

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

IN THE MATTER OF:	§	PETITION FOR OBJECTION
	§	
Clean Air Act Title V Permit No. O3454	§	
	§	
Issued to Flint Hills Resources Ingleside, LLC	§	Permit No. O3454
	§	
Issued by the Texas Commission on	§	
Environmental Quality	§	
	§	

**PETITION TO OBJECT TO TITLE V PERMIT NO. O3454 ISSUED BY THE TEXAS
COMMISSION ON ENVIRONMENTAL QUALITY**

Pursuant to section 42 U.S.C. § 7661d(b)(2), Ingleside on the Bay Coastal Watch Association (IOBCWA) and TCHD Consulting LLC, hereby petitions the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) to object to the Proposed Federal Operating Permit No. O3454 issued by the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) authorizing operation of Flint Hills Resources Ingleside Oil Terminal in San Patricio County, Texas.

Flint Hills Resources (FHR) Ingleside, LLC applied to the TCEQ for a renewal of its Title V Permit to authorize continued operations at the Ingleside Terminal located at 103 Farm-to-Market Road 1069 in Ingleside, Texas, San Patricio County, Texas 78362. According to its Statement of Basis, the Terminal includes marine loading and unloading, as well as storage tanks for petroleum products and crude oil, though it should be noted that it recently announced the sale of its marine loading operations to the adjacent Enbridge Ingleside Energy Center. Equipment at the facility includes a ship and barge dock for loading and unloading bulk liquids, seventeen crude

or petroleum products storage tanks, and ancillary equipment. An onshore vapor combustor controls volatile organic compound (VOC) emissions during marine loading.

I. PETITIONERS

Ingleside on the Bay Coastal Watch Association is a non-profit organization formed in 2019 to mitigate negative effects on this bayfront community due to rising sea levels, larger and more frequent ship traffic, and rapid industrialization. Association members include Ingleside on the Bay residents, educators, engineers, business owners, elected officials, and other individuals who support the goal to decrease the negative impacts on the area and to preserve and enhance the local environment.

TCHD Consulting LLC is located in Driftwood, Texas and provides technical, environmental, safety, and thermography consulting services to a variety of customers in the United States, Canada, South America, and Europe. It provides technical, air monitoring, environmental, and optical gas imaging (OGI) and general thermography consulting services, including instruction, to both students and relevant parties including but not limited to those associated with affected communities, environmental causes, safety, the public interest, and the media.

II. PROCEDURAL BACKGROUND

TCEQ mailed a Notice of Proposed Permit and Executive Director's Response to Public Comment Renewal Permit Number O3454 for Flint Hills Resources Ingleside, LLC Ingleside Terminal Ingleside, San Patricio County (TCEQ Regulated Entity Number: RN100222744 Customer Reference Number: CN605721935) on March 22, 2024. The proposed Permit was subject to an EPA review for 45 days in a timeframe starting on March 26, 2024, and ending on May 10, 2024. Because EPA did not file an objection to the proposed Permit, Petitioners may

petition the EPA within 60 days of the expiration of the EPA’s 45-day review period in accordance with Title 40 Code of Federal Regulations Part 70 (40 CFR Part 70) and Texas’ Title V permitting rules contained in Title 30 Texas Administrative Code Chapter 122 (30 TAC Chapter 122).

This Petition is based on objections to the permit raised with reasonable specificity during the public comment period and in TCEQ’s responses after the public comment period. This Petition follows content and formatting guidelines specified in Title 40 Code of Federal Regulations Part 70 (40 CFR § 70.12). The EPA should object to the issuance of this proposed Permit because it is not in compliance with the applicable requirements or the requirements of 30 TAC Chapter 122. Per the EPA’s Region 6 Operating Permit Timeline for Texas, the 60-day public petition period began on May 11, 2024, and ends on July 10, 2024.

Per TCEQ’s publicly available letter dated March 22, 2024, from Mr. Jesse E. Chacon, P.E., Manager of the Operating Permits Section of the Air Permits Division to Commenter/Interested Party (known as the “letter”), there were five modifications that were made from the draft to the proposed permit (that were also re-stated and elaborated upon in its Response to Comments) including:

1. Revised Special Term and Condition 9 in the proposed permit 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 PBRs and permits by rule identified in the PBR Supplemental Tables dated November 10, 2023 in the application for project 33957), standard permits, flexible permits, special permits, permits for existing facilities including Voluntary Emissions Reduction Permits and Electric Generating Facility Permits issued under 30 TAC Chapter 116, Subchapter I, or special exemptions referenced in the New Source Review Authorization References attachment.”
2. New Source Review Authorization References by Emissions Unit table in the proposed permit (pages 21-22) has been updated to include the emission units listed in the OP-PBRSUP tables.

3. New Source Review Authorization References table was updated to list NSR Permit Number 6606, effective 10/11/2022.
4. Revised the SOB to include a reference to the PBR Supplemental Table and Special Term and Condition 9 and an updated reference to NSR Permit Number 6606.
5. The Proposed Permit is revised to delete the MACT Y permit shield that was previously granted for GRP DOCK unit.

After reviewing TCEQ's response to public comments and the technical materials, it appears that there was only one change to the proposed revised permit itself. This includes a revised Special Condition Number 9 under the New Source Review Authorization Requirements when it states:

“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 PBRs and permits by rule identified in the PBR Supplemental Tables dated November 10, 2023 in the application for project 33957), standard permits, flexible permits, special permits, permits for existing facilities including Voluntary Emissions Reduction Permits and Electric Generating Facility Permits issued under 30 TAC Chapter 116, Subchapter I, or special exemptions referenced in the New Source Review Authorization References attachment.”

No additional monitoring requirements were added to the Statement of Basis or to the proposed revised permit.

III. GROUNDS FOR OBJECTION

ISSUE 1: The proposed permit revision fails to assure compliance with emission limits for the Marine Combustors.

Per its March 22, 2024, letter to Commenter/Interest Party, TCEQ addressed its assertion concerning the Assurance of Compliance with Emissions [sic] Limit for the Marine Vapor Combustion Units in Comment 2. The objection cited that the:

“The Draft Permit Special Condition 9 incorporates Flint Hills’ NSR permits listed in New Source Review Authorization References, including NSR Permit No. 6606. Permit No. 6606

authorizes numerous emissions sources at Flint Hills' Terminal, including the three marine vapor combustion units. The marine vapor combustion units are a significant source of criteria pollutants – and the largest source of non-volatile organic compounds (VOC) pollutants – at Flint Hills' Terminal.

The Draft Permit fails to assure compliance with the emission limits for the marine vapor combustion units. The Draft Permit itself contains no monitoring or reporting related to pollutants from the marine vapor combustion units. And New Source Review Permit No. 6606 only specifies monitoring to demonstrate initial compliance with some of the emission limits at the marine vapor combustion units.³ Permit No. 6606 requires only a single, initial stack test for carbon monoxide (“CO”), nitrogen oxides (“NO_x”), sulfur dioxide (“SO₂”), and VOC's, performed shortly after construction of the marine vapor combustion units. Neither the Draft Permit nor Permit No. 6606 includes terms that demonstrate ongoing compliance with hourly and annual limits of the numerous pollutants emitted by the marine vapor combustion units.”

With the shortcomings mentioned, proposed FOP O3454 would need to comply with “30 TAC § 122.142(b)(2)(B) that requires Title V permits to include the specific regulatory citations in each applicable requirement ... identifying the emission limitations and standards; and ... the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards ... sufficient to ensure compliance with the permit.” In addition, “40 CFR § 70.6(a)(1) provides that “[e]ach permit issued under this part shall include ... [e]missions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.”

Per the March 22, 2024, letter, permit commentators declared that the proposed Flint Hills Resources revised FOP O3454 is deficient because:

“It fails to establish monitoring and recordkeeping requirements that assure compliance with hourly and annual emissions limits for CO, NO_x, SO₂, VOC, hydrogen sulfide (“H₂S”), and particulate matter (“PM”) from the marine vapor combustion units in incorporated New Source Review Permit No. 6606. While Permit No. 6606 includes provisions for determining initial compliance with some of those limits through a single initial stack test, it does not include provisions to demonstrate ongoing compliance.

The Draft Permit thus fails to include any monitoring or reporting to assure ongoing compliance. One-time, initial stack testing is not sufficient to assure ongoing compliance with hourly and annual emission limits 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.

Commenters cannot ascertain from the Draft Permit what monitoring or reporting methodology Flint Hills has elected to use, or whether this methodology is sufficient to assure compliance with all applicable requirements for the vapor combustion units. This effectively prevents the public from determining if the chosen monitoring, recordkeeping, and reporting satisfies Clean Air Act requirements. See 42 U.S.C. § 7661(c); see also 40 C.F.R. 70.6(a)(3). This lack of ongoing monitoring also renders the permit limits unenforceable by regulators and the public.

This lack of monitoring is especially problematic given that Flint Hills' recent series of sham minor amendments to New Source Review Permit No. 6606 are predicated on meeting emission limits at the marine vapor combustion units. Because the Draft Permit lacks monitoring to assure compliance with the emission limits from the marine vapor combustion units, Flint Hills cannot rely on those unenforceable emissions limits for its synthetic minor permit amendments.

And adequate monitoring is critical because the Draft Permit also assumes a very high VOC destruction efficiency of 99.9%. As VOC destruction efficiency increases, actual NO_x and CO emissions also tend to increase. The public must be able to verify that Flint Hills is continuously meeting its optimistic VOC limits while also continuously meeting its NO_x and CO limits. To remedy these deficiencies, TCEQ must require Flint Hills to amend the Draft Permit to include regular stack testing of all three marine vapor combustion units in all operating conditions for CO, NO_x, SO₂, VOC, H₂S, and PM.”

In its response, TCEQ stated that “the ED disagrees with the Commenter’s assertion that the draft permit fails to assure compliance with emissions limits for the marine vapor combustion units (MVCUs). The emissions from loading and unloading operations of marine tank vessels are routed to MVCUs that are used as an emissions control device.”

“Special Condition (SC) 6 of the Proposed Permit lists the sitewide requirements including compliance and performance testing, monitoring and reporting and recordkeeping (MRRT) for operations pertaining to the loading and unloading of marine tank vessels as specified in 40 CFR Part 63, Subpart Y. The applicable requirements summary table lists the applicable requirements for GRP MVCU on page 14 of Proposed Permit and the periodic monitoring (PM) requirements for the unit are listed on page 16 of the Proposed Permit.

The MVCUs demonstrate compliance by continuously monitoring the firebox temperatures at an averaging period of 6 minutes or less with an accuracy of the greater of the plus or minus 2 percent of the temperature being measured expressed in degrees Celsius or plus or minus 2.5 °C. This ensures that the average firebox temperature is kept at a minimum of 1600 °F, which translates into a minimum of 99.9 percent waste gas destruction efficiency and the minimum conversion of 98 percent H₂S into SO₂ in crude oil through combustion.

In addition to the MRRT requirements listed in FOP O3454, the MVCUs related requirements for monitoring, testing, recordkeeping, reporting, emissions factors and calculations, and emissions controls to demonstrate compliance with applicable standards are also stated in NSR permit 6606 conditions 8, 9.A through 9.E, 10.A through 10.E, 11 through 14, 24-25 and 26.A through 26 C. Other requirements in NSR permit 6606 that ensures compliance include routine maintenance of the MVCUs and equipment design and vessel loading interlocks that ensure proper collection and combustion of VOCs. MVCU stack temperatures are recorded continuously while loading, and the MVCUs are monitored for visible emissions to demonstrate compliance with 30 TAC 111.111. Application representation for NSR permit 6606 dated April 2021, version 4.1, page 34-36 document monitoring requirements for MVCUs on a per pollutant basis.

Emission rates are calculated using the methodology summarized on pages 17-20 of the application representation including stack testing data, manufacturer's specifications, engineering estimates, mass balances, TCEQ guidance, and EPA's Compilation of Air Emission Factors (AP-42). These approaches and emission factors were determined to be correct and applicable by TCEQ staff during the technical review based on standard industry air permitting practices. The Applicant represented the appropriate methodologies to control and minimize emissions and utilized corresponding control efficiencies when calculating the emission rates. As provided in 30 TAC § 116.116(a), the Applicant is bound by this representation, including the represented performance characteristics of the control equipment. In addition, the permit holder must operate within the limits of the permit, including the emission limits as listed in the MAERT.

Finally, the ED notes that the Title V permit holder is required to file a permit compliance certification (PCC) report annually to certify compliance with the applicable requirements listed in the FOP O3454, including emission limitations and standards. In addition, EPA requires permit holders to electronically file reports and emissions data required under 40 CFR Part 63, Subpart Y, via Electronic Reporting of Air Emissions, Compliance and Emissions Data Reporting Interface (CEDRI).”

With it response to comments, it is evident that TCEQ is/will rely on Permit 6066 to assure compliance with declarations made in Permit 6066 regarding the existence of a pilot flame and the temperature of the firebox. This does not equate with manufacture and Flint Hills Resources' statements that the marine combustors have 99.9% combustion efficiency, as declared by the draft FOP O3454 revisions. The EPA has questioned this type of rationale in the past, as it does not take into account that marine vapor combustors must be accurately sized, operated, and maintained to achieve the purported combustion efficiency levels claimed by manufacturers.

As a result of the proposed draft revision to FOP O3454, TCEQ should provide its technical rationale on how the agency determined that the permitting VOC destruction and removal efficiency (DRE) assumptions are correct even now, as the waste control devices need almost continuous maintenance to minimize emissions, as carbon deposits, burner inefficiencies, and uneven heating result in lower DRE. EPA has recognized TCEQ shortcomings with DRE assumptions in permitting actions in the past, as it consistently leans on manufacturer combustion efficiency declarations despite years of agency OGI observations from 2006 to present documenting significant emissions from the waste control devices that do not meet manufacturer specifications on a daily basis. This is based on numerous internal TCEQ technical meetings with manufacturers, flare operators, and on a multi-million-dollar steam-assisted flare study and subsequent operator training development from 2009 – 2010.

Consequently, this proposed draft permitting revision for FOP O3454 is misguided and non-defendable as the agency cannot ensure that Flint Hills Resources is/will be in compliance with 30 TAC § 122.142(b)(2)(B) and 40 CFR § 70.6(a)(1). Though technologies such as the Providence Photonics Mantis™ can actually measure combustion efficiency with some certainty, there is nothing in this proposed FOP O3454 revision that encourages its use in any capacity. Consequently, Flint Hills Resources' emissions are understated and are likely non-compliant with its existing FOP now. TCEQ did not mention or touch on its rationale to ignore its historical experiences in addressing overstated combustion efficiency declarations, as permitting actions often lean on early EPA flare studies that were conducted decades ago. As a result, TCEQ should ensure that this final FOP includes monitoring, recordkeeping, and operational parameters and limits to ensure compliance with DRE declarations that are currently unachievable over the long term.

ISSUE 2: The proposed permit fails to include adequate monitoring requirements to ensure compliance with incorporated permits-by-rule.

As described in TCEQ's letter dated March 22, 2024, Comment 1 filed by the Environmental Integrity Project (EIP) and Bay Coastal Watch Association [sic] stated that:

“The “Flint Hills” application includes a table specifying monitoring requirements for its Permits-by-Rule (“PBR”), Table D, Monitoring Requirements for registered and claimed PBRs for the Application Area. Unfortunately, the monitoring requirements for many of the units identified in this table merely require Flint Hills to keep records of the duration of the event and “any other inputs needed to calculate emissions.” These requirements are so vague as to be meaningless, and Commenters are unable to ascertain what monitoring, if any, Flint Hills is using to determine compliance with the limits in PBR No. 107625,” and thus, “the applicable requirement or Part 70 requirement not met as 42 U.S.C. § 7661c(c) requires that each Title V permit “set forth monitoring sufficient to assure compliance with all applicable requirements, along with applicability from 42 U.S.C § 7661c(a); 40 C.F.R. § 70.6(a), (a)(3), (c); 30 TAC 122.142(c), also.”

Moreover, per the letter, “To remedy this deficiency, the table should be updated to indicate 1) how the monitoring is to be performed, 2) the frequency for performing any monitoring, and 3) what emission factors and calculation methodology are being used to determine the emissions. TCEQ must require Flint Hills to revise the PBR Supplemental Table to include information adequate to assure compliance with emission limits and operational limits that are imposed by its PBRs, including PBR No. 107625.”

TCEQ did provide a response to those relevant issues by cross-referencing the enforceability of PBRs and New Source Review (NSR) permits just by their existence. Per 30 TAC § 122.142(b)(2)(B), FOPs must include monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards sufficient to ensure compliance with the permit. Merely including vague, non-descriptive permitting language does not meet the burden of these requirements. Additionally, 40 CFR § 70.6(a)(1) states that “each permit issued under this part shall include ... [e]missions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.”

Additional statutory language in 42 U.S.C § 7661c(a), 40 CFR § 70.6(a), (a)(3), (c), and 30 TAC 122.142(c), incorporate language that also require compliance with all applicable

requirements. However, the proposed vague permitting language and general references about “recordkeeping,” without any specificity and details, does nothing to assure appropriate monitoring and ultimately compliance that needs to be specifically enforced through regulatory inspections and investigations. TCEQ has failed in its duty to properly address these technical issues by assuring compliance with the listed rule language and properly addressing shortcomings in the proposed revision of FOP O3454.

ISSUE 3: The proposed permit fails to assure compliance with emission limits for storage tanks.

TCEQ’s letter to Commenter/Interested Party dated March 22, 2024, describes its response to comments regarding the topic of Draft Permit Fails to Assure Compliance with Emissions [sic] Limits for All Storage Tanks. Comment 3 states:

“The Draft Permit specifies the use of unreliable and inappropriate emission factors to calculate emission from Flint Hills’ many storage tanks. The storage tanks are the largest source of VOCs at Flint Hills’ Terminal, and subject to additional monitoring to assure Flint Hills’ recent expansion project does not trigger major New Source Review.

The Draft Permit Special Condition 9 incorporates New Source Review Permit No. 6606 in the New Source Review Authorization References table. New Source Review Permit No. 6606 Special Condition 6 authorizes the storage of fuel products with a vapor pressure less than crude oil, including but not limited to naphtha, diesel, No. 6 oil, and coker gas oil.

Permit No. 6606 Special Condition 17 lists different monitoring requirements for heated and unheated tanks, which suggests that some tanks at Flint Hills’ Terminal are heated at least some of the time, depending on what kind of oil they are storing. Permit No. 6606 Special Condition 15(F) states that emissions from tanks shall be calculated using “AP-42 Compilation of Air Pollution Emission Factors, Chapter 7 - Storage of Organic Liquids” and the TCEQ publication, titled “Technical Guidance Package for Chemical Sources-Storage Tanks.” Permit No. 6606 Special Condition 18 lists fifteen tanks subject to additional monitoring and recordkeeping for a period of five years to assure that the synthetic minor Ingleside Terminal Expansion Project does not trigger major New Source Review.”

Per the public comments, 42 U.S.C. § 7661c(c) requires that each Title V permit “set forth monitoring sufficient to assure compliance with all applicable requirements.” See also 42 U.S.C §

7661c(a); 40 C.F.R. § 70.6(a), (a)(3), (c); 30 TAC 122.142(c). Public comments indicated that several parties alleged that TCEQ's proposed FOP O3454 did not meet these standards.

TCEQ did not agree with these assertions per its response in the letter dated March 22, 2024, which stated:

“The ED disagrees with the Commenter’s assertion that the draft permit fails to assure compliance with emissions limits for the storage tank units. The Proposed Permit at pages 12-14 contains an applicable requirements summary table to document applicable standards and MRRT for storage tank grouped units GRP EFR, GRP EFRKA subject to requirements under 30 TAC Chapter 115, storage of VOCs and NSPS Ka, and GRP EFRKB, GRP IFR, GRP IFRKB subject to requirements under 30 TAC Chapter 115, storage of VOCs and NSPS Kb.

The ED notes storage tanks subject to requirements under NSPS Ka and Kb require storage tank visual inspections and seal gap measurements to verify fitting and seal integrity. In addition, NSR permit 6606 lists conditions 6, 7, 15.A through 15.F, and 17 to document requirements of the storage tank units including sampling methods, emission calculations, control requirements, and recordkeeping requirements. NSR permit 6606, Attachment A shows rates for withdrawal, filling, loading, and throughputs for stored products are calculated on an hourly basis.

TCEQ requires NSR permit holders to use AP-42 factors per TCEQ guidance document APDG 6419 – Short-term Emissions from Floating Roof Storage Tanks to determine permitted hourly emissions rates. Emissions from the tank units were determined by using AP-42, Compilation of Air Pollutant Emission Factors, 5th Edition, Volume I, Chapter 7 Liquid Storage Tanks, Section 7.1 Organic Liquid Storage Tanks, following TCEQ guidance for marine loading and vapor combustion unit (VCU) control emissions, stack testing data, and TCEQ’s fugitive guidance document APDG 6422. The Applicant represented the appropriate methodologies to control and minimize emissions and utilized corresponding control efficiencies when calculating the emission rates. As provided in 30 TAC § 116.116(a), the Applicant is bound by this representation, including the represented performance characteristics of the control equipment. In addition, the permit holder must operate within the limits of the permit, including the emission limits as listed in the MAERT.

In regards to the Commenters assertion that use of AP-42 had resulted in underestimating emissions, e.g., “the use of a default vapor pressure value for estimating VOC emissions from heated tanks that store heavy refinery liquids such as No. 6 fuel oil which all tanks at Flint Hills’ Terminal are authorized to store – undercounted VOC emissions by a factor of 100” (emphasis added), the ED notes that all storage tank units at the site operate at ambient temperature.

In regard to the Commenter’s assertion that Optical Gas Imagery (OGI) video footage showed the Applicant was improperly maintaining their storage tanks, the ED notes OGI is not used to determine compliance with the permitted emission limits of storage tanks. Tanks are permitted sources of emissions, and the detection of emissions is not an indication of being out of compliance. Compliance is determined by performing the proper inspections of the

floating roof required by the permit and federal rules and limiting withdrawal rates to the maximum permitted rates. TCEQ does take reports of emissions detected by OGI seriously and may send out investigators to look into these reports.”

Despite its responses to Comment 3, TCEQ did not address the technical statement in the AP-42 manual that includes the disclaimer that “Use of these factors as source-specific permit limits and/or as emission regulation compliance determinations is not recommended by EPA. Because emission factors essentially represent an average of a range of emission rates, approximately half of the subject sources will have emission rates greater than the emission factor and the other half will have emission rates less than the factor. As such, a permit limit using an AP-42 emission factor would result in half of the sources being in noncompliance.” Consequently, TCEQ has not met its burden to ensure emission rates are within permitting declarations, as it is likely that half of Flint Hills Resources’ storage tanks are already out of compliance, and thus AP-42 emission factors are not appropriate for calculating source emissions.

An example of the inappropriateness of AP-42 emission estimates on heated storage tanks containing No. 6 fuel oil may be understated by many times as the default vapor pressure values do not take into account specific cutter stock recipes. Cutter stock is blended into the fuel oil (sometimes referred to as bunker fuel for ships) so that it maintains its viscosity by adding supplemental chemicals, they may include legal (or not) hazardous waste disposal, which is then heated and stirred. Because the fuel oil is heated continuously to maintain its viscosity, there are continuous emissions being released unless the storage tanks are outfitted with vapor recovery systems. Both TCEQ and EPA have known heated fuel oil calculations greatly understate pollution since approximately 2006-2007, as OGI cameras documented significant storage tank emissions that were largely unknown and understated before the advancement of the technology.

This same technology is also effective at identifying storage tank seal emissions and leaks that are likely not compliant with permitting representations. Much of this is unknown to TCEQ

because it does not quantify permitting emission declarations, nor does it perform its own regulator tank seal gap measurements. Moreover, TCEQ does not require regulated entities to alter standardized timeframes for seal gap measurements to ensure emission and permitting requirements and representations are accurate. Consequently, TCEQ technical statements stating that seal gap measurements are sufficient to ensure regulated entity compliance is misguided and technically incorrect.

For Flint Hills Resources and TCEQ to state that “all storage tank units at the site operate at ambient temperature” appears disingenuous, as the proposed permitting action will allow the company to operate heated storage tanks with understated and underrepresented emissions. Thus, the proposed Title V FOP O3454 will likely not be in compliance with 42 U.S.C. § 7661c(c), 42 U.S.C § 7661c(a), 40 C.F.R. § 70.6(a), (a)(3), (c), and 30 TAC 122.142(c).

ISSUE 4: Increased health and safety risks due to an oil spill on Christmas Eve 2022 at the site that is affecting local communities.

In response to Comments 8 and 9 on the TCEQ letter dated March 22, 2024, to Commenter/Interested Party, TCEQ stated its reactions to the responses it received regarding a variety of technical matters including but not limited to those associated with an estimated 14,000-gallon Flint Hills Resources’ crude oil pipeline spill into Corpus Christi Bay on the night of December 24, 2022. Per a United States Justice Department Notice of Lodging of Proposed Consent Decree under the Clean Water Act and Oil Pollution Act that was filed on April 8, 2024, (Document 4410-15), this crude oil spill negatively impacted nearby natural resources, wildlife, and aquatic life within Corpus Christi Bay.

TCEQ’s subsequent response in the March 22, 2024, letter to address alleged health and safety risks to the nearby community, including but not limited to those that reside in Ingleside on the Bay, included the following:

“The applicant’s and site’s compliance history (CH) rating is determined on an annual basis by TCEQ’s Office of Compliance and Enforcement (OCE) which enforces compliance with the state’s environmental laws to address any non-compliance and enforcement issues. OCE considers past emission releases and events to determine applicant’s and site’s compliance history (CH) rating on an annual basis.

An explanation of the factors used in the Site Rating formula to calculate CH rating may be found in 30 TAC §60.2. Based on various factors such as notices of violations, investigations, enforcement order(s), court judgment(s), consent decree(s), criminal conviction(s), and similar others cited in 30 TAC §60.2, the CH classification for the site with RN100222744 is shown as “satisfactory.”

Deviation reports are usually processed by the TCEQ regional office and acted upon as required to address/resolve any potential non-compliance issues. Violations are usually addressed through a notice of violation letter that allows the operator a specified period of time within which to correct the problem. The violation is considered resolved upon timely corrective action. A formal enforcement referral will be made if the cited problem is not timely corrected, if the violation is repeated, or if a violation is causing substantial impact to the environment or neighbors.

In regard to the Commenter’s concerns about NSR permit 6606 amendment application, the ED notes that under the two-permit system in Texas, only NSR permits authorize air emissions under 30 TAC Chapter’s 106 and 116. The Proposed Permit issued under 30 TAC Chapter 122 (or Title V program) does not authorize any emission limits or changes to emission limits for various emission sources. The establishment of authorized air emissions limits for each pollutant, determination of non-attainment status, evaluation of BACT and health impact analysis of air emissions occurs during an NSR permit project review and not during a Title V permit review.”

Despite responding to public comments in this proposed Flint Hills Resources proposed permitting action, it appears that TCEQ has failed to consider regulatory guidance in 30 TAC §60.4 that was adopted on July 23, 2022, that states that

“(a)... the executive director may designate a site’s current compliance history classification “under review” if the executive director determines that exigent circumstances exist due to an event at the site. The executive director shall make any such designation no later than 90 days after exigent circumstances begin. The designation as “under review” is effective immediately and written notice will be issued to the site’s owner and operator, as readily identifiable through agency for the purpose of this section, exigent circumstances must include:

(1) Significant community disruption; (2) emergency response by a federal or state governmental authority to address an actual, unauthorized release of pollutants, contaminants, or other materials regulated by the agency; and (3) the event must have resulted in one or more of the following:

(A) the issuance of an emergency order by a federal or state governmental authority; (C) the use of significant federal or state resources, such as the activation of an incident command

system or: (D) an actual, unauthorized release of pollutants, contaminants, or other materials regulated by the agency, which causes:

(i) the evacuation of off-site persons from homes, places of employment, or other locations; (ii) the sheltering in place by off-site persons in homes, places of employment, or other locations; (iii) the creation of a traffic hazard or interference with normal use of a navigable waterway, railway, or road.”

Though it is acknowledged that December 24, 2022, Flint Hills Resources crude oil spill did occur after the adoption of the 30 TAC §60.4 regulations on July 23, 2022, the TCEQ seemingly did not consider the negative effects and fallout from a more recent Flint Hills Ingleside Marine Terminal Facility crude oil spill that occurred on January 6, 2024, during this FOP O3454 permitting process. During this most recent event that is documented by TCEQ’s Air Emission Event Report Database Incident 415203, this Flint Hills Resources Ingleside facility was responsible for a 187 hour and 40-minute event that resulted in a 2,915-barrel crude oil spill that was released from the Tank 75 roof drain system that was openly draining into a secondary containment area and ultimately into the adjacent water body.

This January 6, 2024, emergency response event resulted in the activation of both TCEQ and the United States Coast Guard in an incident command system and a shelter in place situation for several residences in Ingleside on the Bay. Multiple addresses and community members experienced adverse health effects including but not limited to headaches, sore throats, and skin numbness resulting in the placement of towels under doorways and the taping off of windows to prevent further exposure. Moreover, the adjacent navigable Corpus Christi Bay Channel was polluted which negatively affected the normal use of the waterway for an extended period.

Despite these negative effects to the local community, TCEQ seemingly did not re-evaluate this proposed FOP O3454 permitting action through that lens. The 30 TAC §60.4 regulations allow for (b) Notice of Decision to Reclassify by the TCEQ ED to reclassify a site’s compliance history to “suspended” or an (c) Evaluation of Permit Applications that reads:

“To the extent any permit applications are pending for authorizations at the site, upon the executive director’s written Notice of Decision to Reclassify a site’s compliance history to “suspended” and until the agency has evaluated the pending permit application in light of the event, unless legally obligated otherwise or the decision is withdrawn or set aside, the agency shall not take action to issue, renew, amend, or modify a permit specific to the site. Based on the evaluation, the agency may: (1) approve the permit; (2) approve the permit with changes, which may include additional protective measures to address conditions that caused or resulted from the event; or (3) deny the permit.”

Because the Flint Hills Resources Ingleside facility has a history of crude oil spills, it should be considered imperative that TCEQ re-evaluate its approval of the proposed revised FOP O3454, and the provisions contained within. This site’s track record on preventing and minimizing excess emissions that negatively affect nearby residents should not be considered acceptable considering statutory language exists in 30 TAC §60.4 that can aid TCEQ in denying the proposed FOP O3454 permit and/or strengthening the proposed permitting language to include enhanced monitoring, recordkeeping, and operational and maintenance activities that could aide in preventing and/or minimizing future oil spills and emission releases that have had unnecessarily caused harmful effects on air quality, water quality, wildlife, aquatic life, and downwind receptors in the Ingleside, Texas area.

Sincerely,



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