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Title V/Clean Air Act: U.S. Environmental Protection Agency Grants in Part and Denys in Part a Petition for an Objection to a San Patricio County, Texas, Plastics Manufacturing Complex

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The Administrator of the United States Environmental Protection Agency (“EPA”) issued a May 12th Order granting in part and denying in part a Petition objecting to the issuance of a Clean Air Act Title V Operating Permit (“Permit”) for the Gulf Coast Growth Ventures, LLC (“Gulf Coast”) Olefins, Derivative, and Utilities plant in San Patricio County, Texas. See Petition No. VI-2021-3.

The Petition was submitted by the following organizations:

- Coastal Alliance to Protect our Environment
- Texas Campaign for the Environment
- Sierra Club
- Environmental Integrity Project

(collectively, “Petitioners”)

The federal Clean Air Act Title V program includes a provision that allows the EPA Administrator to object to a Title V permit issued by a delegated state. In other words, Congress provided EPA a Clean Air Act oversight role by mandating that every Title V permit be subject to a 45-day EPA review period before the Title V permit is finalized.

The EPA Administrator can object to a Title V permit at two points.

An objection may be made during the 45-day review period and in response to a public petition within 60 days after the end of the 45-day review period. Further, even if EPA fails to object to a proposed Title V permit, a right to petition the agency to reconsider its failure to object to the permit is potentially available. However, only those persons who have submitted comments to the draft permit during the applicable public comment period have a right to petition.

The right to petition EPA arises at the close of the agency’s 45-day review period.

Gulf Coast is stated to own and operate a plastics (olefins and derivate) manufacturing complex (“Complex”) in San Patricio County, Texas. The Complex is stated to include process units that produce olefins, polyethylene, and monoethylene glycol, as well as utilities and wastewater treatment operations.

The Complex is a major stationary source of multiple air pollutants and subject to various Clean Air Act requirements which include:

- Title V
- Prevention of Significant Deterioration
- Other Pre-Construction Permitting Requirements
- New Source Performance Standards
- National Emission Standards for Hazardous Air Pollutants

Gulf Coast is stated to have submitted an application for an initial Title V permit on August 21, 2019. The Texas Commission on Environmental Quality (“TCEQ”) submitted a proposed permit to EPA for its 45-day review. EPA did not object to the permit and TCEQ issued the final Title V permit for the Complex on December 30, 2020. The current version of the Title V permit was issued on June 17, 2021.

The Petitioners submitted a Petition to Object within 60 days after the expiration of EPA’s review period.

The Petitioners raised the following objections.

Claim 1: The Proposed Permit is Deficient Because it was Issued Before Gulf Coast Complied with Applicable Public Participation Requirements.

EPA denies the Petitioners objection on this claim.

EPA notes that the Clean Air requires that state programs include adequate, streamlined and reasonable procedures for public notice, including offering an opportunity for public comment and a hearing, citing 42 U.S.C. § 7661a(b)(6). Further, the federal agency states that its implementing regulations provide that a Title V permit may be issued only if relevant public participation requirements have been satisfied, citing 40 C.F.R. § 70.7(a)(1)(ii).

EPA’s response states that the Petitioners do not allege that TCEQ’s issuance of the permit failed to satisfy the federal statutory or regulatory requirements. Instead, they are stated to allege that issuance of the Permit failed to satisfy the regulations in TCEQ’s EPA-approved part 70 program.

TCEQ’s regulations are stated to be generally more detailed than EPA’s.

EPA states it acknowledgement that TCEQ and Gulf Coast:

. . . might have done more to improve public access, such as providing an updated public notice directing the public to the most up-to-date means of obtaining relevant documents (as TCEQ later did for other facilities), had they anticipated the duration of the restrictions due to COVID-19.

Nevertheless, EPA concludes that the Petitioners did not demonstrate that TCEQ was prohibited from issuing the permit without taking the additional step. In other words, Petitioners are stated to have failed to demonstrate that the public notices failed to satisfy the requirements of 30 TAC 122.320. They are stated to have further failed to demonstrate the issuance of permit contravened 40 C.F.R. § 70.7(a)(1)(ii) .

Claim 2: The Proposed Permit Fails to Include and Assure Compliance with All Applicable Requirements

EPA grants Petitioners objection on this claim.

EPA grants this claim because it states the Petitioners have demonstrated that the permit does not assure compliance with the requirements of the permit because the latter permit’s references to calculation methods are not sufficiently clear to incorporate by reference those calculation methods into the permit.

EPA notes its agreement with Petitioners that:

. . . the manner in which the emission calculation methodologies are incorporated into the Permit is not sufficient to assure compliance with all applicable requirements.

TCEQ is required by EPA to:

Clearly include or incorporate the monitoring or emission calculation methods necessary to assure compliance with the applicable requirements of Permit. . .

Further, TCEQ is required (to the extent it incorporates such requirements by reference) to identify the specific document incorporated by reference and the specific location within such document that contains the relevant calculation methods. It is also required to provide the public with an opportunity to review and comment on the changes to the Title V permit.

A copy of the Order can be downloaded [here](#).