



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

April 27, 2023

Mr. Cory Chism, 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. O1267
TotalEnergies Petrochemicals & Refining USA, Inc. Port Arthur Refinery
Jefferson County, Texas

Dear Mr. Chism:

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 TotalEnergies Petrochemicals & Refining USA Port Arthur Refinery permit referenced above. The United States Environmental Protection Agency has a 45-day review period which began on March 13, 2023 and ends on April 28, 2023. 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), EPA is objecting to the proposed permitting action. Section 505(b)(1) of the federal Clean Air Act requires EPA to object to the issuance of a proposed title V permit during its 45-day review period if 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 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 Supervisor 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: TotalEnergies Petrochemicals & Refining USA, Inc.

ENCLOSURE

EPA Objections to TCEQ Title V Permit O1267

EPA views monitoring, recordkeeping, and reporting adequacy in New Source Review (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; PacifiCorp-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 Permit by Rule (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 Timely Issue Renewal of Title V Permit.** TCEQ received the application to renew the title V permit on February 3, 2015. The application was determined to be complete on February 5, 2016. The title V permit went to public notice on March 16, 2016. Comments were received on April 1, 2016. EPA initially received the proposed title V permit and response to comments for review on February 14, 2020, over 4 years after the permit application was determined to be complete. Title V permits are to be issued within 18 months after the application is complete. 40 CFR 70.7(a)(2) and 30 TAC 122.139(3). TCEQ withdrew that proposed permit from EPA review after EPA indicated that the permit had significant deficiencies. The proposed title V permit and response to comments was submitted to EPA for review a second time on March 10, 2023. The version of the NSR permit that is incorporated into the title V permit is from December 30, 2015. The NSR permit has been amended seven times since then with the most recent amendment being issued on November 17, 2022. The result is that the proposed permit is severely outdated. TCEQ had seven years to require TotalEnergies to update their title V permit renewal application to incorporate if not the most recent version of NSR permit 46396, at least one of the seven more recent revisions. TCEQ should already be aware of the issue as a Special Term and Condition was added to the title V permit that requires the permit holder to submit a title V revision application to TCEQ to incorporate the changes to NSR permit 46396 into the title V permit, through a revision, within 90 days of issuance. See condition 1.F. of the title V permit. The EPA regulations at 40 CFR 70.5(a)(1)(ii) indicate that when a source obtains a permit under the preconstruction program, they shall file a complete application to obtain the part 70 permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish. If TCEQ wants to delay the addition of the NSR permit changes until after the issuance of this title V renewal, then they should require that the NSR permit be incorporated through a significant revision to ensure that a full public participation process is available to the public and they should commit to responding to these EPA objections within the 90 day time period provided in 40 CFR 70.8(c)(4).

2. Objection for Failure to Include Adequate Monitoring for PBRs. As the title V permitting authority, TCEQ should ensure that the title V permit “set[s] forth” monitoring sufficient to assure compliance with all applicable requirements. 42 U.S.C. § 7661c(c); see id. § 7661c(a); 40 C.F.R. § 70.6(a), (a)(3), (c); 30 TAC 122.142(c). EPA supports TCEQ’s efforts to incorporate PBRs into the title V permit in a manner that clearly identifies each registration and the emission unit(s) to which it applies through the use of the PBR Supplemental Table. EPA finds that the permit lacks sufficient monitoring to assure compliance with emission limitations and operational limits. More detailed monitoring information is needed in the PBR Supplemental Table for this permit. The goal of this supplemental table is to explicitly incorporate monitoring/recordkeeping requirements and reduce ambiguity with respect to how emissions are calculated and how compliance is determined. In addition, the title V permit lists 1 standard exemption for which TotalEnergies has not included in the PBR supplemental table. The TCEQ website indicates that there are other standard exemptions that are currently effective at the site and these are identified in Objection 4 below. Standard exemptions are considered permits by rule and as such, must be included on the PBR Supplemental tables.

Monitoring is missing from Table D of the PBR Supplemental Table for the following emission units:

- 09SATLQFUG
- 17NHTFUGS
- 17REFFUGS
- 45DOCK1FUG
- 22BZNTKFUG
- 40CSWWFUG
- 55FCCWWFUG
- 22TANK0563
- 45DOCKTO1
- 45DOCKTO2
- 42FGTFUGS
- 14FGTFUGS
- 01ACU1FUGS
- 16ISOMFUGS
- 04BTXFUGS
- 04SULFFUGS
- 50TDPFUGS
- 37SWS2FUGS
- 19PSAFUGS
- 67805CLTWR
- 45DOCK3PCV
- 06VDU2FUGS
- 34SRU4FUGS
- 39SWS3FUGS

- 43DHT3FUGS
- 47SWS4FUGS
- 20GASTRKFG
- 20MOGASBLD
- 2OSFTKFUG
- 45DOCK1FUG
- 01ACU1FUGS
- 08ALKYFUGS
- 16ISOMFUGS
- 04BTXFUGS
- 04SULFFUGS
- 22GOTKFUG
- 19PSAFUGS
- 31KNHTHFUGS
- 22TANK0542A
- 22TANK0502
- 22TANK0531
- 14FGTFUGS
- 16ISOMFUGS
- 18RAILLOAD
- 19PSAFUGS
- 20GASTRKFG
- 20MOGASBLD
- 22TANK0475
- 22TANK0476
- 22TANK0479
- 45DOCK2FUG

When TCEQ relies on Table D to incorporate additional monitoring requirements, the monitoring and recordkeeping terms must be sufficient to assure compliance with emission limitations and operational requirements. When records are identified as being maintained, it would be practical and necessary to include a frequency for the recordkeeping. Table D for TotalEnergies contains references to “as appropriate” for each entry without qualification or explanation under what circumstances the specified monitoring would not be appropriate. The use of the term “as appropriate” in this manner does not establish a practically enforceable permit limit or condition. In addition, the monitoring requirements are vague without specifying what exactly is being monitored, at what frequency, and how that information is used to determine the emissions. The table should be updated to indicate how the monitoring is to be performed, the frequency for performing any monitoring, and specify what emission factors are being used (if applicable) and the calculation methodology for determining the emissions. TCEQ must require TotalEnergies to revise the PBR Supplemental table to include information adequate to assure compliance with emission limits and operational limits that are imposed by the PBRs.

3. Objection for Failure to Properly Identify All Emission Units. The title V permit appears to be missing emission units from the Applicable Requirements Summary Table and the NSR Authorization References by Emissions Unit table.

The title V permit also does not appear to include the following emission units:

- SCALVACTRK authorized by PBR Registration 102135
- 67805CLTWR authorized by PBR Registration 110761
- 50BZTNKFLR authorized by permit 46393/PSDTX1073M2/N044

The proposed title V permit fails to meet the requirements of CAA § 504(a) requiring 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 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 NSR permits, including standard 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 TotalEnergies has provided a PBR Supplemental Table that includes claimed PBRs, and monitoring for claimed PBRs. However, TCEQ should verify if the PBRs listed above need to be added to the title V permit or if the PBRs have been consolidated by incorporation into an NSR permit and then TCEQ needs to update the title V permit as necessary.

4. Objection for Failure to Include all Applicable Requirements. EPA reviewed the PBR Supplemental Table that was included with the title V permit application. The NSR Authorization References by Emissions Unit table fails to include registration numbers next to emission units authorized by registered PBRs as required by TCEQ’s EPA-approved regulations, 30 TAC § 122.142(2)(B)(i), as well as the agreements underpinning the EPA’s approval of the Incorporation By Reference (IBR) of PBRs - namely that "PBRs will be cited to the lowest level of citation necessary to make clear what requirements apply to the facility." 66 Fed. Reg. at 63322 n.4. In addition, EPA reviewed the PBR Supplemental Table that identified all claimed PBRs, several claimed PBRs appear to be omitted from title V permit O1267 (identified below by PBR rule number and emission unit):

- Claimed PBRs absent from the title V permit :
 - DEGREASERS – 106.454
 - SMALLTK – 106.472
- Standard Exemptions absent from the title V permit:
 - 110766
 - 110768
 - 110769
 - 110773
 - 11273

- Registered PBRs absent from the title V permit:
 - 110761
 - 131467
 - 137702
 - 138865
 - 139741
 - 144748
 - 146063
 - 151211
 - 152274
 - 157656
 - 159672
 - 160728
 - 161471
 - 161828
 - 162102
 - 163516
 - 164527
 - 166287
 - 166855
 - 168522
 - 172132

In addition, EPA found the following errors in the proposed permit which need to be corrected before the permit is issued. These errors make the permit unclear as to the applicability of various PBRs to specific emission units.

- PBR Supplemental Table identifies 45DOCK1FUG and 17REFFUGS as authorized by PBR registration 101772. However, the title V permit indicates that the only PBR registrations for 45DOCK1FUG are 108341 and 111965. The registration for 17REFFUGS contains a typo and reads 101172 instead of 101772
- PBR Supplemental Table identifies 10DEMEXFUG and 58GSHDSFUG, as authorized by PBR registration 101776. However, the title V permit indicates 10DEMEXFUG is authorized by PBR registration 101772 and 58GSHDSFUG, is authorized by PBR registration 101779 (assume to be a typo).
- The title V permit shows 10GRUFUGS to be authorized by PBR registration 55631. However, the title V permit shows that this unit is also authorized by PBR registration 101776.
- The title V permit shows 45DOCK1FUG and 45DOCK2FUG as authorized by PBR registrations 108341 and 111965. However, the PBR Supplemental Table does not reflect this.
- The PBR Supplemental Table shows 45DOCKTO1 and 45DOCKTO2 to be authorized by registered PBRs 108341 and 111965. However, the title V permit shows these units to be authorized by PBR registrations 108341 and 118814.
- The PBR Supplemental Table shows 22OSFTKFUG, 22GOTKFUG, and 45DOCK1FUG to be authorized by PBR registration 118814. However, this PBR registration is missing from

the title V permit for 22OSFTKFUG and 22GOTKFUG. The Title V permit appears to have a typo in the PBR registration for 45DOCK1FUG.

It is not clear that the TotalEnergies title V permit currently includes or incorporates all applicable requirements for the facility, as required by the CAA, the EPA's regulations, TCEQ's regulations, the agreements underlying the EPA's approval of IBR in Texas, and the EPA's longstanding position concerning IBR. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the TotalEnergies title V permit since it is not in compliance with the requirements of CAA § 504(a) and 40 CFR § 70.6(a)(1) & (3).

- 5. Inadequate Monitoring for Flares.** As you are aware from petition orders recently published for other TCEQ title V permits, EPA has discovered that meeting the requirements of 40 CFR § 60.18 does not always account for certain problems that can reduce combustion efficiency, such as those caused by excess steam or air assistance to the flare. The flares at the TotalEnergies refinery are subject to the 40 CFR Part 63 Subpart CC National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries (NESHAP) requirements and EPA does see that requirements have been added to the title V permit for compliance with this NESHAP. However, the NSR that is incorporated by reference into the title V permit is outdated and lacks sufficient information about the flares. Steam and air-assisted flares for certain waste gas streams are susceptible to performance problems that may reduce VOC destruction efficiency below 98%. EPA seeks clarification on a few items in an effort to determine if the draft permit requires sufficient monitoring to ensure compliance with the stated 98% / 99% destruction efficiencies and the related lb/hr and TPY emission rates.

The Major NSR Summary Table for Emission Point No. FLARECAP, which includes the North Flare, Middle Flare, South Flare, and East Flare), indicates that Special Conditions 3, 5, 8, 51, and 87 impose monitoring for the flares. None of the conditions in Special Condition 51 contain any required monitoring for the amount of assist steam or air that is sent to the flares. Special Condition 51.C. states, "The flares shall be operated with no visible emissions except periods not to exceed a total of five minutes during any two consecutive hours. If necessary, this shall be ensured by the use of steam or air assist to the flare". The permit does not indicate if any of the four flares are to be operated under normal conditions with either steam or assist air. TCEQ should identify which flares are steam or air assisted and if unassisted flares are permitted to use steam or air in resolving excess opacity emission events. In addition, the permit does not identify the minimum destruction efficiency required of the flares. Special Condition 51.G. refers to an amendment application dated June 2006 for documentation on how the emission limits were established. EPA checked the TCEQ website for the information on the amendment applied for in June 2006 and found an entry dated June 20, 2006 with a project number given as 123319. When checking the TCEQ Central File Room Online searching by the NSR permit number 46396 and project number 123319, the system returned 11 files, however none of the files were an application. TCEQ should verify that the June 2006 application is available online and provide the content ID for ease in retrieval. TCEQ should provide any details that identify what the destruction efficiency is for each flare and provide permit conditions that ensure compliance with the specified destruction efficiency of each flare.

- 6. Objection to Improperly Incorporating Confidential Information.** The proposed title V permit incorporates by reference NSR permit numbers 46396, PSDTX1073M1, and N044. Special Condition 96.Q. states, "Production rates for the condensate splitter shall not exceed the values listed in the Confidential File, Permit No. 20381, Table 2B, dated September 24, 1997. The maximum

production rate shall not exceed 60,000-barrels per day unit charge rate (based on a 12-month rolling average)”. This condition imposes an operational production limitation on the condensate splitter. The confidential file referenced is for an NSR permit that is no longer valid. It is unclear if NSR permit 20381 was consolidated into PSDTX1073M1.

The CAA limits the types of information that may be treated as confidential under title V, and therefore withheld from the public. 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 “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 ….” 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). It is not clear in the current permit record whether the title V permit contains all the necessary emissions limitations and standards, including those emission methodologies and inputs, operational requirements and limitations that assure compliance with all applicable requirements, or if some of that information may be inappropriately treated as confidential resulting in the title V permit not complying with the CAA.

Here, the confidential information that is referenced in NSR permit 46396 and subsequently incorporated into the title V permit establishes binding requirements governing operations of the plant related to production limits. Since the limitations from the NSR permit and associated application are incorporated into the title V permit, these production rates are part of the contents of the title V permit. 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 40 C.F.R. § 70.6(b)(1). Because the production rates or limitations are confidential, the public does not know what these applicable requirements are, significantly hampering the ability of citizens to enforce these conditions. TCEQ asserts that according to the Texas Health & Safety Code § 382.041 that 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 Clean Air Act, however, limits the type of information that may be withheld from the public on the basis of trade secret or business confidentiality. TCEQ should reevaluate the companies claim of confidentiality and provide a technical analysis that shows that the quantity of product produced does (or does not) correlate to the amount of facility emissions or is needed by the public to enforce the emission or operational limitations of the title V permit. If TCEQ can establish that this confidential information is not part of the title V permit operational limit, emissions data, or contains emissions calculation methodologies and inputs to determine compliance, TCEQ will still need to establish the basis or details in the permit record for why it is not necessary to enforce these as a term or condition of the title V permit. Otherwise, TCEQ should take appropriate action to ensure the throughput and operation limits and/or emission calculations (including calculation

methodologies and inputs required) that are necessary to assure compliance with applicable requirements are transferred into non-confidential portion of the permitting record.

Additional Comments Outside of EPA's Objections

EPA Region 6 has conducted an analysis using EPA's EJSscreen to assess key demographic and environmental indicators within a five-kilometer radius of the TotalEnergies Port Arthur Refinery. This analysis shows a total population of approximately 21,727 residents within a five-kilometer radius of the facility, of which approximately 46% are low income, 22% are low life expectancy, and 18% have less than a high school education. The air toxics cancer risk (lifetime risk per million) is 70, whereas the state risk is on average 31. In addition, the EPA reviewed the EJSscreen EJ Indices, which combine certain demographic indicators with 12 environmental indicators. The results show that 9 of the 12 EJ Indices in this five-kilometer radius area exceed the 70th percentile in the State of Texas, with 2 of the 12 EJ Indices exceeding the 80th percentile.

Tools to address EJ concerns have been and continue to be developed by EPA to assist states and stakeholders in evaluating environmental justice¹. 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 EJSscreen 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 income, national origin (including LEP status), or other demographic factors. 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.

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

1 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>

See also EPA Legal Tools to Advance Environmental Justice found at: <https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>

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.