



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270

August 26, 2022

Ms. Tonya Baer Miller, Director  
Office of Air  
Texas Commission on Environmental Quality (MC 122)  
Post Office Box 13087  
Austin, Texas 78711-3087

Re: Objection to Title V Permit No. O1384  
Huntsman Petrochemical LLC, Huntsman Petrochemical Conroe Plant  
Montgomery County, Texas

Dear Ms. Baer Miller:

This letter is in response to the Texas Commission on Environmental Quality submittal to our office containing the proposed renewal of the title v permit for the Huntsman Petrochemical Conroe Plant referenced above. The U.S. Environmental Protection Agency has a 45-day review period which began on July 12, 2022, and ends on August 26, 2022. We have reviewed the TCEQ's proposed title v permit action and Statement of Basis. In accordance with 40 CFR § 70.8(c) and 42 U.S.C. § 7661d(b)(1), the EPA is objecting to the proposed permitting action. Section 505(b)(1) of the federal Clean Air Act requires the EPA to object to the issuance of a proposed title v permit during its 45-day review period if the EPA determines that the permit is not in compliance with applicable requirements of the Act or requirements under 40 CFR Part 70. The enclosure to this letter provides the specific reasons for each objection and a description of the terms and conditions that the permit must include to respond to the objections.

Section 505(c) of the Act and 40 CFR § 70.8(c)(4) provide that if the permitting authority fails, within 90 days of the date of the objection, to submit a permit revised to address the objections, then the EPA will issue or deny the permit in accordance with the requirements of 40 CFR Part 71. Because the State must respond to our objection within 90 days, we suggest that the revised permit be submitted with sufficient advance notice so that any outstanding objection issues may be resolved prior to the expiration of the 90-day period.

We are committed to working with the TCEQ to ensure that the final title v permit is consistent with all applicable title v permitting requirements and the EPA approved Texas title v air permitting program. If you have questions or wish to discuss this further, please contact Cynthia Kaleri, Air Permits Section Chief at (214) 665-6772, or Aimee Wilson, Texas Permit Coordinator at (214) 665-7596. Thank you for your cooperation.

Sincerely,

David F. Garcia, P.E.  
Director  
Air & Radiation Division

Enclosure

cc: Huntsman Petrochemical Conroe Plant Site Manager  
Mr. Sam Short, Director  
Air Permits Division  
Texas Commission on Environmental Quality (MC-163)

## ENCLOSURE

### EPA Objections to TCEQ Title V Permit O1384

*EPA views monitoring, recordkeeping, and reporting adequacy in NSR permits that are incorporated by reference into a title v permit to be part of the title v permitting process and will therefore review whether a title v permit contains adequate monitoring, recordkeeping, and reporting provisions sufficient to assure compliance with the terms and conditions established in the preconstruction permit. The statutory obligations to ensure that each title v permit contains “enforceable emission limitations and standards” supported by “monitoring . . . requirements to assure compliance with the permit terms and conditions,” 42 U.S.C. § 7661c(a), (c), apply independently from and in addition to the underlying regulations and permit actions that give rise to the emission limits and standards that are included in a title v permit.” See *South Louisiana Methanol Order* at 10; *Yuhuang II Order* at 7-8;  *PacificCorp-Hunter Order* at 16, 17, 18, 18 n.33, 19; *Big River Steel Order* at 17, 17 n.30, 19 n.32, 20. Therefore, regardless of the monitoring, recordkeeping, and reporting initially associated with a minor NSR permit or PBR, TCEQ has a statutory obligation independent of the process of issuing those permits to evaluate monitoring, recordkeeping, and reporting in the title v permitting process to ensure that these terms are sufficient to assure compliance with all applicable requirements and title v permit terms. *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008); see *Motiva Order* at 25-26.*

- 1. Objection for Failure to Identify Specific Applicable Requirements under 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAP).** The Applicable Requirements Summary table shows that the Huntsman Petrochemical Conroe Plant is subject to emission limitations/standards or equipment specification requirements of NESHAP Subpart FFFF. However, the Applicable Requirements Summary table gives only a high-level citation to the applicable NESHAP. The Applicable Requirements table does not list any requirements for the emission units identified for monitoring and testing, recordkeeping, or reporting requirements. Therefore, pursuant to 40 CFR § 70.8(c)(1), the United States Environmental Protection Agency objects to the issuance of the title v permit because the title v permit fails to identify the specific emission limitations and standards, including those operational requirements that assure compliance with 40 CFR Part 63 Subpart FFFF, as required by 40 CFR § 70.6(a)(1). The title v permit should contain references that are detailed enough that the manner in which the referenced requirements apply to the facility is clear and is not reasonably subject to misinterpretation. See *In the Matter of Tesoro Refining, Order on Petition No. IX-2004-06* (March 15, 2005) at 8. See also *White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program*, 34-38 (March 5, 1996). In the case of the Huntsman Petrochemical Conroe Plant permit, the permit does not contain enough information or detailed enough citations to determine how the specific requirements of the NESHAP requirements apply to the facility.

In responding to this objection, TCEQ should revise the Huntsman Petrochemical Conroe Plant title v permit to include the specific emission limitations and standards applicable to each emission unit subject to 40 CFR Part 63 Subpart FFFF. TCEQ should also include the specific monitoring and testing, recordkeeping, and reporting requirements applicable to the affected units along with a reference to the compliance method that will be used to ensure compliance with all applicable requirements in the title v permit.

- 2. Objection for Failure to Include all Applicable Requirements.** The proposed title v permit fails

to meet the requirements of CAA § 504(a) for “each permit issued under this subchapter shall include enforceable emission limitations and standards. . . and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan.” TCEQ’s definition of “applicable requirement” (found at 30 TAC § 122.10(2)) includes an extensive list of federal and state provisions. Minor New Source Review (NSR) permits and Permits by Rule (PBRs) are included in TCEQ’s definition of applicable requirement and are applicable requirements as defined under 40 CFR § 70.2. EPA appreciates that Huntsman has provided a PBR Supplemental Table that includes claimed PBRs, and monitoring for claimed PBRs. The NSR Authorization References table includes the following PBRs which were not included in the PBR Supplemental Table: 106.355, 106.371, 106.473, 106.512, and 106.532. In addition, the NSR Authorization References by Emissions Unit table includes PBR 106.532 with multiple emission units. TCEQ should verify if the PBRs listed above need to be added to the title v permit or if the PBR has been consolidated by incorporation into an NSR permit and update the title v permit as necessary.

### **3. Objection for Failure to Properly Incorporate by Reference the PBR Supplemental Tables.**

EPA understands that TCEQ is now requiring title v applicants to fill out the PBR Supplemental Table, which TCEQ will then incorporate into the title v permit through a general condition in the title v permit itself. EPA notes that Special Condition 20 of the proposed title v permit reads as follows:

Permit holder shall comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including permits, permits by rule (*including the permits by rule identified in the PBR Supplemental Tables in the application*), standard permits, flexible permits, special permits, permits for existing facilities including …” (emphasis added)

To the extent that TCEQ is relying on the PBR Supplemental Tables to incorporate additional requirements such as monitoring, the proposed Permit must ensure that the terms identified in the PBR Supplemental Table are adequately incorporated into the title v permit. EPA suggests that Special Condition 20 include the clarifying language as agreed upon in the Sandy Creek petition Order response. This additional language would read as follows:

Permit holder shall comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including permits, permits by rule (*including the terms, conditions, monitoring, recordkeeping, and reporting identified in registered PBR and permits by rule identified in the PBR Supplemental Tables dated October 28, 2021 in the application for project 32857*), standard permits, flexible permits, special permits, permits for existing facilities including …” (emphasis added)

In order to satisfy the requirement in title v for the Permit to set forth, include, or contain the applicable requirements, the special condition incorporating this table needs to include, at minimum, the date of the application and project number. The addition of the application date, project number, and clarifying monitoring language in the general condition adequately incorporates the PBR

supplemental table and clarifies that not only do the requirements of the PBR rule itself apply but the modified/expanded monitoring terms in the PBR Supplemental Table also apply.

#### **4. Objection to Improperly Incorporating Confidential Operational Limits and Emission**

**Calculations.** The proposed title v permit incorporates by reference NSR permit 4788. This NSR permit contains a special condition which references confidential information submitted in a permit application. Specifically, Special Condition 13 states:

“Annual production is limited to the rates represented in the Table 2 Material Balance submitted in the confidential section of the permit amendment application dated May 26, 2006. Each batch of choline hydroxide (XHE-112) is limited to the rates represented in the Table 2 Material Balance submitted in the confidential section of the permit amendment application dated January 12, 2017. Annual production of XHE-112 is limited to 400 batches on a 12-month rolling basis. (10/17).”

The Clean Air Act limits the types of information that may be treated as confidential in a title v permit, and therefore withheld from the public. In this instance, NSR applications containing confidential information have been incorporated into corresponding NSR permits and, in turn, are now incorporated by reference into the proposed title v permit as a term of that permit. As a general matter, some information may be protected as a trade secret under section 114(c) of the CAA. 42 U.S.C. § 7414(c). However, the CAA specifically limits this protection: “The contents of a [title v] permit shall not be entitled to [confidential] protection under section [114(c)].” 42 U.S.C. § 7661b(e). Regarding the contents of a title v permit, the CAA further requires that “[e]ach permit issued under this subchapter shall include enforceable emission limitations and standards, ... and such other conditions as are necessary to assure compliance with applicable requirements ....” 42 U.S.C. § 7661c(a). EPA regulations further require that the contents of a title v permit include “emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.” 40 C.F.R. § 70.6(a)(1). Further, “terms and conditions in a part 70 permit... are enforceable by the Administrator and citizens under the Act.” 40 C.F.R. § 70.6(b)(1). Additionally, information which is considered emission data, as well as standards or limitations, are also not entitled to confidential treatment. See CAA § 114(c) (“other than emissions data”); 40 C.F.R. § 2.301(f).

The EPA has previously evaluated the use of confidential requirements in permits issued by TCEQ. See *In the Matter of ExxonMobil Corporation, Baytown Refinery, Order on Petition No. VI-2016-14* (April 2, 2018) (Baytown Order). In granting that petition, the EPA acknowledged that a potential conflict exists between TCEQ’s regulatory scheme and the CAA mandate that does not afford confidential protections to the contents of a permit.

Here, the confidential information that is referenced in NSR permit 4788 and subsequently incorporated into the proposed title v permit establishes binding requirements governing operations of the plant related to annual production rates and rate limitations for each batch of XHE-112. Since the limitations from the NSR permit and associated application are incorporated into the proposed title v permit, these production rates would be part of the contents of the title v permit. Therefore, for purposes of title v permitting, they are not entitled to protection as confidential pursuant to CAA § 503(e). Further, since these limitations on production are applicable requirements for purposes of title v, they must be enforceable by citizens in addition to the EPA. See CAA § 504(a); 42 U.S.C. §§ 7414(b)(2), 7604(a)(1), (f)(4). Because the production rates or limitations are

confidential, the public does not know what these applicable requirements are, negating the ability of citizens to enforce these conditions. TCEQ asserts that according to the Texas Health & Safety Code § 382.041, as an agent of the commission they “may not disclose information submitted to the commission relating to secret processes or methods of manufacture or production that is identified as confidential when submitted.” The Texas Health & Safety Code § 382.041 cannot override 503(e) of the CAA. The CAA states that permit terms of the title v permit cannot be withheld from the public. Since these special conditions are incorporated by reference into the title v permit, they appear to be “contents of a [title v] permit,” and therefore ineligible for confidential treatment.

TCEQ should reevaluate and ensure that the claimed confidential information in the title v permit is neither part of the title v permit, establishing binding, enforceable permit terms, nor considered emissions data for purposes of CAA 503(e) and 40 C.F.R. § 2.301(a)(2)(i)(B). If TCEQ can establish that the claimed confidential information is not part of the title v permit operational limit or emissions data, TCEQ needs to document in the permit record the basis for why this information is not necessary to enforce any term or condition of the title v permit.

### **Additional Comments Outside of EPA’s Objections**

EPA Region 6 has conducted an analysis using EPA's EJScreen to assess key demographic and environmental indicators within a five-kilometer radius of the Huntsman Petrochemical Conroe Plant. This analysis shows a total population of approximately 15,000 residents within a five-kilometer radius of the facility, of which approximately 52 % are people of color and 48 % are low income. In addition, the EPA reviewed the EJScreen EJ Indices, which combine certain demographic indicators with 12 environmental indicators. The results show that 10 of the 12 EJ Indices in this five-kilometer radius area exceed the 60th percentile in the State of Texas, with two of the 12 EJ Indices exceeding the 80th percentile. These two indices are superfund proximity and wastewater discharge.

Tools to address EJ concerns have been and continue to be developed by EPA to assist states and stakeholders in evaluating environmental justice<sup>1</sup>. In order to fully assess equity considerations for overburdened communities during the permitting process, EPA believes that an EJ analysis should include input received from the community, an evaluation of existing environmental data, use of known demographic information, and other relevant information as much as possible. We encourage TCEQ to screen permitting actions for EJ concerns and to consider potential compliance issues related to civil rights of the communities potentially impacted early in the permitting process by utilizing EJScreen and knowledge of the impacted area. This screening will indicate whether a permitting decision has the potential to contribute to significant public health or environmental impacts, if the community may be particularly vulnerable to impacts from the proposed permit, and whether the community is already disproportionately impacted either by public health or environmental burdens. A sound screening practice will also provide important information as to whether there are residents of the affected community who could be disproportionately subjected to adverse health, environmental and/or quality of life impacts on the basis of race, color, or national origin (including LEP status). TCEQ should take into consideration other permitted facilities in the area, including whether these facilities are major or minor sources of pollution and contribute to community risk. An area with an above average number of sources, especially if those sources are large or in close proximity to residents, is a sign of concern.

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<sup>1</sup> EPA Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions found at: <https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant.pdf>

Finally, the EPA notes that civil rights regulations prohibit state, local, or other entities that receive federal financial assistance, either directly or indirectly from EPA (recipients) from taking actions that are intentionally discriminatory as well as practices that have an unjustified discriminatory effect, including on the bases of race, color, or national origin. EJ and civil rights compliance are complementary. Integrating environmental justice in decision making and ensuring compliance with civil rights laws can, together, address the strong correlation between the distribution of environmental burdens and benefits and the racial and ethnic composition, as well as income level of communities. EPA is committed to advancing environmental justice and incorporating equity considerations into all aspects of our work. The title v process can allow public participation to serve as a motivating factor for applying closer scrutiny to a title v source's compliance with applicable CAA requirements. Communities can use the title v process to help ensure that each title v permit contains all of a source's applicable requirements, and other conditions necessary to assure the source's compliance with those requirements. When TCEQ responds to this EPA objection, please consider utilizing some form of enhanced public outreach to notify the public of the Executive Director's response to comments and opportunity to petition the EPA to object to the proposed permit.