to a very small percentage of the WCLA emissions: the annual limit for the fugitive emissions is 4.28 tons of VOCs. *See* Draft Permit's Emission Rates for Criteria Pollutants and CO2e at 4. Thus, these requirements cannot ensure compliance with the other 420.19 tons worth of VOC limits for WCLA-OFFSITES and WCLA-ONSITES. Nor

[26] Because we were unable to review any relevant monitoring requirements, emission factors, or calculation methods (including, among other things, the inputs for those calculation methods) during (or prior to) the comment period, it was impracticable to raise our specific objections to any relevant monitoring requirements or emission factors factors/calculation methods that LDEQ may later insert into the permit, and the grounds for our specific objections will arise after the comment period. *See* 42 U.S.C. § 7661d(b)(2).

can they ensure compliance with the PM limits, since LDAR requirements are generally meant to reduce VOC emissions.

Further, the LDAR requirements are based on Louisiana state MACT requirements "in the manner agreed" by Exxon in an Air Toxics Compliance Plan that was approved April 18, 1996. Draft Statement of Basis at 13. That compliance plan is not incorporated into the Title V permit or available in the other draft permit materials that we can see. The specific LDAR requirements from that plan are meant to replace fugitive emissions requirements from Subpart CC of 40 C.F.R. Part 63. *Id.* Thus, they are applicable requirements that must be included in the Title V permit. *See* 40 C.F.R. § 70.2 (defining "applicable requirement" to include any requirements under sections 111 and 112 of the Clean Air Act). Because the specific LDAR requirements from that plan are not included in the draft permit or otherwise available to the public, they cannot ensure compliance with the WCLA-related limits (even assuming those limits include the WCLA heavy liquid fugitive emissions). Nor can the public assess whether these LDAR requirements from the plan are more stringent than the requirements from Subpart CC, as LDEQ claims at page 13 of the draft Statement of Basis. LDEQ must attach and incorporate the LDAR plan into the Title V permit, to allow the public and regulators to access the specifics of these applicable requirements as they apply to Exxon. *See* 42 U.S.C. § 7661c(a) (requiring Title V permits to include enforceable emission limitations and standards and "such other conditions as are necessary to assure compliance with applicable requirements of this chapter").

The draft permit's complete lack of monitoring, reporting, and recordkeeping requirements for the hourly and annual VOC and PM limits for WCLA-OFFSITES and WCLA-ONSITES are especially egregious here—and the existing NESHAP, NSPS, and other requirements listed in the permit are especially unlikely to ensure compliance with the specific VOC WCLA-OFFSITES and WCLA-ONSITES limits—for several reasons:

First, Exxon itself states that VOC emissions from the refinery's wastewater treatment system can be highly variable. *See* Exxon's Dec. 2018 Application for Renewal of Title V Permit for Utilities ("Application") at PDF pp. 149-50 ("To account for the inherent variability of wastewater streams, a higher concentration [than average concentration] for each pollutant was used to estimate the individual [state-only] emission limits for [VOC HAPs for WCLA-OFFSITES and WCLA-ONSITES]."") (emphasis added).[27] VOC emissions from wastewater treatment systems at refineries can vary greatly over short and long periods of time, depending on various conditions, including (but not limited to) flow rate, concentration of VOCs in the wastewater, temperature, pressure, the degree of agitation as wastewater is routed through the treatment system, and (for uncovered units) wind speed. This variability depending on these conditions is explained in the attached declaration of Dr. Ranajit Sahu, who has expertise in engineering (including engineering issues related to petroleum refineries), the Clean Air Act, and issues related to monitoring emissions of air pollution (including monitoring of emissions from wastewater treatment systems) and calculating those emissions. *See* Ex. 5, March 25, 2019 Decl. of Dr. Ranajit Sahu at Att. A, ¶¶ 1-5, 34-42; Ex. 6, Oct. 2, 2019 Decl. of Dr. Sahu at Att. A, ¶¶1-

[27] The application is available on LDEQ's EDMS site here: https://edms.deq.louisiana.gov/app/doc/view.aspx?doc=11445060&ob=yes&child=yes

5, 34-42.[28] As described below in more detail, § 7 from EPA's Emissions Estimation Protocol for Petroleum Refineries v.3 (April 2015) ("Emissions Estimation Protocol") also shows that emissions from wastewater treatment systems at refineries depend on the various conditions (*i.e.*, flow rate, VOC concentration, etc.) mentioned above.[29] And EPA also recognized in its 2015 final petroleum refinery sector risk and technology review rule that ambient temperature can greatly affect emissions of fugitive VOC HAPs from wastewater treatment units. *See* 80 Fed. Reg. at 75,194 ("… temperature can have a significant impact on emissions from storage vessels and wastewater treatment systems …").

Second, relatedly, the individual state-only VOC HAP limits for WCLA-ONSITES show that the federally-enforceable annual and hourly VOC limits of 73.29 lb/hour and 321.00 tons/year for WCLA-ONSITES could easily be exceeded in any given year: those individual limits total well over 500 tons/year of VOC HAPs—much higher than the 321.00 tons/year VOC limit. *See* Draft Permit's Emission Rates for TAP/HAP & Other Pollutants at 1-2.[30]

Third, as discussed above (*supra* at 4-8), environmental justice concerns here mandate increased, focused attention to ensure that all Title V requirements—especially monitoring and reporting requirements—have been complied with. In these circumstances, the permit's lack of

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[28] These declarations from Dr. Sahu were submitted with comments on (among other things) Title V permit monitoring provisions covering wastewater treatment units at the Valero refinery in Houston. Although the declarations specifically addressed a different permit for a different refinery, the cited discussion from Dr. Sahu's declarations regarding the variability of wastewater emissions is equally applicable to the Exxon Baton Rouge refinery's wastewater treatment units.

The relevant paragraphs from Dr. Sahu's declarations are not merely incorporated into this petition by reference. *See* 40 C.F.R. § 70.12(a)(2) ("… the Administrator will not consider arguments … or other information incorporated into the petition by reference.") Instead, the cited paragraphs from the declarations directly support the fact that air emissions from wastewater treatment units vary according the factors listed above—and also directly support the additional arguments below for which we cite Dr. Sahu's declaration as support.

[29] The Emissions Estimation Protocol is available here: https://www3.epa.gov/ttn/chief/efpac/protocol/Protocol%20Report%202015.pdf

[30] In particular, the draft Title V permit's state-only limits for WCLA-ONSITES allow the following tons/year of the following VOC HAPs regulated under 42 U.S.C. § 7412(b)(1) of the Clean Air Act: 94.45 tons/year 2,2,4-trimethylpentane, 16.78 tons/year benzene, 5.65 tons/year biphenyl, 16.22 tons/year ethylbenzene, 16.48 tons/year methanol, 34.05 tons/year methyl ethyl ketone, 6.60 tons/year methyl isobutyl ketone, 148.73 tons/year methyl tert-butyl ether, 11.24 tons/year n-hexane, 17.12 tons/year naphthalene, 5.10 tons/year phenol, 80.10 tons/year toluene, and 94.26 tons/year xylene (mixed isomers). Draft Permit's Emission Rates for TAP/HAP & Other Pollutants at 1-2.

Exxon submitted additional application information to LDEQ through email, stating that the WCLA-ONSITES total VOC limit was calculated using a "contingency factor" of 1.294. *See* Ex. 7, August 7, 2019 email from R. Wyatt to S. Pusateri at PDF pp. 13. The use of this contingency factor cannot ensure that the emissions from WCLA-ONSITES will not exceed the VOC limits, especially given the highly variable nature of wastewater VOC emissions and Exxon's own recognition that the WCLA-ONSITES units are capable of emitting VOC HAPs at much higher combined rates than the limits for total VOCs.

monitoring, reporting, or recordkeeping requirements to ensure compliance with the specific VOC and PM limits for WCLA-OFFSITES and WCLA-ONSITES is appalling. And, even if the NSPS, NESHAP, or other permit requirements could conceivably ensure compliance with the WCLA-OFFSITES and WCLA-ONSITES limits for VOCs and PM (they cannot), the environmental justice concerns surrounding this refinery mandate that EPA require LDEQ to make a very compelling showing in the permit record (which LDEQ has not even attempted to do) that these other requirements can ensure compliance with these particular limits.

Further, as mentioned above, the benzene fenceline data that Exxon has submitted for the Baton Rouge refinery shows that the refinery is dangerously close to the 9 µg/m^3 annual-average level that triggers corrective action under the NESHAP requirements for the petroleum refinery sector. And that data also shows that the refinery experiences large spikes in VOC HAP emissions—meaning that emissions are highly variable (not steady-state). For example, during the sampling period March 20–April 3, 2019, the benzene fenceline data yielded a value of 4.9 µg/m^3 for those two weeks, but then, during the next sampling period (April 3-17), the value shot up to 11.1 µg/m^3. *See* Ex. 4. And over the next few sampling periods, the fenceline benzene values continued to be very high (with values of 10.5, 11.3, 13.4 and 30.5 µg/m^3),[31] before finally dropping to 7.3 µg/m^3 during the June 12-26 sampling period. *Id.* The wastewater treatment system could be significantly contributing to these high, variable fenceline levels of VOC HAPs, but, without adequate monitoring for the system, there is no way to know whether that is the case.

Finally, as noted above, LDEQ has not yet responded to our comments raising these precise objections on the draft permit as required by Title V (as reflected in the newly revised 40 C.F.R. § 70.7(h)(6)). Thus, Petitioners cannot "explain how [LDEQ's] response to comment is inadequate to address the issue raised in the public comment." *See* 40 C.F.R. § 70.12(a)(2)(vi).

A. If Exxon Uses TOXCHEM Modeling to Calculate VOC Emissions for Compliance Purposes, Use of Such Modeling Alone Cannot Ensure Compliance with the VOC and PM Limits for WCLA-OFFSITES and WCLA-ONSITES.

In its application for the Title V permit, Exxon states that it originally used the wastewater emissions modeling software TOXCHEM to calculate the VOC limits for the treatment system. Application at PDF p. 148. As Petitioners' comments explained (at pages 7-8), if Exxon now calculates emissions to show compliance with these limits in the same way that it apparently calculated emissions to establish the limits in the first place (which is completely

[31] The 30.5 µg/m^3 value is higher than the reference exposure level for inhalation of benzene that indicates acute developmental harm, as well as health harm to the immune and hematologic systems (27 µg/m^3), as determined by the California Office of Environmental Health Hazard Assessment. *See* https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary; https://oehha.ca.gov/media/downloads/crnr/benzenerelsjune2014.pdf

Exxon claims that the 30.5 µg/m^3 value was attributable to a source not regulated under the refinery NESHAP provisions from Subpart CC of 40 C.F.R. Part 63. *Id.* Regardless, data from earlier periods shows that the refinery is capable of very large spikes in fenceline benzene values. For example, for the two weeks from September 19–October 3, 2018, the refinery reported a value of 22.1 µg/m^3. *Id.*

unclear, since the draft Title V permit is silent on how emissions are to be determined), those calculation methods cannot ensure compliance with the hourly and annual VOC limits for WCLA-OFFSITES and WCLA-ONSITES. Those calculation methods cannot ensure compliance first because they are not listed in the permit.

Exxon's calculation methods from the application also cannot ensure compliance because they do not address variability. Exxon's initial calculations (made through a computer model run in 2002) were apparently based on a (now) 17-plus year-old snapshot of conditions in the wastewater treatment system at that particular time, including flow rate, concentrations of VOCs in the system, and the sequence that the wastewater was routed through the system.[32] These conditions are all variable (*see supra* at 11-12 and *infra* at 15-16), and different conditions could result in dramatically higher emissions. Thus, even if using TOXCHEM to calculate emissions could otherwise ensure compliance, it could only do so if Exxon was required to monitor these changing conditions (and others) on a set schedule at appropriate intervals and plug in the new attributes in calculating emissions (as discussed in further detail below), but the draft permit does not require this of Exxon.

In addition, Exxon's 2002 modeling did not account for variability because it was based (at least for the WCLA-ONSITES limits) on assumptions regarding average flow rate and average feed concentrations (both of which are highly variable), and it is unclear whether the modeling took into account other variable inputs such as temperature, pressure, and wind speed, among others. *See* Ex. 7, August 7, 2019 email from R. Wyatt to S. Pusateri at PDF pp. 13-14. As discussed above (*supra* at 11-12), flow rate and feed concentrations (and other calculation inputs, such as temperature and wind speed) are highly variable. Thus, without direct measurement to verify those inputs at appropriate periods, there is no way to know whether Exxon's calculations are accurate. Further, Exxon has not indicated where in the wastewater treatment train it measured flow rate and pollutant concentration, and Exxon's sampling location(s) could be in areas that yield results that are not representative of flow and concentration in other important areas of the treatment train.

EPA has recognized that variable inputs such as flow, concentration, wind speed, temperature, and pressure (among other inputs) are "critical inputs" in the calculation of emissions of VOCs from wastewater treatment systems. *See, e.g.,* Emissions Estimation Protocol at Tables 7-2 – 7-7.[33] Here, the additional information that Exxon submitted to LDEQ through email in August 2019 indicates that the individual units in the Baton Rouge refinery's wastewater treatment system that are the largest sources of VOC emissions are the Pretreat Air Flotation Units (TK0202A-B), BIOX Aeration units (TK0303A-B) and Aggressive Biological

[32] The information that Exxon submitted through email to LDEQ states that the TOXCHEM model was run in September 2002. *See* Ex. 7, August 7, 2019 email from R. Wyatt to S. Pusateri at PDF pp. 5-6, 13-16. For two pollutants (hexane and methanol) emitted by WCLA-ONSITES, it appears that the model may have been run in 2014 and 2006, respectively, as Exxon states that those limits were increased in those years. *Id.* at 14. Those limits for those two pollutants (27.72 tons combined) are small compared to the overall WCLA-ONSITES VOC limit of 321.0 tons/year. *See* Draft Permit's Emission Rates for TAP/HAP & Other Pollutants at 1.

[33] EPA explains that "critical inputs" "includes data that is required to estimate air emissions from the specific process unit." *Id.* at 7-3.

Treatment unit (TK0102)—with the last of these being the largest emitter of them all, by far. *See* Ex. 7, August 7, 2019 email from R. Wyatt to S. Pusateri at PDF pp. 16-41.[34] *See also* Draft Permit's Inventories at pp. 1-3, 6-8 (identifying these units by number and listing them as part of Common Requirements Group for WCLA Onsites Tanks). EPA has recognized that there are additional variable critical inputs that must be taken into account to accurately determine emissions from biological treatment units in particular, including wastewater depth, mixed liquor volatile suspended solids, power to aerators, the number of aerators, influent BOD concentration, turbulent surface area, and wasted sludge flow rate. Emissions Estimation Protocol at Table 7-7. For these units, EPA has specifically stated that "it is important to obtain and use site-specific variables when estimating emissions to obtain accurate results." *Id.* at p. 7-7. EPA has also added that the "factors that can have the most dramatic impact on air emissions from a biological treatment unit are the ones impacting biodegradation," and that site-specific data provide the most accurate results." *Id.* at 7-8. Some of the variables discussed in this paragraph are ones that can change quickly and frequently—and thus affect VOC emissions over short (and long) periods of time. These variables need to be monitored and taken into account to accurately estimate the VOC emissions from the Exxon refinery's wastewater treatment system, but there is no indication in the draft permit or Exxon's application information that Exxon conducts (or is required to conduct) such monitoring.

Finally, use of TOXCHEM modeling cannot ensure compliance with the PM limits for WCLA-ONSITES because there is no indication from the permit or application materials that such modeling can be used to estimate PM emissions.

LDEQ has not yet responded to our comments raising these precise objections regarding the use of TOXCHEM, in violation of Title V requirements (as reflected in the newly revised 40 C.F.R. § 70.7(h)(6)). Thus, Petitioners cannot "explain how [LDEQ's] response to comment is inadequate to address the issue raised in the public comment." *See* 40 C.F.R. § 70.12(a)(2)(vi).

B. EPA Should Require LDEQ to Take Specific Steps to Revise the Title V Permit So that the Permit Ensures Compliance with the Hourly and Annual VOC and PM Limits for WCLA-ONSITES and WCLA-OFFSITES.

As Petitioners' comments explained (at pages 8-9), to remedy the above-described problems and ensure compliance with the wastewater treatment system's hourly and annual VOC limits for WCLA-OFFSITES and WCLA-ONSITES and the hourly and annual PM limits for WCLA-ONSITES, EPA should require LDEQ to revise the draft Title V permit in the below specific ways. Strong monitoring and reporting requirements are especially important here—and EPA should provide specific instruction to LDEQ in keeping with Petitioners' suggested changes to the permit discussed below—because of the environmental justice concerns noted above, as well as the highly variable nature of VOC emissions from wastewater treatment systems (as Exxon itself recognizes), the high individual VOC HAP limits for WCLA-ONSITES, and the high (and variable) benzene fenceline data reported by Exxon under NESHAP requirements. *See supra* at 11-13.

[34] That same data that Exxon submitted in August 2019 shows that, for WCLA-OFFSITES, the portions with the highest VOC emissions appear to be Rain Basins 1-2 and "CPS," which presumably refers to the central process sewers. *See id.* at PDF pp. 6-12.

First, the Title V permit must specify the exact calculation and monitoring methods (including the input parameters required for such calculation methods or models) to be used for, at the least, each high- or moderately-emitting unit in (or portion of) the wastewater treatment train. At the very, very least, those units should include the Pretreat Air Flotation Units (TK0202A-B), BIOX Aeration units (TK0303A-B), Aggressive Biological Treatment unit (TK0102), Rain Basins 1-2, and "CPS," all of which Exxon's August 2019 supplemental application materials showed to be high emitters. Further, whatever model or calculation method the permit requires Exxon to use in calculating emissions going forward (it must be a reliable method), each variable input for such model or calculation method should be required to be monitored at proper points in the wastewater treatment system. For VOC emissions, Exxon should, at the least, be required to continuously (at least hourly) monitor wastewater flow and pollutant concentration in the wastewater at representative portions of the wastewater treatment stream—and also hourly monitor the other inputs (such as pressure, temperature, air flow rate, and wind speed) that are listed as "critical" in Section 7 of EPA's Emissions Estimation Protocol for Petroleum Refineries, depending the individual units or processes in question. *See also* Ex. 5-6, Sahu Declarations, at ¶¶ 34-42 (discussing similar changes that should be required for the Title V permit provisions covering wastewater treatment units at the Valero Houston refinery). If hourly sampling shows that VOC concentrations are relatively constant (*i.e.*, they don't vary by more than an appropriate specified percentage from day to day), then the frequency of sampling for the VOC concentration levels could be reduced to daily, or perhaps even weekly if the concentrations show almost no variability. Exxon should be required to calculate the hourly and annual VOC emissions using the various "critical" inputs and other variables listed for each particular type of unit or process in Section 7 of EPA's Emissions Estimation Protocol for Petroleum Refineries.

Exxon should also be required to take into account site-specific data on biodegradation factors for its biological treatment unit(s), as described in the Emissions Estimation Protocol at 7-8 through 7-9. In addition, any calculation or monitoring methods should take into account the specific route that the wastewater takes through the various processes and units in the treatment system, as well as the degree of agitation as the wastewater is routed through the system. Finally, "[t]o ensure that predictive model outputs are accurate," Exxon should be required to conduct periodic validation studies through measurement techniques such as offgas collectors, DIAL, or concentration-profile methods, as described in section 7.2.9 of the Emissions Estimation Protocol. If such validation shows that modeling or calculation methods are producing inaccurate emissions from the wastewater treatment system, then Exxon should be required to adjust the modeling or calculation methods to yield accurate results.

LDEQ has not yet responded to our comments raising these precise objections regarding how the permit should be revised, in violation of Title V requirements (as reflected in the newly revised 40 C.F.R. § 70.7(h)(6)). Thus, Petitioners cannot "explain how [LDEQ's] response to comment is inadequate to address the issue raised in the public comment." *See* 40 C.F.R. § 70.12(a)(2)(vi).

II. IN VIOLATION OF 40 C.F.R. § 70.7(A)(5), LDEQ FAILED TO PROVIDE A REASONED EXPLANATION FOR WHY THE DRAFT PERMIT ENSURES COMPLIANCE WITH THE VOC AND PM LIMITS FOR THE REFINERY'S WASTEWATER TREATMENT SYSTEM.

As Petitioners' comments explained (at page 6), in addition to the failure of the draft Title V permit to ensure compliance with the hourly and annual VOC and PM limits for WCLA-OFFSITES and WCLA-ONSITES (as discussed in the preceding paragraphs), the permit and permit record are also deficient for the independent and separate reason that LDEQ has not adequately explained how the draft Title V permit provisions can ensure compliance with these limits. LDEQ's statement of basis does not even discuss why the permit's monitoring, reporting, or other requirements are adequate to ensure compliance with these limits. LDEQ's failure to provide a reasoned explanation (or any explanation) in the permit record for why it believes the permit conditions are sufficient to assure the refinery's compliance with the hourly and annual VOC and PM limits for WCLA-OFFSITES and WCLA-ONSITES violates 40 C.F.R. § 70.7(a)(5)'s requirement that permitting authorities "provide a statement that sets forth the legal and factual basis for the draft permit conditions." *See also* Mettiki Order at 7-8 ("In addition to including permit terms sufficient to satisfy EPA's part 70 monitoring requirements, permitting authorities must include a rationale for the monitoring requirements selected that is clear and documented in the permit record.") (citing § 70.7(a)(5) and prior Title V orders).

In violation of Title V requirements (as reflected in the newly revised 40 C.F.R. § 70.7(h)(6)), LDEQ has not yet responded to our comments raising these precise objections regarding LDEQ's failure to offer a reasoned explanation for why the monitoring and other permit requirements ensure compliance with the VOC and PM limits. Thus, Petitioners cannot "explain how [LDEQ's] response to comment is inadequate to address the issue raised in the public comment." *See* 40 C.F.R. § 70.12(a)(2)(vi).

III. THE DRAFT PERMIT DOES NOT COMPLY—AND FAILS TO ENSURE COMPLIANCE—WITH 40 C.F.R. PART 68 REQUIREMENTS.

As Petitioners' comments pointed out (at pages 9-10), the draft Title V permit does not comply—and fails to ensure compliance—with requirements from 40 C.F.R. Part 68, in violation of 40 C.F.R. § 70.6(a)(1) and 42 U.S.C. § 7661c(a).

The Exxon Baton Rouge refinery is subject to EPA's Accidental Release Prevention Requirements (also known as the EPA Risk Management Program) found in 40 C.F.R. Part 68. *See* Draft Permit's Specific Requirements at 27; Draft Permit's General Information at 1 (noting a Risk Management Plan for the refinery).[35] 40 C.F.R. § 68.215(a)(2) mandates that, for facilities subject to Part 68, Title V permits include conditions requiring the source owner or operator to submit (i) a "compliance schedule for meeting the requirements of this part by the dates provided

[35] These EPA databases also indicate that the refinery is subject to the Risk Management Plan requirements from Part 68: https://ofmpub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110043804185; https://hifld-geoplatform.opendata.arcgis.com/datasets/72bf420c0ec149f59464f83b36ccf5bd_0?geometry=-91.347%2C30.449%2C-91.020%2C30.501.

in §§ 68.10(a) through (f) and 68.96(a) and (b)(2)(i)" or (ii) "[a]s part of the compliance certification submitted under 40 CFR 70.6(c)(5), a certification statement that the source is in compliance with all requirements of this part, including the registration and submission of the RMP." These requirements from Part 68 are applicable requirements that, under § 70.6(a)(1) and 42 U.S.C. § 7661c(a), Exxon's Title V permit must assure compliance with. *See* 40 C.F.R. § 70.2 (defining "applicable requirement" to include "[a]ny standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act"). The draft permit, however, includes neither of these. Thus, LDEQ must revise the permit to comply with § 68.215(a)(2).

In addition, the draft permit unlawfully relaxes other requirements from Part 68. Specifically, the permit (at page 27 of the Specific Requirements) provides that Exxon shall comply with the provisions in Part 68, "except as specified in LAC 33:III.5901." That section of the Louisiana Administrative Code relaxes the Part 68 requirements in at least two ways. First, it amends compliance deadlines from 40 C.F.R. §§ 68.10(a)(2) and 68.190(b)(2) by adding that such deadlines are "[t]hree years after the date on which a new regulated substance is first listed by EPA under 40 CFR 68.130, provided that the Department shall have adopted the addition of the new substance to 40 CFR 68.130 by three years after the date of the new EPA listing." LAC 33:III.5901(C)(3) (emphasis added). Second, LAC 33:III.5901(C)(4) provides: "In 40 CFR 68.210, the availability of information to the public shall be ensured by the Louisiana Public Records Act, R.S. 44:1 et seq., except as otherwise declared confidential pursuant to R.S. 30:2030 and all regulations promulgated thereto including LAC 33:I.Chapter 5." Rather than being subject to Louisiana confidentiality provisions, 40 C.F.R. § 68.210(a) provides that the "RMP required under subpart G of this part shall be available to the public under 42 U.S.C. 7414(c) and 40 CFR part 1400."

As noted above, the requirements from Part 68 are applicable requirements that Exxon's Title V permit must assure compliance with. *See* 40 C.F.R. 70.2 (defining "applicable requirement" to include "[a]ny standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act"). *See also id.* § 70.6(a)(1), 42 U.S.C. § 7661c(a). But because the draft permit includes LAC 33:III.5901's qualifiers on the Part 68 requirements, the permit cannot ensure compliance with all Part 68 requirements. EPA should require LDEQ to revise the permit to unequivocally state that Part 68 is an applicable requirement—and remove the language stating "except as specified in LAC 33:III.5901."

Requiring LDEQ to fix the above-discussed Part 68 problems in the Title V permit is especially important here because, over the years, Exxon's Baton Rouge refinery has experienced multiple major fires, explosions, and other problems—as discussed below in detail in the next section of this petition. *See infra* at 21-22.

In violation of Title V requirements (as reflected in the newly revised 40 C.F.R. § 70.7(h)(6)), LDEQ has not yet responded to our comments raising these precise objections regarding these Part 68 issues. Thus, Petitioners cannot "explain how [LDEQ's] response to comment is inadequate to address the issue raised in the public comment." *See* 40 C.F.R. § 70.12(a)(2)(vi).

IV. THE DRAFT PERMIT INCLUDES NO PROVISIONS ENSURING COMPLIANCE WITH THE GENERAL DUTY REQUIREMENTS FROM NESHAP SUBPART CC OR CLEAN AIR ACT § 112(R).

As Petitioners' comments explained (at pages 10-11), the draft Title V permit fails to include—and fails to include monitoring, reporting, and recordkeeping requirements that assure compliance with—"general duty" requirements from 40 C.F.R. Part 63, Subpart CC and from Clean Air Act § 112(r), in violation of 40 C.F.R. §§ 70.6(a)(1) and 70.6(c)(1) and 42 U.S.C. §§ 7661c(a) and 7661c(c).

In addition to specific regulatory requirements from Part 68, there are additional general duty requirements that apply to Exxon. First, there are general duty requirements from NESHAP Subpart CC that are applicable to the Baton Rouge refinery. The draft permit reflects that Subpart CC applies to certain units addressed in this Title V permit (*see* Draft Permit's Table of Applicable Louisiana and Federal Air Quality Requirements at 14-19), and Subpart CC's 40 C.F.R. § 63.642(d)-(n) requires performance tests, procedures to comply, and a "general duty to minimize emissions" and to "operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions."

Second, Clean Air Act § 112(r)(1) requires Exxon to operate the refinery pursuant to a general duty to prevent and reduce harm from "accidental releases." 42 U.S.C. § 7412(r)(1). In particular, that statutory section provides:

> The owners and operators of stationary sources producing, processing, handling or storing [any substance listed pursuant to §112(r)(3) or any other extremely hazardous substance] have a general duty in the same manner and to the same extent as section 654 of Title 29 to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

Id. Exxon's Baton Rouge refinery produces, processes, handles, and/or stores substances listed pursuant to §112(r)(3) and/or other extremely hazardous substances: the draft Title V permit requires Exxon to, in keeping with certain state requirements from LAC 33:III.5907, to identify hazards that may result from accidental releases of substances listed in 40 C.F.R. § 68.130, and § 68.130 lists the regulated toxic and flammable substances under § 112(r).

The Subpart CC general duty provisions and the statutory general duty are "applicable requirements" within the meaning of Title V. *See* 40 C.F.R. § 70.2 (defining "applicable requirement" to include "[a]ny standard or other requirement under section 112 of the Act ….").
Thus, 40 C.F.R. § 70.6(a)(1) and 42 U.S.C. § 7661c(a) require the Title V permit to include these general duty requirements. The draft Title V permit, however, does not even mention these specific general duty requirements. Although the permit lists a state general duty provision from LAC 33:III.5907 that appears very similar to the general duty from Clean Air Act § 112(r) (*see* Draft Permit's Specific Requirements at 27), a state requirement is not the same as a section from the federal Clean Air Act. The draft permit also fails to include any monitoring, reporting, or recordkeeping requirements to ensure compliance with the general duty requirements, in violation of 40 C.F.R. § 70.6(c)(1) and 42 U.S.C. § 7661c(c).

To remedy these deficiencies, LDEQ must add the applicable general duty requirements from Subpart CC and Clean Air Act § 112(r) to the permit—and also add monitoring, reporting, and recordkeeping requirements that assure compliance with the general duty provisions, especially the requirements from § 112(r)(1).

Regarding the § 112(r)(1) general duty, EPA has emphasized that this duty applies independently and apart from the Part 68 regulations. In denying a petition to object in regard to Part 68, EPA stated:

> Compliance with the requirements of part 68 does not, however, relieve Masada of its legal obligation to meet the general duty requirements of section 112(r)(1) of the Act to identify hazards that may result in an accidental release, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of an actual accidental release. As the Administrator stated in the Shintech Inc. Title V Order, Permit No. 2466-VO (Sept. 10, 1997), at 12, n.9, "section 112(r)(1) remains a self-implementing requirement of the Act, and EPA expects and requires all covered sources to comply with the general duty provisions of 112(r)(1)."

EPA Order, *In the Matter of Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC* at 28 n.38 (May 2, 2001), 2001 WL 36294221. *See also* 61 Fed. Reg. 31,668, 31,680 (June 20, 1996) (explaining that § 112(r)(1) is "a self-executing statutory requirement" that "requires no regulations or other EPA action to take effect").

In a 1997 Title V order, EPA concluded that, while § 112(r)(1)'s general duty clause is an "applicable requirement" for Title V purposes, the permit there did not need to include detailed information regarding how the facility must comply with the clause. *In the Matter of Shintech, Inc.*, Order on Petition (1997) at 12. Rather, EPA concluded, it was enough for the permit to include a generic permit condition consistent with 40 C.F.R. § 68.215. *Id.* Exxon's permit here, however, does not comply with § 68.215, as discussed above. Further, importantly, simply incorporating the language of § 68.215 into Exxon's Title V permit would not be enough to assure compliance with the facility's general duty obligations under Clean Air Act § 112(r)(1). There is no indication in either the Part 68 regulations or in the preamble to those regulations that EPA promulgated them to address how Title V permits are to assure compliance with § 112(r)(1). *See* 61 Fed. Reg. at 31,668. Indeed, § 68.215 does not even mention § 112(r)(1). A permit that does not identify the source's obligations under § 112(r)(1) obviously cannot assure the source's compliance with those obligations.

Even if simply inserting § 68.215's language into a Title V permit is equivalent to listing § 112(r)(1) as an applicable requirement (it is not), it does not satisfy the requirement from 40 C.F.R. § 70.6(c)(1) and 42 U.S.C. § 7661c(c) that Title V permits include monitoring, reporting, and other requirements sufficient to ensure compliance with applicable requirements. Over a decade after the *Shintech* order, the D.C. Circuit confirmed in *Sierra Club*, 536 F.3d at 673, that a permitting authority is obligated to add monitoring, recordkeeping, and reporting requirements to a source's Title V permit where needed to assure the source's compliance with an applicable requirement. Clarifying a source's obligations under the Clean Air Act's general duty clause and developing monitoring, recordkeeping, and reporting sufficient to assure a source's compliance with those obligations falls squarely within what Congress intended by enacting the Title V operating permit program in 1990. *See supra* at 7-8. The fact that a source's specific obligations

under the § 112(r)(1) general duty are surely unique from those of other sources strongly supports the argument that a Title V permit must clarify what the source's obligations are and incorporate any conditions needed to assure the source's compliance with those obligations.

Because refineries have the highest overall risk of accidents among regulated industries[36] and due to the substantial quantities of substances listed under 42 U.S.C. §112(r)(3) and/or other extremely hazardous substances that Exxon presumably uses, stores, or manages, specific terms and conditions (including monitoring and reporting requirements) implementing the §112(r)(1) general duty requirements are especially important here. Such terms and conditions are also very important because of the environmental justice concerns presented by this refinery. *See supra* at 4-8.

Further, specific terms and conditions, including monitoring and reporting requirements, implementing the §112(r)(1) general duty requirements are very important here because, over the years, this particular refinery has experienced major fires, explosions, and other problems. Most recently, on February 11, 2020, a release and subsequent combustion of hydrocarbons from an elevated pipe rack at the refinery caused a massive fireball to erupt.[37] Exxon reported that large amounts of air pollution were released during the ensuing fire (which lasted over six hours), including over 13,000 pounds of sulfur dioxide, 2,681 pounds of cancer-causing 1,3 butadiene, 33 pounds of benzene, 35,290 pounds of sulfuric acid, and over 62,000 pounds of "flammable vapor."[38] Earlier, in November 2017, a fire sent large flames and plumes of smoke into the air.[39] On November 22, 2016, an isobutane release occurred in the sulfuric acid alkylation unit at the refinery, resulting in four serious injuries to workers and injuries to two others.[40] In July 2012, an EPA inspection at the refinery revealed heavily corroded pipes and ruptured pipelines, pipes and other equipment that were overdue for inspection, inadequate documentation for emergency and shutdown procedures, and valves wrapped in garbage bags and secured with duct tape to protect them from corrosive vapors.[41] That inspection was preceded by a June 12, 2012 incident at Exxon's Baton Rouge chemical plant, in which a chemical leak resulted in the release of over 31,000 pounds of benzene and more than 13,000 pounds of toluene.[42] And on Christmas Eve

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[36] 82 Fed. Reg. 4594, 4600 (Jan. 13, 2017).

[37] *See* Ex. 8, Feb. 18, 2020 Letter of Notification from Exxon to LDEQ; https://www.wbrz.com/news/crews-on-scene-of-large-chemical-plant-fire-in-north-baton-rouge/

[38] *See* Feb. 18, 2020 Letter of Notification; https://www.theadvocate.com/baton_rouge/news/article_7c9cff22-5277-11ea-8371-775fba1a956e.html

[39] https://www.cbsnews.com/news/baton-rouge-refinery-exxonmobil-fire-breaks-out/.

[40] https://www.csb.gov/exxonmobil-refinery-chemical-release-and-fire/.

[41] http://www.louisianaweekly.com/exxonmobil-is-scrutinized-in-baton-rouge-after-past-leaks/; https://www.npr.org/2013/05/30/187044721/baton-rouge-s-corroded-overpolluting-neighbor-exxon

[42] https://www.npr.org/2013/05/30/187044721/baton-rouge-s-corroded-overpolluting-neighbor-exxon; https://media.npr.org/documents/2013/may/exxon-60-day-8-14-12.pdf

1989, several tanks at the refinery exploded, killing two plant works and injuring five others, and also damaging buildings up to six miles away.[43]

In violation of Title V requirements (as reflected in the newly revised 40 C.F.R. § 70.7(h)(6)), LDEQ has not yet responded to our comments raising these precise objections regarding the permit's failure to ensure compliance with general duty requirements. Thus, Petitioners cannot "explain how [LDEQ's] response to comment is inadequate to address the issue raised in the public comment." *See* 40 C.F.R. § 70.12(a)(2)(vi).

V. EPA MUST OBJECT TO THE DRAFT PERMIT BECAUSE OF LDEQ'S USE OF CONCURRENT REVIEW.

LDEQ sent the draft Title V permit to EPA for EPA's 45-day review period prior to the conclusion of the public comment period on the draft permit. Petitioners submitted significant and timely comments on the draft permit, but LDEQ has not withdrawn the permit from EPA review, or responded to these comments. As Petitioners explained in their comments (at pages 12-15), which LDEQ has not responded to, such review by EPA concurrent with LDEQ's public comment period is contrary to the Clean Air Act and EPA's Title V regulations.

In its new, final revisions to its Title V regulations, EPA provides that, when (as here) significant comments are submitted on a draft permit,[44] review of the permit by EPA concurrent with the comment period is not permissible:

> If the permitting authority receives significant comment on the draft permit during the public participation process, but after the submission of the proposed permit to the Administrator, the Administrator will no longer consider the submitted proposed permit as a permit proposed to be issued under section 505 of the Act. In such instances, the permitting authority must make any revisions to the permit and permit record necessary to address such public comments, including preparation of a written response to comments (which must include a written response to all significant comments raised during the public participation process on the draft permit and recorded under 70.7(h)(5) of this part), and must submit the proposed permit and the supporting material required under 70.8(a)(1)(i) of this part [which include the response to comments] … to the Administrator after the public comment period has closed. This later submitted permit will then be considered as a permit proposed to be issued under section 505 of the Act, and the Administrator's review period for the proposed permit will not begin until all required materials have been received by the EPA.

85 Fed. Reg. at 6445 (40 C.F.R. § 70.8(a)(1)(ii)). EPA added: "The EPA expects that the permitting authority would withdraw the initial permit submission if significant comments are

[43] https://www.upi.com/Archives/1989/12/24/Exxon-storage-tanks-explode/4958630478800/?ur3=1; https://www.latimes.com/archives/la-xpm-1989-12-27-mn-1106-story.html. *See also* https://earthjustice.org/features/toxic-catastrophes-texas-national-chemical-disaster-rule at Testimonial of Baton Rouge resident William Fontenot.

[44] As discussed below, all of Petitioners' comments on the draft Title V permit are significant ones.

received during the public participation process on a draft permit that has been submitted for concurrent review. If EPA later finds that a significant comment was received and the initial permit submission is not withdrawn, the permit submission will no longer be considered a proposed permit." *Id.* at 6441 n.11 (emphasis added). Relatedly, EPA explained that, "under general principles of administrative law, it is incumbent upon an administrative agency to respond to significant comments raised during the public comment period." *Id.* at 31 (citing *Home Box Office v. FCC*, 567 F. 2d 9 35 (D.C. Cir. 1977) ("the opportunity to comment is meaningless unless the agency responds to significant points raised by the public.")).

Although the effective date of EPA's new rule is April 6, 2020 (with the requirements applying prospectively), 85 Fed. Reg. at 6442, EPA's above-discussed new requirements (with the exceptions of the requirement that comments be "significant" before triggering a response to comments and withdrawal of a draft permit from EPA's review in concurrent-review situations) are consistent with what the Clean Air Act and EPA's current Title V regulations already require in terms of not allowing concurrent review (particularly where there is a comment and the state has not yet responded), as explained below. Thus, LDEQ was required to withdraw the proposed permit that it sent to EPA for EPA's 45-day review period, but LDEQ did not do so. LDEQ should have followed the new Part 70 provisions requiring the Department to prepare a response to these comments and send the response to comments document, along with a version of the permit revised to take into account these comments, to EPA to begin a new 45-day review period. But LDEQ did not do this either. Alternatively, EPA was required to unequivocally state that it would not consider the draft Title V permit sent by LDEQ to be the proposed permit for EPA's review period, but EPA Region 6 refused to do this.

By failing to withdraw the proposed permit from EPA review, LDEQ created an undue, highly prejudicial burden on Petitioners, since LDEQ's action has required us to protectively petition EPA to object to the draft permit, without the benefit of seeing LDEQ's response to comments and any revisions to the permit. EPA itself recognized such prejudice in these circumstances in its new rule revising Part 70. *See* 85 Fed. Reg. at 6440 ("[W]hen [response to comments and statement of basis] documents are also unavailable for the 60-day petition period, potential petitioners may be missing important information to determine whether to submit a petition or may not be able to provide a full argument in support of any issues they may raise in a petition."). And, if LDEQ fails to make the necessary changes to the permit, we will be required to file a second petition to EPA to object to any revised or final permit—doubling the prejudice. EPA could have prevented this prejudice by unequivocally stating that it would not consider the draft Title V permit sent by LDEQ to be the proposed permit for EPA's review period, but EPA Region 6 refused to do this.

All of Petitioners' comments on the draft Title V permit are significant ones—especially given the massive amounts of VOCs and VOC HAPs at issue, Exxon's high fenceline monitoring results for benzene, the acute environmental justice concerns noted above, and the history of fires, explosions, and other problems at the refinery. EPA's new Title V revisions specifically confirm that Petitioners' comments are significant: "Significant comments … include, but are not limited to, comments that concern whether the title V permit includes terms and conditions addressing federal applicable requirements and requirements under part 70, including adequate monitoring and related recordkeeping and reporting requirements." 85 Fed. Reg. at 6436 (emphasis added). Those are the very type of comments that Petitioners raised

here—comments regarding inadequate monitoring and reporting requirements and the Title V permit's failure to list applicable requirements.

Even if Petitioners' comments were not significant (they are), the Clean Air Act and EPA's current regulations (*i.e.*, the ones in effect until April 6, 2020) require LDEQ to withdraw the draft permit from EPA's review—or EPA to unequivocally state that it would not consider the draft Title V permit sent by LDEQ to be the proposed permit for EPA's review period. The Clean Air Act and EPA's current Title V regulations establish a clear order of action for Title V permitting that required LDEQ to first solicit public comment on the draft permit, and then, based on consideration of those comments, send EPA a subsequent version that LDEQ formally proposes to issue. *See* 42 U.S.C. § 7661d(a), (b); 40 C.F.R. §§ 70.2, 70.7, 70.8. LDEQ's contrary process effectively renders the public's input on this permit irrelevant and deprived Petitioners of the opportunity to participate in the permitting process as afforded by the Act. It also has left EPA to review the so-called "proposed" permit without a full permit record that included the public's comments and LDEQ's responses to those comments—as EPA itself recognized would happen in its new Part 70 revisions. *See* 85 Fed. Reg. at 6440 ("When [a response to comments and statement of basis] are unavailable for the EPA's 45-day review period, the EPA usually cannot provide as effective a review under CAA section 505(b)(1) as when a full administrative record, including these documents, is available during that review.").

By its plain terms, the Clean Air Act does not allow LDEQ to submit a draft permit to EPA to start EPA's 45-day review period before LDEQ has received, reviewed, and responded to public comments. A "draft permit" is not a "proposed permit." The Act clearly distinguishes between them, requiring LDEQ to provide an opportunity for public comment and a hearing on a "draft permit," and then—after consideration of public comments and deciding the content of the permit the state proposes to issue—provide EPA with a "proposed permit."

In particular, both the Act and EPA's current Title V regulations require that a state must give EPA 45 days to review the "proposed permit" and decide whether to issue an objection. 42 U.S.C. §§ 7661d(a), (b); 40 C.F.R. §§70.8, 70.7(a)(1)(v). It does not satisfy these requirements to submit a <u>draft</u> permit to EPA. The Act makes clear that a state permitting authority must transmit to the Administrator "a copy of each permit <u>proposed</u> to be issued and issued as a final permit," and the "proposed permit" is the version of the permit upon which EPA will base its 45-day review. 42 U.S.C. § 7661d(a)(1)(B),(b)(1) (emphasis added).

Likewise, EPA's current regulations (not including the new revisions to those regulations) plainly and deliberately distinguish between a "draft permit" and a "proposed permit," and specify review requirements for each. A "draft permit" is the version of the permit that the permitting authority submits for public review and comment pursuant to 40 C.F.R. § 70.7(h). 40 C.F.R. § 70.2 ("Draft permit means the version of a permit for which the permitting authority offers public participation under § 70.7(h) or affected State review under § 70.8 of this part."). By contrast, a "proposed permit" is "the version of the permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with § 70.8." *Id.*; *see also* 40 C.F.R. § 70.8(a)(1) (requiring that the permitting authority "provide to the Administrator a copy of each permit application . . . , each proposed permit, and each final part 70 permit"); *id.* § 70.8(a)-(c) (illustrating that "draft permit" provided "to any affected State on or before the time that the permitting authority provides this notice to the public," and "proposed permit," which must be provided "to the Administrator," are different documents, and

making clear that the EPA Administrator's 45-day review period applies to the "proposed permit"); *id.* § 70.8(c)(1) ("No permit … shall be issued if the Administrator objects to the issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.") (emphasis added). The regulations clearly refer to the "draft" when describing the version of the permit that exists prior to the close of the 30-day public comment period, and "proposed" when describing the version that follows the close of the 30-day public comment period.

In designing the Clean Air Act Title V process in this way, Congress paid particular attention to the importance of public participation and promised "[a]dequate" and "reasonable procedures … for public notice, including an opportunity for public comment and a hearing." 42 U.S.C. § 7661a(b)(6). A "proposed permit" is one that a state has created after assuring those opportunities, precisely to make sure both that the state considers any public comments *before* deciding what permit to propose to EPA, and to make sure that EPA also considers any public comments while deciding whether to object to a permit proposed by a state. Indeed, Congress clearly intended for a state permitting authority to consider and resolve public concerns about a draft permit *before* it proposes the permit, and before EPA determines whether to object to the "proposed permit." Section 502(b)(2) provides that a petition to object "shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (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)." 42 U.S.C. § 7661d(b)(2). Relatedly, EPA's current regulations provide that the "permitting authority shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his obligation under section 505(b)(2) of the Act to determine whether a citizen petition may be granted." 40 C.F.R. § 70.7(h)(5).

The Act and EPA's current regulations differentiate between a "draft" permit and a "proposed" permit for important reasons that are central to implementation of Title V and its purpose. Because a "draft permit" has not yet been subject to public scrutiny, it does not (and cannot) account for any defects or improvements identified by members of the public, or an affected state. The "proposed permit," on the other hand, is issued after the permitting authority's consideration of any public comments (or comments by another state) submitted during the comment period on the draft permit, and is therefore a version that the state creates after considering and addressing the public's concerns (as well as any concerns of other affected states).

At a bare minimum here, LDEQ was required to withdraw the permit from EPA's review after receiving relevant public comments, or EPA was required to take the position that it would not consider the draft permit sent to EPA by LDEQ to be the proposed permit for EPA's 45-day review period. LDEQ and EPA's failure to do so is flatly inconsistent with the Clean Air Act and regulatory provisions discussed above. EPA must object to the permit at the very least because public comments have been received, thus changing the permit record in ways that LDEQ must consider and address before submitting a proposed permit to EPA for its 45-day review. Although LDEQ has informally told us that it is preparing a response to our comments on the draft Title V permit for Exxon's Utilities Unit, there is no guarantee that LDEQ will finalize a response to comments or that it will resubmit a Title V permit for a new EPA 45-day review period once any response to comments is complete.

Even before enacting its new changes to the Part 70 regulations, EPA recognized that Title V and public participation requirements require the permitting authority to withdraw a permit from EPA's review if public comments are filed on the draft permit because the public's input requires consideration and changes the permit record. *See, e.g.*, EPA, Approval of Revisions and Notice of Resolution of Deficiency for Clean Air Act Operating Permit Program in Texas, 70 Fed. Reg. 16,134, 16,137 (Mar. 30, 2005) (approving state program that ensured "that EPA's review period may not run concurrently with the State public review period if any comments are submitted or if a public hearing is requested" after finding this "consistent with section 505(b) of the Act and 40 CFR 70.8"). EPA's new changes to the Part 70 regulations discussed above confirm that LDEQ's use of concurrent review here is unfair and unlawful.

In sum, if EPA were to allow concurrent review of the permit, EPA would violate the Clean Air Act and its own Title V regulations. EPA must object to the permit because LDEQ has not met the requirement to submit a proposed permit to EPA. LDEQ's process violates Title V requirements and denies Petitioners a meaningful opportunity to have their comments considered and addressed by LDEQ and EPA. Finally, EPA must object to the permit here to be consistent with its own practice and interpretation, as most recently evidenced through the new Part 70 revisions). *See, e.g., F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009) (explaining that an agency's failure to acknowledge a change and provide a reasoned explanation would be arbitrary and capricious, and where a new policy rests on factual findings that contradict a prior policy, a "more detailed justification that would suffice for a new policy created on a blank slate" is required).

The concurrent review process that LDEQ has used for this permit plainly does not satisfy Title V's statutory and regulatory requirements. And EPA does not meet its review requirement by considering a "draft" permit rather than a "proposed" permit. Thus, EPA must object to this permit and direct LDEQ to not issue the permit before it has considered the public comments and has submitted a proposed permit for EPA's full 45-day review period, along with LDEQ's response to Petitioners' comments.

LDEQ has not yet responded to our comments raising these precise objections regarding the Department's use of concurrent review. Thus, Petitioners cannot "explain how [LDEQ's] response to comment is inadequate to address the issue raised in the public comment." *See* 40 C.F.R. § 70.12(a)(2)(vi).

Respectfully submitted this 27th day of March 2020,

/s/ Emma Cheuse
Emma Cheuse
Earthjustice
1001 G St. NW Suite 1000
Washington, D.C. 20001
(202) 667-4500 ext. 5220
echeuse@earthjustice.org

/s/ Corinne Van Dalen
Corinne Van Dalen
Earthjustice
900 Camp Street, Unit 303
New Orleans, LA 70130
(415) 283-2335
cvandalen@earthjustice.org

/s/ Gabriel Clark-Leach
Gabriel Clark-Leach
Environmental Integrity Project
1206 San Antonio Street
Austin, Texas 78701
(512) 637-9478
gclark-leach@environmentalintegrity.org

/s/ Patton Dycus
Patton Dycus
Patton Dycus Law, LLC
315 W. Ponce de Leon Ave., Suite 842
Decatur, Georgia 30030
(404) 446-6661
pattondycuslaw@gmail.com

CC, without Attachments:

Bryan Johnston, Administrator, LDEQ, Air Permits Division, bryan.johnston@la.gov
Shannon Pusateri, Environmental Chemical Specialist III, LDEQ, Air Permits Division, Shannon.Pusateri@la.gov
Jeff Robinson, Section Chief, EPA Region 6, robinson.jeffrey@epa.gov
Brad Toups, EPA Region 6, Toups.brad@epa.gov
Brady J. Fontenot, Air Permits & Compliance Section Supervisor, ExxonMobil Fuels & Lubricants Company Baton Rouge Refinery, brady.j.fontenot@exxonmobil.com
Russell O. Williams, Ill, BRCX Air Permitting Renewals Coordinator, ExxonMobil Fuels & Lubricants Company Baton Rouge Refinery, russell.o.williams@exxonmobil.com

LIST OF EXHIBITS

1) Comments of Louisiana Bucket Brigade, EIP, and Earthjustice on draft Title V permit for Exxon Baton Rouge refinery utilities unit

2) ERIC report of actual VOC emissions within three miles of Exxon Baton Rouge Refinery

3) Excerpts from Draft Statement of Basis for Reforming Complex

4) Table of Exxon Baton Rouge NESHAP Fenceline Benzene Data

5) March 25, 2019 Declaration of Dr. Ranajit Sahu

6) October 2, 2019 Declaration of Dr. Sahu

7) August 7, 2019 email from R. Wyatt to S. Pusateri

8) February 18, 2020 Letter of Notification from Exxon to LDEQ