

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

IN THE MATTER OF	§	PETITION FOR OBJECTION
	§	
Clean Air Act Title V Permit No. O1493	§	
	§	
Issued to Oxbow Calcining LLC	§	Permit No. O1493
	§	
Issued by the Texas Commission on	§	
Environmental Quality	§	
	§	

**PETITION TO OBJECT TO TITLE V PERMIT NO. O1493 ISSUED BY THE TEXAS
COMMISSION ON ENVIRONMENTAL QUALITY**

Pursuant to section 42 U.S.C. § 7661d(b)(2), the Environmental Integrity Project, Port Arthur Community Action Network, Lone Star Legal Aid, and the Lone Star Chapter of the Sierra Club (“Petitioners”) hereby petition the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) to object to Proposed Federal Operating Permit No. O1493 (“Proposed Permit”) issued by the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) authorizing operation of the Oxbow Calcining Plant, located in Jefferson County, Texas.

I. PETITIONERS

The 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. EIP has offices and programs in Austin, Texas and Washington, D.C.

The Port Arthur Community Action Network is a non-profit community organization formed by Port Arthur residents to advocate for solutions that will reduce or eliminate environmental and public health hazards and improve the quality of life in Port Arthur. Port Arthur Community Action Network members live in close proximity to the Oxbow Calcining Plant and are directly affected by the pollution it emits.

Lone Star Legal Aid's ("LSLA") mission is to protect and advance the civil legal rights of the millions of Texans living in poverty by providing free advocacy, legal representation, and community education that ensures equal access to justice. LSLA's Environmental Justice Team focuses on the right to fair distribution of environmental benefits and burdens and the right to equal protection from environmental hazards on behalf of impacted communities like Port Arthur. This petition is filed on behalf of LSLA's client, Port Arthur Community Action Network.

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

II. PROCEDURAL BACKGROUND

This petition addresses TCEQ's renewal of Permit No. O1493 authorizing operation of the Oxbow Calcining Plant. The Oxbow Calcining Plant is a major source of criteria air pollutants located in Jefferson County, Texas.

Oxbow Calcining LLC filed its application to renew Permit No. O1493 on March 5, 2018. The Executive Director concluded his technical review of Oxbow's application on May 30, 2019.

The Executive Director proposed to approve Oxbow's application and issued Draft Permit No. O1493, notice of which was published on June 18, 2019. Port Arthur Community Action Network and Lone Star Legal Aid timely-filed comments with the TCEQ identifying deficiencies in the Draft Permit. (Exhibit A), Public Comments on Draft Permit No. O1493 ("Public Comments"). A public hearing on the permit was held on November 14, 2019, and additional oral and written comments were submitted at the hearing.

On July 10, 2020, the TCEQ's Executive Director issued notice of Proposed Permit No. O1493 along with his response to public comments on the Draft Permit. (Exhibit B), Notice of Proposed Permit and the Executive Director's Response to Public Comment ("Response to Comments"); (Exhibit C), Proposed Permit; (Exhibit D), Statement of Basis, Permit No. O1493. The Executive Director made limited revisions to the Draft Permit in response to the Public Comments that did not resolve the issues discussed in Section IV of this petition below.

EPA's 45-day review period for the Proposed Permit began on July 14, 2020 and ended on August 28, 2020. Because the Administrator did not object to the Proposed Permit during his 45-day review period, members of the public have 60-days from the close of the review period to petition the Administrator to object to the Proposed Permit. This petition for objection is timely filed through EPA's Central Data Exchange on October 28, 2020. Copies of the petition will be sent to the Executive Director and Oxbow.

III. LEGAL REQUIREMENTS

Title V permits are the primary method for enforcing and assuring compliance with the Clean Air Act's pollution control requirements for major sources of air pollution. Operating Permit Program, 57 Fed. Reg. 32,250, 32,258 (July 21, 1992). Prior to enactment of the Title V permitting program, regulators, operators, and members of the public had difficulty determining which

requirements applied to each major source and whether sources were complying with applicable requirements. This was a problem because applicable requirements for each major source were spread across many different rules and orders, some of which did not make it clear how general requirements applied to specific sources.

The Title V permitting program was created to improve compliance with and to facilitate enforcement of Clean Air Act requirements by requiring each major source to obtain an operating permit that (1) lists all applicable federally-enforceable requirements, (2) contains enough information for readers to determine how applicable requirements apply to units at the permitted source, and (3) establishes monitoring requirements that assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a) and (c); *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996) (“The permit is crucial to implementation of the Act: it contains, in a single, comprehensive set of documents, all CAA requirements relevant to the particular source.”); *Sierra Club v. EPA*, 536 F.3d 673, 674-75 (D.C. Cir. 2008) (“But Title V did more than require the compilation in a single document of existing applicable emission limits It also mandated that each permit . . . shall set forth monitoring requirements to assure compliance with the permit terms and conditions”).

The Title V permitting program provides a process for stakeholders to resolve disputes about which requirements should apply to each major source of air pollution outside of the enforcement context. 57 Fed. Reg. 32,266 (“Under the [Title V] permit system, these disputes will no longer arise because any differences among the State, EPA, the permittee, and interested members of the public as to which of the Act’s requirements apply to the particular source will be resolved during the permit issuance and subsequent review process.”). Accordingly, federal courts do not generally second-guess Title V permitting decisions made by state permitting agencies and

will not enforce otherwise-applicable requirements that have been omitted from or displaced by conditions in a Title V permit. See, 42 U.S.C. § 7607(b)(2); see also, *Sierra Club v. Otter Tail*, 615 F.3d 1008 (8th Cir. 2008) (holding that enforcement of New Source Performance Standard omitted from a source’s Title V permit was barred by 42 U.S.C. § 7607(b)(2)). Because courts rely on Title V permits to determine which requirements may be enforced and which requirements may not be enforced against each major source, state-permitting agencies and EPA must exercise care to ensure that each Title V permit includes a clear, complete, and accurate account of the requirements that apply to the permitted source.

The Act requires the Administrator to object to a state-issued Title V permit if he determines that it fails to include and assure compliance with all applicable requirements. 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c). If the Administrator does not object to a Title V permit, “any person may petition the Administrator within 60 days after the expiration of the Administrator’s 45-day review period to make such objection.” 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); 30 Tex. Admin. Code § 122.360. The Administrator “shall issue an objection... if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the... [Clean Air Act].” 42 U.S.C. § 7661d(b)(2); see also, 40 C.F.R. § 70.8(c)(1). The Administrator must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2).

IV. GROUNDS FOR OBJECTION

- A. The Proposed Permit Fails to Include Monitoring and Recordkeeping Provisions Sufficient to Ensure Compliance with Sulfur Dioxide National Ambient Air Quality Standards, including: NSR Permit No. 45622 General Condition 13 and Special Condition 25; 30 Tex. Admin. Code §§ 101.3, 101.21, 116.115(b)(2)(H)(i); Tex. Health & Safety Code § 382.085(b), and 40 Code of Federal Regulations § 50.17(a).**
- 1. Specific Grounds for Objection, Including Citation to Permit Term**

The Proposed Permit fails to assure compliance with the Sulfur Dioxide (“SO₂”) National Ambient Air Quality Standard (“NAAQS”), including conditions of the Texas State Implementation Plan (“SIP”) at 30 Tex. Admin. Code §§ 101.3, 101.21, 116.115(b)(2)(H)(i), federal regulations at 40 Code of Federal Regulations § 50.17(a), and Tex. Health & Safety Code § 382.085. These provisions are applicable requirements of Oxbow’s Title V Permit O1493 through incorporated NSR Permit No. 45622 General Condition 13 and Special Condition 25. NSR Permit No. 45622 General Condition 13 prohibits Oxbow from causing “air pollution,” mirroring requirements in Texas Health & Safety Code § 382.085:

13. Emissions from this facility must not cause or contribute to “air pollution” as defined in Texas Health and Safety Code (THSC) § 382.003(3) or violate THSC § 382.085. If the executive director determines that such a condition or violation occurs, the holder shall implement additional abatement measures as necessary to control or prevent the condition or violation.

NSR Permit No. 45622 Special Condition 25 prohibits violations of allowable emission rates or other standards, such as the NAAQS, and includes a non-exhaustive list of corrective measures to be taken in the event of a violation:

25. If this permitted facility or any portion of it exceeds any of the applicable allowable emission rates or other standards, the holder of this permit must take immediate corrective action to comply with the applicable standards and record the event. These actions may include (but are not limited to) reducing operating temperature, reducing throughput, and the installation of additional control equipment. These corrective actions shall not be considered complete until compliance with the allowable emission rates and/or other standards has been demonstrated. Demonstration may include testing.

The Texas Health & Safety Code § 382.003(3) defines “air pollution” as:

“the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that: (A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or (B) interfere with the normal use or enjoyment of animal life, vegetation, or property.”

Exceedances of the health-based SO₂ NAAQS are by definition “air pollution,” because the NAAQS is specifically created to prevent injurious or adverse effects from SO₂ exposure to human health and welfare, including sensitive populations including children, the elderly, and people with asthma, with a margin for error. Primary National Ambient Air Quality Standard for Sulfur Dioxide, 75 Fed. Reg. 35520 (June 22, 2010). SO₂ is a potent air pollutant that can cause adverse respiratory symptoms from even brief exposures. To protect human health and welfare from these effects, EPA set the SO₂ NAAQS at 75 parts per billion (“ppb”) of SO₂ averaged over a one-hour period. *Id.*

SO₂ levels in excess of the NAAQS are “air pollution” because they are or may tend to be injurious to or to adversely affect human health or welfare. Tex. Health & Safety Code § 382.003(3). Further, EPA views the SO₂ NAAQS as “source-oriented” rather than “regional,” with strategies for attaining the NAAQS to be focused on key point sources of SO₂ emissions, including refineries, electric utilities, and other industrial facilities. Data Requirements Rule for the 1-Hour Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard (NAAQS) 79 Fed. Reg. 92 at 27446, 27448 (May 13, 2014).

Incorporated NSR Permit No. 45622 General Condition 13 incorporates the SO₂ NAAQS as an applicable requirement for Title V. The SO₂ NAAQS and related SIP and CFR provisions are critical to Oxbow’s Title V permit because Oxbow has repeatedly caused exceedances of the SO₂ NAAQS, and thus caused “air pollution” in violation of those requirements. The Executive Director recently concluded an enforcement action against Oxbow for multiple violations of the SO₂ NAAQS. (Exhibit E) In the Matter of and Enforcement Action Concerning Oxbow Calcining LLC, Agreed Order, Docket No. 2018-1687-AIR (Aug. 14, 2019) (“Agreed Order”).

2. Applicable Requirement of Part 70 Requirement Not Met

Each Title V permit must contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1). Conditions in NSR permits incorporated by reference into the Proposed Permit are applicable requirements. 40 C.F.R. § 70.2; Proposed Permit, Special Condition No. 8. The rationale for the selected monitoring requirements must be clear and documented in the permit record. 40 C.F.R. § 70.5(a)(5); In the Matter of United States Steel, Granite City Works (“Granite City I Order”), Order on Petition No. V-2009-03 at 7-8 (January 31, 2011).

As explained below, the Proposed Permit is deficient because (1) it fails to specify monitoring, testing, and recordkeeping requirements that assure compliance with emission limits and operating requirements in incorporated NSR Permit No. 45622 and the above listed regulations; and (2) the permit record does not contain a reasoned justification for the Executive Director’s determination that monitoring, testing, and recordkeeping requirements in the Proposed Permit assure compliance with the SO₂ NAAQS.

3. Inadequacy of the Permit Term

Each Title V permit must include terms and conditions sufficient to assure compliance with applicable requirements. 42 U.S.C. § 7661c(a), (c). The Proposed Permit is deficient because it fails to establish monitoring, testing, and recordkeeping requirements that assure compliance with the SO₂ NAAQS and related provisions, including: Tex. Admin. Code §§ 101.3, 101.21, 116.115(b)(2)(H)(i); 40 Code of Federal Regulations § 50.17(a); and Tex. Health & Safety Code § 382.085(b). As explained above, the SO₂ NAAQS and related provisions are applicable requirements for the purposes of Title V because they are incorporated through NSR Permit No. 45622 General Condition 13 and Special Condition 25. The Proposed Permit lacks adequate monitoring, testing, and recordkeeping to assure compliance with these requirements.

The Proposed Permit and incorporated NSR permits include numerous terms and conditions related to SO₂ emissions, but these assure compliance only with hourly and annual emission limits from specific emission points, not ambient levels of SO₂ like those in the NAAQS. The Proposed Permit lacks any monitoring, recordkeeping, or reporting terms regarding ambient levels of SO₂ resulting from Oxbow's emissions. Annual stack testing at various emission points cannot be used to demonstrate ongoing compliance with the NAAQS. Similarly, recordkeeping of feed rates and sulfur content cannot demonstrate ongoing compliance with the NAAQS.

The Executive Director's incorrect statement in the Response to Comments that Oxbow is not subject to the NAAQS shows that the Executive Director wholly failed to consider whether the Proposed Permit assures compliance with the NAAQS and provides additional evidence that the Proposed Permit lacks adequate terms to implement this applicable requirement.

The Executive Director based its NAAQS enforcement action on SO₂ monitoring data from nearby Continuous Ambient Monitoring Station 1071. This monitoring station was placed near Oxbow in response to the Data Requirements Rule for the SO₂ NAAQS. 79 Fed. Reg. at 27446 (May 13, 2014). The Proposed Permit lacks any terms or conditions related to this or any other monitoring station. The Proposed Permit lacks any terms or conditions requiring air quality monitoring or air quality modeling, which could be used to determine ongoing compliance with the NAAQS. Because the Proposed Permit lacks any such provisions, it fails to identify and assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a).

4. Issues Raised in Public Comments

This issue was raised on pages 14-17 of the Public Comments.

5. Analysis of State's Response

The Executive Director disagrees with Petitioners' demonstration that the Proposed Permit is deficient because it fails to specify monitoring and testing requirements that assure compliance with applicable requirements. The Executive Director states that "individual facilities are not subject to NAAQS SO₂ limits." The Executive Director's position is inconsistent with the language of Permit No. 45622 and his own recent enforcement efforts against Oxbow. In the Matter of and Enforcement Action Concerning Oxbow Calcining LLC, Agreed Order, Docket No. 2018-1687-AIR (Aug. 14, 2019).

On August 14, 2019, the Commission approved the Agreed Order to address repeated violations of the SO₂ NAAQS caused by Oxbow. The specific allegations were as follows:

During a record review conducted on October 24, 2018 through October 25, 2018, an investigator documented that the Respondent failed to comply with the national primary one-hour annual ambient air quality standard for SO₂, in violation of 30 TEX. ADMIN. CODE §§ 101.21, 116.115(b)(2)(H)(i) and (c), and 122.143(4), 40 CODE OF FEDERAL REGULATIONS § 50.17(a), New Source Review ("NSR") Permit No. 45622, General Conditions No. 13 and Special Conditions No. 25, Federal Operating Permit No. O1493, General Terms and Conditions and Special Terms and Conditions No. 8, and TEX. HEALTH AND SAFETY CODE § 382.085(b). Specifically, the Respondent exceeded the national primary one-hour annual ambient air quality standard for SO₂ of 75 ppb at the TCEQ Continuous Ambient Monitoring Station 1071 by an average of 16.16 ppb for two hours on January 10, 2017, one hour on February 11, 2017, one hour on March 7, 2017, one hour on April 2, 2017, two hours on May 3, 2017, and one hour on May 26, 2017.

Agreed Order at 2. This Agreed Order, approved by the Commission, demonstrates that the SO₂ NAAQS is an applicable requirement for purposes of Title V, because it is enforceable against Oxbow under the terms of its NSR permit, which, in turn, is incorporated by reference into the Proposed Permit. Accordingly, the Proposed Permit must include monitoring, recordkeeping, and reporting requirements to ensure compliance with such standards. 42 U.S.C. § 7661c(a) and (c). The Proposed Permit is deficient because it lacks any such requirements.

The SO₂ NAAQS was developed to protect the health and safety of communities exposed to hazardous levels of air pollution from facilities like Oxbow's Port Arthur Plant. Oxbow is the

largest emitter of SO₂ in Jefferson County, and responsible for over 80% of county-wide SO₂ emissions. Oxbow emits far more SO₂ than the combined emissions of refineries operated by Exxon, Motiva, Valero, and Total. As described in the Agreed Order, Oxbow's emissions of SO₂ caused multiple violations of the SO₂ NAAQS, necessitating enforcement by TCEQ to remedy the situation. Enforcement actions like the one TCEQ undertook are vital to protecting residents of Port Arthur and Jefferson County from harmful levels of SO₂ caused by Oxbow.

The Executive Director's contention that the SO₂ NAAQS is not an applicable requirement that may be directly enforced against Oxbow is inconsistent with his own enforcement action, which identified Oxbow's violations of the SO₂ NAAQS as violations of Oxbow's Title V permit. The Executive Director's position is also contrary to the clear language of Oxbow's NSR permit—incorporated by reference into the Proposed Permit—which provides that NAAQS and similar standards in the Texas SIP are applicable requirements directly enforceable against Oxbow. The Proposed Permit is deficient because it lacks monitoring, recordkeeping, and reporting requirements sufficient to ensure compliance with such standards. 42 U.S.C. § 7661c(a), (c).

The Executive Director's Response to Comments incorrectly denies that the SO₂ NAAQS is an applicable requirement under the Act, and fails to rebut Petitioners' demonstration that the Proposed Permit is deficient on this point.

B. The Permit Fails to Establish Monitoring, Testing, and Recordkeeping Provisions that Assure Compliance with Lead and Volatile Organic Compound Limits from Kiln Stacks 2, 3, 4, and 5 in NSR Permit No. 45622.

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

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

References attachment identifies NSR Permits 45622 and 103030, along with several Permits by Rule, as applicable requirements for the Port Arthur Plant. Proposed Permit at 36. NSR Permit No. 45622 authorizes emissions of lead and volatile organic compounds (VOC), among numerous other pollutants, from Process Kiln Stacks 2, 3, 4, and 5 (EPN's KS2, KS3, KS4, and KS5).

Neither the Proposed Permit nor incorporated NSR Permit No. 45622 specify particular monitoring or testing requirements that assure compliance with lead and VOC limits from Kiln Stacks 2, 3, 4, and 5.

2. Applicable Requirement of Part 70 Requirement Not Met

Each Title V permit must contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a)(3) and (c)(1). Emission limits in NSR permits incorporated by reference into the Proposed Permit are applicable requirements. 40 C.F.R. § 70.2; Proposed Permit, Special Condition No. 8. The rationale for the selected monitoring requirements must be clear and documented in the permit record. 40 C.F.R. § 70.5(a)(5); In the Matter of United States Steel, Granite City Works (“Granite City I Order”), Order on Petition No. V-2009-03 at 7-8 (January 31, 2011).

As explained below, the Proposed Permit is deficient because (1) it fails to specify monitoring, testing, and recordkeeping requirements that assure compliance with emission limits and operating requirements in incorporated NSR Permit No. 45622; and (2) the permit record does not contain a reasoned justification for the Executive Director's determination that monitoring, testing, and recordkeeping requirements in the Proposed Permit assure compliance with emission limits established by Oxbow's NSR Permits.

3. Inadequacy of the Permit Term

The Proposed Permit is deficient because it fails to establish monitoring, testing, and recordkeeping requirements that assure compliance with lead and VOC limits in incorporated NSR Permit No. 45622. While NSR Permit No. 45622 includes provisions for determining *initial* compliance with lead and VOC limits through *initial* stack testing of Kiln Stacks 2, 3, 4, and 5, it does not include provisions to demonstrate ongoing compliance. Lead and VOC are absent from the ongoing compliance stack sampling for those emission points.

One-time, initial stack testing is not sufficient to ensure ongoing compliance with hourly and annual emission limits for lead and VOC, because a one-time test provides only a single snapshot of performance. A one-time test, performed years in the past, is incapable of demonstrating ongoing compliance in a variety of operating conditions and fails to account for changes in equipment performance due to wear and tear over time.

NSR Permit No. 45622 includes monitoring, testing, and recordkeeping requirements for all other pollutants emitted by Kiln Stacks 2, 3, 4, and 5. NSR Permit No. 45622 Special Condition 29 requires stack sampling at the request of the Executive Director or other air pollution control agency, while Special Condition 30 requires annual on-going stack sampling for nitrogen oxides, carbon monoxide, sulfur dioxide, hydrogen chloride, and hydrogen fluoride from the kiln stacks. Additionally, stack sampling procedures in NSR Permit No. 45622 Special Condition 36 detail compliance determinations for particulate matter and sulfur trioxide limits from the kiln stacks. These Special Conditions collectively specify monitoring and recordkeeping requirements for all the pollutants authorized for Kiln Stacks 2, 3, 4, and 5, with the exception of lead and VOC. Additional recordkeeping requirements in NSR Permit No. 45622 Special Condition 41 are used to determine ongoing compliance with hourly and annual emission limits for sulfur dioxide, but do not assure compliance with hourly and annual limits on lead or VOC. The framework for proper

monitoring of Kiln Stack pollution limits is clearly evident in NSR Permit No. 45622 Special Conditions 29, 30, 36, and 41. But these conditions are entirely silent regarding lead and VOC.

The Proposed Permit is deficient because it fails to establish specific monitoring, testing, and recordkeeping requirements that assure compliance with hourly and annual lead and VOC limits from Kiln Stacks 2, 3, 4, and 5 in incorporated NSR Permit No. 45622.

4. Issues Raised in Public Comments

This issue was raised on pages 10-12 of the Public Comments.

5. Analysis of State's Response

The Executive Director disagrees with Petitioners' demonstration that NSR Permit No. 45622 incorporated by reference into the Proposed Permit fail to specify monitoring and testing requirements that assure compliance with applicable requirements. The Executive Director states that, pursuant to 40 CFR 70.6(a)(3)(b), recordkeeping may serve as periodic monitoring, but fails to identify any specific provision of either the Proposed Permit or incorporated NSR permit that assures compliance with lead and VOC limits from Kiln Stacks 2, 3, 4, and 5.

The Executive Director references Proposed Permit Terms 10 and 12, as well as NSR Permit No. 45622 Special Condition 41, which requires recordkeeping of all materials used as input to enable calculations of all emission rates as required in NSR Permit No. 45622. RTC at 31-32. Unfortunately, these provisions do not specify which monitoring or testing methods—if any—are necessary to assure compliance with NSR emission limits. Rather, these provisions provide a non-exhaustive menu of options that Oxbow may pick and choose from, at its discretion, to demonstrate compliance with various emission limits and operating requirements. The laundry lists of options for monitoring compliance contained in Proposed Permit, Special Condition No.'s 10 and 12, and NSR Permit No. 45622 Special Condition 41, are so vague as to be meaningless.

This vagueness prevents EPA and the public from effectively evaluating whether the monitoring or testing methods—if any—that Oxbow uses to assure compliance with emission limits are consistent with Title V. Additionally, much of the recordkeeping listed in these conditions is not available to members of the public, further frustrating any attempt to determine compliance with emission limits or bring citizen enforcement suits to address non-compliance.

The Executive Director also references NSR Permit No. 45622 Special Conditions 4, 5, 6, and 7, collectively labeled “Opacity and Visible Emission Limits,” in defense of the Proposed Permit. These conditions limit visible emissions from dozens of emission points at the Port Arthur Plant, and lay out the visual monitoring requirements to ensure compliance with those opacity limits. Like the general permit terms discussed in the preceding paragraph, neither the proposed permit nor the incorporated NSR permits explain how opacity monitoring can be used to determine compliance with numeric emission limits on lead and VOC.

Finally, the Executive Director references NSR Permit No. 45622 Special Conditions 29 and 30, which detail stack sampling requirements to demonstrate compliance with various emission limits. While these conditions are much more specific than those discussed above, they still fail to specify monitoring, testing, and recordkeeping requirements that assure compliance with lead and VOC limits in incorporated NSR Permit No. 45622.

NSR Permit No. 45622 Special Condition 29 requires stack sampling at the request of the Executive Director or other air pollution control agency, while Special Condition 30 requires annual on-going stack sampling for nitrogen oxides, carbon monoxide, sulfur dioxide, hydrogen chloride, and hydrogen fluoride from the kiln stacks. Additionally, stack sampling procedures in NSR Permit No. 45622 Special Condition 36 detail compliance determinations for particulate matter and sulfur trioxide limits from the Kiln Stacks, based on EPA calculation methods. These

Special Conditions collectively specify monitoring and recordkeeping requirements for all the pollutants authorized for Kiln Stacks 2, 3, 4, and 5, with the exception of lead and VOC. The framework for proper monitoring of Kiln Stack pollution limits is clearly evident in NSR Permit No. 45622 Special Conditions 29, 30, and 36. But these conditions are entirely silent regarding lead and VOC.

The Executive Director's Response to Comments fails to rebut Petitioners' demonstration that the Proposed Permit is deficient on this point. The Executive Director broadly references numerous permit conditions and high-level citations to the Texas Administrative Code, but does not identify any permit terms or other requirements sufficient to assure ongoing compliance with hourly and annual lead and VOC limits for Kiln Stacks 2, 3, 4, and 5.

V. CONCLUSION

For the foregoing reasons, and as explained the Public Comments, the Proposed Permit is deficient. Accordingly, the Clean Air Act requires the Administrator to object to the Proposed Permit.

Respectfully,

ENVIRONMENTAL INTEGRITY PROJECT

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