UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ENVIRONMENTAL INTEGRITY PROJECT 707 Rio Grande, Suite 200 Austin, TX 78701, and SIERRA CLUB 1202 San Antonio Street Austin, TX 78701 Plaintiffs, v. GINA MCCARTHY, Administrator, U.S. Environmental Protection Agency, Ariel Rios Building, Mail Code 1101A 1200 Pennsylvania Ave, NW Washington, DC 20460 Defendant.	Case No. _____

COMPLAINT FOR INJUNCTIVE AND DECLATORY RELIEF

I. STATEMENT OF THE CASE

1. This is a civil action for declaratory and injunctive relief, with costs and fees under the Clean Air Act, 42 U.S.C. § 7401 et. seq. and the declaratory judgment statute, 28 U.S.C. §§ 2201 and 2202.

2. Environmental Integrity Project and Sierra Club (collectively, "Plaintiffs") seek an order declaring that the Defendant, the Administrator of the United States Environmental Protection Agency ("Administrator"), is required, pursuant to 42 U.S.C. § 7661d(b)(2), to grant or deny a petition filed by Plaintiffs requesting that the Administrator object to Title V Permit No. O31,

issued by the Texas Commission on Environmental Quality ("TCEQ") to the Southwestern Electric Power Company ("SWEPCO") for operation of the H.W. Pirkey Power Plant ("Pirkey Plant"), in Harrison County, Texas. Plaintiffs also seek an order requiring the Administrator to perform her non-discretionary duty to grant or deny this petition.

II. JURISDICTION, VENUE AND NOTICE

3. This is a Clean Air Act citizen suit. Thus, this Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(a), and has the authority to award attorneys' fees pursuant to 42 U.S.C. § 7604(d). The Clean Air Act is a federal statute. The Defendant is an agency of the United States government. Thus, this Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 28 U.S.C. §§ 1331 (federal question) and 1346 (United States as defendant). This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, nor does it involve the Tariff Act of 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. § 2201. If the Court orders such relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief and 28 U.S.C. § 2412 authorizes this Court to award Plaintiffs their costs and attorneys' fees.

4. A substantial part of the alleged events or omissions giving rise to Plaintiffs' claims occurred in the District of Columbia. In addition, this suit is being brought against the Administrator in her official capacity as an officer or employee of the United States Environmental Protection Agency, residing in the District of Columbia. Thus, venue is proper in this Court, pursuant to 28 U.S.C. § 1391(e).

5. As required by 42 U.S.C. § 7604(b)(1)(A), Plaintiffs notified the Administrator of the EPA, the U.S. Attorney General, the EPA Administrator for Region 6, and the Deputy Director of the TCEQ's Office of Air of the violations alleged in this complaint and of Plaintiffs' intent to sue, via certified first-class mail on March 6, 2015. See Exhibit A (Notice of Intent to Sue Administrator McCarthy for her Failure to Timely Grant or Deny a Petition to Object to Part 70 Operating Permit No. O31 for SWEPCO's Pirkey Plant). More than 60 days have passed since Defendant received this notice of intent to sue letter. Defendant has not acted to remedy the violations alleged in this complaint. Therefore, an actual controversy exists between the parties.

III. PARTIES

6. Plaintiff ENVIRONMENTAL INTEGRITY PROJECT ("EIP") is a national non-profit corporation founded to advocate for the effective enforcement of state and federal environmental laws, with a specific focus on the Clean Air Act and large stationary sources of air pollution, like coal-fired power plants. EPA's failure to timely respond to the petition, which demonstrates that the Pirkey Plant Title V permit fails to comply with the law, adversely affects EIP's ability to assure that SWEPCO complies with Clean Air Act requirements at the Pirkey Plant.

7. Plaintiff SIERRA CLUB is one of the Nation's largest and oldest grassroots nonprofit membership organizations. Sierra Club's Texas chapter was formed more than forty years ago and has a long history of working to reduce industrial air pollution that adversely affects air quality in Texas. Sierra Club petitioned the Administrator to object to Title V Permit No. O31, because the permit fails to comply with applicable Clean Air Act requirements. The Administrator's failure to perform her non-discretionary duty to grant or deny this petition

injures the organizational interests of Sierra Club as well as the concrete public health interests of its members.

8. Plaintiffs have an interest in ensuring that SWEPCO's Pirkey Plant Title V permit complies with all applicable federal requirements. Members and employees of Plaintiff organizations live, work, and recreate in areas that are affected by air pollution from the Pirkey Plant. These members and employees will be adversely affected if EPA fails to object to this permit.

9. Defendant GINA MCCARTHY is the Administrator of the Environmental Protection Agency. The Administrator is responsible for implementing and enforcing the Clean Air Act. As described below, the Clean Air Act assigns to the Administrator a non-discretionary duty to grant or deny timely-filed Title V petitions within 60 days.

10. For the foregoing reasons, the Administrator's failure to respond to Plaintiffs' petition has caused, is causing, and unless this Court grants the requested relief, will continue to cause Plaintiffs concrete injuries that the Court can redress through this case.

IV. LEGAL AUTHORITY

11. The Clean Air Act is designed to protect and enhance the quality of the Nation's air so as to promote the public health and welfare and productive capacity of its population. 42 U.S.C. § 7401(b)(1). To advance this goal, Congress amended the Act in 1990 to establish the Title V operating permit program. See 42 U.S.C. §§ 7661-7661f. Title V of the Clean Air Act provides that "[a]fter the effective date of any permit program approved or promulgated under this subchapter, it shall be unlawful for any person to violate any requirement of a permit issued

under this subchapter, or to operate . . . a major source . . . except in compliance with a permit issued by a permitting authority under this subchapter. 42 U.S.C. § 7661a(a). SWEPCO's Pirkey Plant is a major source subject to Title V permitting requirements.

12. The Clean Air Act provides that the Administrator may approve a state's program to administer the Title V operating permit program with respect to sources within its borders. 42 U.S.C. § 7661a(d). The Administrator approved Texas's administration of its Title V operating permit program. 61 Fed. Reg. 32693 (June 25, 1996); 66 Fed. Reg. 66318 (December 6, 2001). Thus, the TCEQ is responsible for issuing Title V operating permits in Texas.

13. Before the TCEQ may issue, modify, or renew a Title V permit, it must forward the proposed permit to EPA for review. 42 U.S.C. § 7661d(a)(1)(B). The Administrator then has 45 days to review the proposed permit. The Administrator must object to the permit if she finds that the proposed permit does not comply with all applicable provisions of the Clean Air Act. 42 U.S.C. § 7661d(b)(1). If the Administrator does not object to the permit during EPA's 45-day review period, "any person may petition the Administrator within 60 days" to object to the permit. 42 U.S.C. § 7661d(b)(2).

14. If a petition is timely filed, the Administrator has a non-discretionary duty to grant or deny it within 60 days. Id.; New York Public Interest Research Group v. Whitman, 214 F.Supp.2d 1, 2 (D.D.C. 2002).

15. The Clean Air Act authorizes citizen suits "against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator." 42 U.S.C. § 7604(a)(2).

V. FACTUAL BACKGROUND

SWEPCO Pirkey Power Plant

16. SWEPCO applied to the TCEQ to for a minor revision to Title V Permit No. O31 for the Pirkey Plant on March 27, 2013. The Executive Director of the TCEQ issued a draft revision operating permit ("Pirkey Draft Permit"), which was announced on the TCEQ's Title V Minor Revision Public Announcement webpage on May 14, 2013. The public comment period for the Pirkey Draft Permit ended on June 14, 2013.

17. On June 13, 2013, Plaintiffs submitted written comments to the TCEQ during the public comment period. The comments identified specific deficiencies contained in the Pirkey Draft Permit.

18. On July 15, 2014, the Executive Director of the TCEQ issued his Notice of Proposed Permit and Executive Director's Response to Public Comment for the Minor Revision to SWEPCO's Pirkey Plant Title V Permit. The Executive Director declined to revise the Proposed Permit to address Plaintiffs' public comments and provided instructions for petitioning EPA to object to the Proposed Permit.

19. EPA's 45-day review period for the proposed permit ended on September 5, 2014. EPA did not object to the permit.

20. On October 30, 2014, Plaintiffs timely filed with EPA a petition to object to the Pirkey Plant Title V operating permit ("Pirkey Petition"). 42. U.S.C. § 7661d(b)(2). The Pirkey Petition was based on (1) objections to the Pirkey Draft Permit that were raised with reasonable

specificity during the public comment period and (2) objections to the permit that arose after the close of the public comment period, as required by 42 U.S.C. § 7661d(b)(2).

21. Though the Administrator was required to grant or deny the Pirkey Petition within 60 days, she has not yet done so. 42 U.S.C. § 7661d(b)(2).

22. On March 6, 2015, Plaintiffs sent Defendant notice of their intent to sue the Administrator for her failure to grant or deny the Chemical Plant Petition within 60 days.

VI. CAUSE OF ACTION

FAILURE TO RESPOND TO PLAINTIFFS' PIRKEY PETITION

[42 U.S.C. § 7661d(b)(2)]

23. Plaintiffs re-allege and incorporate the allegations set forth in Paragraphs 1-22.

24. The Clean Air Act required Defendant to act on the Pirkey Petition within 60 days of its filing. 42 U.S.C. § 7661d(b)(2) (stating that "[t]he Administrator shall grant or deny such a petition within 60 days after the petition is filed.") (emphasis added). This is a non-discretionary duty. New York Public Interest Research Group v. Whitman, 214 F.Supp.2d 1, 3 (D.D.C. 2002).

25. It has been more than 60 days since Defendant received the Pirkey Petition. Defendant's failure to grant or deny the Pirkey Petition constitutes a failure to perform an act or duty that is not discretionary. 42 U.S.C. § 7604(a)(2).

PRAYER FOR RELIEF

WHEREFORE, based upon the allegations set forth above, Plaintiffs respectfully request that this Court:

A. Declare that Defendant's failure to grant or deny the Plaintiffs' Pirkey Petition within 60 days constitutes a failure to perform acts or duties that are not discretionary within the meaning of 42 U.S.C. § 7604(a)(2);

B. Order the Defendant to grant or deny the Pirkey Petition within sixty (60) days;

C. Retain jurisdiction over this action to ensure compliance with the Court's Order;

D. Award Plaintiffs their costs and fees related to this action; and

E. Grant such other relief as the Court deems just and proper.

DATED: May 18, 2015

ATTORNEY OF RECORD

/s/ Sparsh Khandeshi
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EXHIBIT A

Notice of Intent to Sue for Failure to Timely Grant or Deny a Petition to Object to Part 70 Operating Permit No. 031 Issued to Southwestern Electric Power Company for the H.WA. Pirkey Power Plant in Harrison County, Texas

ENVIRONMENTAL INTEGRITY PROJECT

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Austin TX, 78701
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www.environmentalintegrity.org

March 6, 2015

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Fax number (202) 501-1450

Via Certified Mail

RE: **Notice of Intent to Sue for Failure to Timely Grant or Deny a Petition to Object to Part 70 Operating Permit No. O31 Issued to Southwestern Electric Power Company for the H.W. Pirkey Power Plant in Harrison County, Texas**

Dear Administrator McCarthy:

With this letter, the Environmental Integrity Project and the Sierra Club are giving you notice of our intent to sue you in your official capacity as Administrator of the U.S. Environmental Protection Agency for failure to timely respond to our Petition to Object to the Part 70 Operating Permit (Title V permit) No. O31 issued to Southwestern Electric Power Company ("SWEPCO") for operation of the H.W. Pirkey Power Plant in Harrison County, Texas.

Our Title V Petition was timely filed on October 30, 2014, within 60 days following the end of EPA's 45-day review period for the proposed Title V Permit.[1] EPA failed to respond to the Petition within 60 days, in violation of 42 U.S.C. § 7661d(b)(2). Please respond to our Petition, as required by law, or we will be forced to file suit 60 days after you receive this notice letter to compel your response.

Authority to Bring Suit

Clean Air Act section 304(a)(2) authorizes citizen suits "against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator." 42 U.S.C. § 7604(a)(2). The Administrator has a nondiscretionary duty to grant or deny petitions filed by citizens that object to the issuance of a federal operating permit on the basis that it contains provisions not in compliance with the Clean

[1] The Petition is attached to this notice letter as Attachment A.

Air Act. 42 U.S.C. § 7661d(b)(2). In the event that the Administrator fails to perform this nondiscretionary duty, citizens may bring suit to compel such action. The district courts have jurisdiction over these suits. 42 U.S.C. § 7604(a).

The Clean Air Act requires citizens to give the Administrator notice 60 days before bringing an action under section 304(a)(2). 42 U.S.C. § 7604(b)(2). Petitioners are hereby giving you notice of our intent to file suit against you in your official capacity as Administrator of the EPA, under Clean Air Act section 304(a)(2), for failing to perform a non-discretionary duty. Petitioners may commence this suit at any time 60 days after you receive this notice.

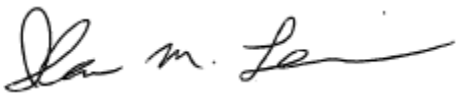
Relief Requested

Petitioners will seek the following relief:

1. An order compelling you to grant or deny the Petition within 60 days from the date of the order;
2. Attorney's fees and other litigation costs; and
3. Other appropriate relief as allowed.

If you have any questions regarding this notice letter, believe any of the foregoing information to be in error, wish to discuss the exchange of information, or would otherwise like to discuss a settlement of this matter prior to the initiation of litigation, please contact Ilan Levin at (512) 637-9479 or ilevin@environmentalintegrity.org.

Sincerely,



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Attachment

cc: *(Via Certified Mail)*

Eric Holder, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Ron Curry, Regional Administrator
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Steve Hagle, P.E., Office of Air Deputy Director, MC-122
Texas Commission on Environmental Quality
P.O Box 13087
Austin, Texas 78711-3087

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF	§	PETITION FOR OBJECTION
	§	
Clean Air Act Title V Permit (Federal Operating Permit) No. O31	§	
	§	
	§	Permit No. O31
Issued to Southwestern Electric Power Company, H.W. Pirkey Power Plant	§	
	§	
Issued by the Texas Commission on Environmental Quality	§	
	§	

PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF THE PROPOSED TITLE V OPERATING PERMIT FOR THE H.W. PIRKEY POWER PLANT, PERMIT NO. O31

Pursuant to Clean Air Act § 505(b)(2), 42 U.S.C. § 7661d(b)(2), and 40 CFR § 70.8(d), Environmental Integrity Project and Sierra Club ("Petitioners") petition the Administrator of the United States Environmental Protection Agency ("EPA") to object to Federal Operating Permit No. O31 ("Proposed Permit") for Southwestern Electric Power Company's ("SWEPCO"), H.W. Pirkey Power Plant ("Pirkey Plant"), in Harrison County, Texas.[1]

As set forth below, the Administrator should object to the Proposed Permit for the following reasons:

- The Proposed Permit is an impermissible end-run around the Clean Air Act's State Implementation Plan ("SIP") revision requirements that undermines the enforceability of Texas SIP particulate matter and opacity limits; and

- The Proposed Permit fails to ensure that citizens, EPA, and the State may all rely on credible evidence to demonstrate non-compliance with applicable requirements.

The first issue was raised with specificity during the draft permit public comment period. The second issue arose after the close of the public comment period and is timely raised for the first time in this Petition.[2]

[1] Exhibit A ("Proposed Permit"); Exhibit B (Draft Statement of Basis).
[2] 42 U.S.C. § 7661d(b)(2) (A Title V petition "shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition ot the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)").

I. INTRODUCTION

SWEPCO's Pirkey Plant is a 721 megawatt coal and lignite-fired power plant located in Harrison County, Texas that began operation in 1985. The plant utilizes one boiler to burn lignite, coal, or sweet natural gas. The Pirkey Plant is a significant source nitrogen oxide ("NOx"), volatile organic compounds ("VOC"), particulate matter ("PM"), and Mercury. In 2011, the Pirkey Plant was the tenth largest source of mercury emissions in the United States.[3]

II. PETITIONERS

Environmental Integrity Project ("EIP") is a nonprofit, non-partisan organization dedicated to strict enforcement and effective implementation of state and federal air quality laws. Environmental Integrity Project has offices and staff in Austin, Texas.

Sierra Club is the oldest and largest grassroots environmental organization in the county, with hundreds of thousands of members nationwide. Sierra Club is a non-profit corporation with offices, programs, and many members in Texas and has the specific goal of improving outdoor air quality.

III. PROCEDURAL AND LEGAL BACKGROUND

A. Texas's Rules For Regulating Emissions During Planned Maintenance, Startup, and Shutdown Activities

In 2005, Texas's SIP-approved rules establishing affirmative defense provisions for excess emissions during upset events and planned MSS activities expired. Prior to the plan's expiration, EPA informed Texas that the State would be required to develop a new approach for regulating planned MSS emissions, because the previously approved affirmative defense was inconsistent with Clean Air Act requirements. To address EPA's concern, Texas proposed to phase out the affirmative defense for planned MSS activities and to establish in its place a program for permitting planned MSS activities.[4] The proposed rules established a schedule for the submission and evaluation of MSS permit applications and provided that the affirmative defense would no longer be available to sources with permits authorizing planned MSS activities.[5]

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[3] *The Toxic Ten: Top Power Plant Emissions of Mercury, Toxic Metals, and Acid Gases in 2011*, Environmental Integrity Project (January 3, 2013). Available electronically at: http://environmentalintegrity.org/news_reports/documents/Toxic10PowerPlantsreport-January32013.pdf

[4] *Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction Activities*, 75 Fed. Reg. 68989 (November 10, 2010). The rules Texas submitted with its SIP revision included provisions in 30 Tex. Admin. Code Chapter 101, Subchapter A (General Rules) and Subchapter F (Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities).

[5] *Id*. at 68994.

While EPA ultimately rejected TCEQ's proposal to include a temporary affirmative defense for planned MSS activities in the Texas SIP, the agency did not object to Texas's proposal to issue permits authorizing MSS activities. Though EPA agreed that permits were an appropriate instrument for authorizing and regulating planned MSS emissions, the agency was also concerned that Texas might be tempted to use its MSS permitting process to improperly relax federally-enforceable SIP requirements.

In particular, EPA was concerned that Texas might read its rule at 30 Tex. Admin. Code § 101.221(d) to allow the TCEQ to issue permits exempting sources from SIP requirements during planned MSS activities. The rule provides:

> Sources emitting air contaminants that cannot be controlled or reduced due to a lack of technological knowledge may be exempt from the applicable rules when so determined and ordered by the commission. The commission may specify limitations and conditions as to the operation of such exempt sources. The commission will not exempt sources from complying with any federal requirements, including New Source Performance Standards (40 Code of Federal Regulations Part 60) and National Emission Standards for Hazardous Air Pollutants (40 Code of Federal Regulations Parts 61 and 63).

Before taking action on Texas's SIP revision, EPA asked the TCEQ to clarify whether 101.221(d) could be applied to relax SIP requirements.[6] The TCEQ squarely addressed EPA's concern about the rule in a letter written by John Steib, Jr., Deputy Director of the TCEQ's Office of Compliance and Enforcement, which was included in the SIP revision rulemaking docket:

> The TCEQ agrees that this rule cannot be used by the agency to grant any requested relief from compliance with <u>any State Implementation Plan (SIP) requirements</u>, such as, for example, SIP approved rules in 30 Tex. Admin. Code Chapters 115 and 117, or in approved area-specific plans. Any such relief would be limited to state-only requirements for controlling air contaminants. <u>Further, as stated in the last sentence, the commission will not exempt sources from compliance with any federal requirements</u>.[7]

[6] *Proposed Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction Activities* 75 Fed. Reg. 26892, 26894 (May 13, 2010).

[7] Exhibit C, Letter from John Steib, Jr., TCEQ, Deputy Director, Office of Compliance and Enforcement, to John Blevins, EPA Region 6, Director, Compliance Assurance and Enforcement Division, Re: EPA Approval of the TCEQ Emission Events Rule (April 17, 2007) at 3 (emphasis added).

Based on the TCEQ's response and the clear language in the rule stating that it may not be used to create exemptions to "any" federal requirements, EPA approved 30 Tex. Admin. Code § 101.221(d). In the preamble to its final action on Texas's SIP revision, EPA offered the following response to two commenters seeking additional clarification regarding 101.221(d):

> *Comments:* One commenter asserts that the exemption provision of section 101.221(d) . . . should be interpreted to apply to the opacity requirements of 30 TAC section 111.111, while another commenter requests clarification that the exemption provision in section 101.221(d) . . . be interpreted to exclude federally approved SIP requirements. The commenter claims that TCEQ's and EPA's interpretation of that section is incorrect.
>
> *Response*: 30 TAC section 111.111 entitled "Requirements for Specified Sources" was adopted by TACB on June 18, 1993, and approved by EPA as a revision to the Texas SIP on May 8, 1996 (61 FR 20734). At that time, it became federally enforceable. Therefore, the requirements in the SIP rule found at 30 TAC section 111.111 are "federal requirements." Section 101.221(d) plainly states that TCEQ will not exempt sources from complying with any "federal requirements." This position is also consistent with the April 17, 2007 letter from John Steib, Deputy Director, TCEQ Office of Compliance and Enforcement to EPA Region 6, in which the State confirmed that the term "federal requirements" in 30 TAC 101.221(d) includes any requirement in the federally-approved SIP. In section D of our May 13, 2010 proposal, we stated that new section 101.221 (Operational Requirements) requires that no exemptions can be authorized by the TCEQ for any federal requirements to maintain air pollution control equipment, including requirements such as NSPS or National Emissions Standards for Hazardous Air Pollutants (NESHAP) or requirements approved into the SIP. Texas confirmed this interpretation and, therefore, the State may not exempt a source from complying with any requirement of the federally-approved SIP. Any action to modify a state-adopted requirement of the SIP would not modify the federally enforceable obligation under the SIP unless and until it is approved by EPA as a SIP revision.[8]

Thus, EPA approved 101.221(d) and signed-off on Texas's plan to issue permits for planned MSS activities, because it was clear to EPA, Texas, and the regulated community that the TCEQ could not issue permits that relaxed or exempted sources from federal requirements, including Texas SIP requirements. The TCEQ has issued permits to many large industrial sources, including the Pirkey Plant, authorizing planned MSS activities.

[8] 75 Fed. Reg. 68998.

B. Procedural Background

Since at least 2000, New Source Review ("NSR") Permit No. 6269 has included emission limits and operational requirements for the Pirkey Plant main boiler. On February 3, 2012, the Executive Director of the TCEQ issued an amendment to Permit No. 6269 ("MSS Amendment") specifically authorizing emissions during planned MSS activities at the plant. As part of the authorization, certain operating requirements and emission limits were relaxed during planned MSS activities. Most notably, the amended permit purports to create exemptions to SIP particulate matter and opacity limits during planned MSS activities.

Special Condition 18(B) of Permit No. 6269 provides that "opacity greater than 20 percent" is authorized during "planned online and offline maintenance activities" identified in attachments to the permit. This Special Condition purports to create an exemption to the 20 percent opacity SIP limit established by 30 Tex. Admin. Code § 111.111(a)(2)(B). The Maximum Allowable Emission Rate Table ("MAERT") of Permit No. 6269 authorizes the Pirkey Plant main boiler to emit up to 1,457 pounds of particulate matter per hour. Prior to the MSS authorization, the main boiler was only authorized to emit 682 pounds per hour. The limit was increased to allow higher emissions during planned MSS activities. The Pirkey Plant main boiler cannot emit 1,457 an hour without exceeding the Texas SIP PM limit of 0.3 lb/MMBtu established by 30 Tex. Admin. Code § 111.153(b). While neither Special Condition 18(b) nor the MAERT state that the new opacity exemption and increased PM limit are meant to relax applicable SIP limits, Special Condition 18(D) makes this intent clear: "For periods of MSS other than those subject to Paragraphs A-C of this condition, 30 TAC § 111.111, 111.153, and Chapter 101, Subchapter F apply." Special Condition 18(D) confirms what Special Condition 18(B) and the increased hourly PM limit suggest: the purpose of the MSS Amendment is to exempt the Pirkey Plant from SIP particulate matter and opacity limits during authorized planned MSS activities.

After the MSS Amendment was issued, SWEPCO filed an application to incorporate the MSS Amendment into its Title V permit. On May 14, 2013, the Executive Director publicly announced issuance of a draft permit for and recommended approval of SWEPCO's application. On June 13, 2013, the Environmental Integrity Project timely submitted comments to the TCEQ explaining that the Draft Permit was deficient, because it improperly relaxed applicable SIP limits, it was improperly processed as a minor revision, and it failed to assure compliance with applicable SIP limits.[9] More than a year later, on July 15, 2014, the Executive Director issued his response to public comments, which he forwarded to EPA with the Proposed Permit for

[9] Exhibit D, Public Comments on Draft Title V Permit No. O31 Filed by the Environmental Integrity Project ("Comments").

review.[10] The Executive Director did not make any changes to the draft permit in response to EIP's comments.

EPA's 45-day review period began on July 22, 2014 and ended on September 5, 2014.[11] EPA did not object to the Proposed Permit. Petitioners timely file this petition for objection within 60 days after EPA's review period ended. As required by 42 U.S.C. § 7661d(b)(2), the issues raised in this petition were either identified with specificity in timely-filed public comments or arose after the public comment period closed.

IV. PROCEDURAL REQUIREMENTS FOR SUBMISSION AND EPA REVIEW OF TITLE V PETITIONS

The Clean Air Act requires sources subject to Title V permitting requirements to obtain a permit that "assures compliance by the source with all applicable requirements."[12] Applicable requirements include, among others, any standard or other requirement in a state's federally-approved SIP and preconstruction permit limits and conditions.[13] Title V permit applications must disclose all applicable requirements and any violations at the source.[14]

Where a state permitting authority issues a Title V operating permit, EPA will object to the permit if it is not in compliance with applicable requirements under 40 C.F.R. Part 70.[15] If the EPA does not object, any person may petition the Administrator to object within 60 days after the expiration of the Administrator's 45-day review period.[16] 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]."[17] The Administrator must grant or deny a petition to object within 60 days of its filing.[18] While the burden is on the petitioner to demonstrate to EPA that a Title V operating permit is deficient, once such a burden is met, EPA is required to object to the permit.[19]

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[10] Exhibit E, Notice of Proposed Permit and Executive Director's Response to Public Comment, Minor Revision, Permit No. O31 ("Response to Comments").
[11] *Id*. ("As of July 22, 2014 the proposed permit is subject to an EPA review for 45 days, ending on September 5, 2014.").
[12] 40 C.F.R. § 70.1(b); 30 Tex. Admin. Code § 122.142(c).
[13] 40 C.F.R. § 70.2; 30 Tex. Admin. Code § 122.10(2).
[14] 42 U.S.C. § 7661b(b); 40 C.F.R. §§ 70.5(c)(4)(i), (5), and (8); Tex. Admin. Code § 122.132.
[15] 40 C.F.R. § 70.8(c).
[16] 42. U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); 30 Tex. Admin. Code § 122.360.
[17] 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8(c)(1).
[18] 42 U.S.C. § 7661d(b)(2).
[19] *New York Public Interest Group v. Whitman*, 321 F.3d 316, 332-34, n12 (2nd Cir. 2003) ("Although there is no need in this case to resort to legislative history to divine Congress' intent, the conference report accompanying the final version of the bill that became Title V emphatically confirms Congress' intent that the EPA's duty to object to non-compliant permits is nondiscretionary").

V. OBJECTIONS

A. Issues Raised During the Draft Permit Public Comment Period

1. *The TCEQ may not use its NSR and Title V permitting programs to unilaterally relax or create exemptions to Texas SIP requirements.*[20]

The Clean Air Act forbids state permitting agencies from issuing permits that modify SIP requirements.[21] Such permits are ineffective, unless and until the permitting agency applies to EPA for a site-specific SIP revision and obtains EPA approval.[22] The Proposed Permit violates this prohibition by incorporating SIP exemptions established by the MSS Amendment as federally-enforceable terms of SWEPCO's Title V permit. So long as SWEPCO's Title V permit includes these exemptions, EPA, the State, and citizens will be barred under the prevailing doctrine of collateral attack from enforcing Texas SIP particulate matter and opacity limits in federal court, so long as SWEPCO complies with the requirements of its Title V permit.[23] Incorporation of the MSS Amendment into SWEPCO's Title V permit is an impermissible end-run around the Clean Air Act's SIP-revision process and the Administrator should object to it.

2. *The conditions and limits in Permit No. 6269 that purport to create exemptions to Texas SIP requirements violate Clean Air Act requirements and therefor may not be incorporated into SWEPCO's Title V permit through a minor revision.*[24]

Texas's Title V program rules establish a streamlined "minor revision" process that may be used to authorize certain kinds of insignificant changes to Title V permits. The rules provide that streamlined process is not appropriate to authorize changes that "violate any applicable

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[20] Comments at 2-3.

[21] 42 U.S.C. § 7410(i) ("Except for a primary nonferrous smelter order under section 7419 of this title, a suspension under subsection (f) or (g) of this section (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d) of this title (relating to compliance orders), a plan promulgation under subsection (c) of this section, or a plan revision under subsection (a)(3) of this section, no order, suspension, plan revision, or other action modifying any requirement of an applicable implantation plan may be taken with respect to any stationary source by the State or by the Administrator."); 75 Fed Reg. 68,995 ("[T]he State cannot issue any NSR SIP permit that has a less stringent emission limit than already is contained in the approved SIP.")."

[22] 75 Fed Reg. 68998 ("Any action to modify a state-adopted requirement of the SIP would not modify the federally enforceable obligation under the SIP unless and until it is approved by EPA as a SIP revision."); *United States v. General Dynamics Corp*, 755 F.Supp. 720, 723 (N.D. Texas 1991) ("Because the effect of the agreed board order is to raise the emissions limits set by the Texas SIP, the order requires approval by . . . [EPA] to be effective.").

[23] *U.S. v. EME Homer City Generation, L.P.*, 727 F.3d 274, 300 (3rd Cir. 2013) (EPA barred from enforcing federal requirements omitted from power plant Title V permit); *Sierra Club v. Otter Tail Power Co.*, 615 F.3d 1008, 1020-21 (8th Cir. 2010) (Court lacked jurisdiction to consider Sierra Club's allegation that source violated requirement that was not included in its Title V permit); *Romoland School Dist. v. Inland Empire Energy Center*, 548 F.3d 738, 754-755 (9th Cir. 2008).

[24] Comments at 4-5

requirement."[25] "Applicable requirement" is defined to include applicable SIP opacity and PM limits.[26] The Proposed Permit violates applicable requirements by creating improper exemptions to Texas SIP particulate matter and opacity limits without full public notice and EPA approval. The Executive Director's end-run around the SIP revision process is not the kind of change that can be authorized as a streamlined Title V permit minor revision.

3. *Incorporation of the MSS Amendment into SWEPCO's Title V permit fails to assure compliance with applicable requirements.*[27]

Texas Title V permits must include conditions necessary to assure compliance with applicable requirements, including Texas SIP requirements.[28] The Texas SIP's 20 percent opacity limit and 0.3 lb/MMBtu PM limit are applicable requirements for the Pirkey Plant. These SIP limits apply at all times, including planned MSS activities. This is so for at least three independent reasons. First, the rules establishing the limits do not provide any exception for planned MSS events. Second, these limits are SIP limits and SIP limits are not subject to exemptions during maintenance, startup, shutdown, and malfunction activities.[29] Third, EPA has spent the better part of the last decade working with the TCEQ to end the historic (and illegal) practice of allowing blanket exemptions from compliance with SIP limits. The Proposed Permit fails to assure compliance with these requirements because it says that the SWEPCO does not need to comply with them during MSS Activities authorized by Permit No. 6269.

4. *The Executive Director's Response to Public Comments misstates the law and fails to address Petitioners' concerns.*

The Executive Director does not deny that the Proposed Permit incorporates purported exemptions to Texas SIP particulate matter and opacity limits. Instead, he claims that he has the authority to unilaterally exempt sources from SIP requirements. The source of this authority, the Executive Director contends, is Texas's SIP-approved rule at 30 Tex. Admin. Code § 101.221(d):

> The MSS Amendment does not modify permit requirements in a way that violates the SIP. Rather, the Commission has specified limitations and conditions for certain specific operational phases. The Texas SIP includes 30 TAC § 101.221(d). That rule provides that sources emitting air contaminants that cannot

[25] 30 Tex. Admin. Code § 122.215(1).
[26] 30 Tex. Admin. Code § 122.10(2)(A).
[27] Comments at 5.
[28] 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.6(a).
[29] 75 Fed. Reg. 68992 ("Although one might argue that it is appropriate to account for . . . variability [of emissions under all operating conditions] in technology-based standards, EPA's longstanding position has been that it is not appropriate to provide exemptions from compliance with emission limits in SIPs that are developed for the purpose of demonstrating how to attain and maintain the public health-based NAAQS.").

> be controlled or reduced due to a lack of technological knowledge may be exempt from the applicable rules when so determined and ordered by the Commission," (sic) and allows the Commission to "specify limitations and conditions as to the operation of such exempt sources."[30]

Here, in one short paragraph, the Executive Director looks to sweep the clear language of the rule ("The commission will not exempt sources from complying with any federal requirements[.]"),[31] the TCEQ's on-the-record interpretation of the rule with respect to SIP requirements ("The TCEQ agrees that this rule cannot be used by the agency to grant any requested relief from compliance with any State Implementation Plan requirements[.]"),[32] the conditions of EPA's approval of the rule ("[T]he State may not exempt a source from complying with any requirement of the federally-approved SIP")[33]—all of it—under the rug, like a pile of dust. Obviously, 30 Tex. Admin. Code § 101.221(d) does not say what the Executive Director contends it does. Accordingly, the Executive Director's response fails to address Petitioners' concerns and the Administrator should object to the Proposed Permit.

The Executive Director's position is wrong for another important reason: it is fundamentally incompatible with the Clean Air Act's core concept of cooperative federalism. While the Clean Air Act affords states discretion to develop their own SIPs, it also provides that EPA must approve state SIPs and SIP revisions before they may be implemented. Just as EPA may not dictate SIP particulars to the states, states cannot unilaterally discard the particulars of their own plans once they are approved by EPA.[34] If the Executive Director can exempt sources from SIP requirements at his own discretion, without any public notice, without EPA approval, without any real scrutiny, EPA's SIP-approval authority and the Clean Air Act itself is a dead letter in Texas. As a matter of law, the Executive Director's response is meritless. However, this fact means very little if EPA is unwilling to enforce the law. As a matter of fact, the Executive Director's attempt to skirt the law in this case—and others—will be successful unless the Administrator addresses and corrects his missteps as they happen. The Administrator should object to the Proposed Permit.

- **Requested Revision to the Proposed Permit:**

The Administrator should require the Executive Director to revise the Proposed Permit to state that any condition in any incorporated NSR permit that purports to modify an applicable requirement contained in the Texas SIP or a federal rule is ineffective and does not excuse non-compliance with the requirement. The Executive Director should also be

[30] Response to Comments at Response 1.
[31] 30 Tex. Admin. Code § 101.221(d).
[32] Exhibit C.
[33] 75 Fed. Reg. 68998.
[34] 42 U.S.C. §§ 7410(i), 7416; 40 C.F.R. §§ 51.102, 51.105.

required to revise the Statement of Basis to clarify that SIP limits apply at all times, regardless of what may be indicated in NSR permits incorporated by reference into the final permit.

B. Credible Evidence

In 1997, EPA promulgated revisions to 40 C.F.R. Parts 51, 52, 60, and 61 to clarify that nothing shall preclude the use of *any* credible evidence or information in demonstrating compliance or noncompliance with federal emission limits.[35] The purpose of this rule is to allow enforcement entities to rely on any available credible evidence to demonstrate compliance or noncompliance with a federally enforceable emission limit.[36] To ensure that the Credible Evidence rule would achieve this purpose, EPA included language in the rule prohibiting states from barring the use of credible evidence to assess compliance with federal emission limits:

> For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this part, the plan *must not preclude the use*, including the exclusive use, *of any credible evidence or information*, relevant to whether the source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.[37]

In response to this rulemaking and EPA's proposed Compliance Assurance Monitoring rule, some commenters suggested that Title V permits may still be written to limit the use of credible evidence to prove violations of emissions standards.[38] EPA not only rejected this suggestion, the agency also emphasized that permits containing such limits should be vetoed.[39] And in cases where objectionable permits are not vetoed, EPA clarified that terms limiting the use of credible evidence should be read as "null and void" and "without meaning."[40]

While the Proposed Permit does not contain language limiting the use of credible evidence, a recent Texas federal court ruling suggests that the mere absence of limiting language is not sufficient to protect the use of credible evidence. After the close of the Draft Permit public comment period, the United States District Court for the Western District of Texas held that "a concerned citizen is limited to the compliance requirements, as defined in the Title V permit,

[35] *Credible Evidence Revisions*, 62 Fed. Reg. 8314 (February 24, 1997); 40 C.F.R. §§ 52.12(c), 60.11(g) and 61.12(e); *Natural Res. Def. Council*, 194 F.3d 130, 134 (D.C. Cir. 1999).
[36] *Id.*
[37] 40 C.F.R. § 51.212(c)(emphasis added).
[38] *Compliance Assurance Monitoring*, 62 Fed. Reg. 54900, 54907-8 (October 22, 1997).
[39] *Id.*
[40] *Id.*

when pursuing a civil lawsuit for CAA violations."[41] According to the Court, Title V permits must be read to limit applicable compliance demonstration methods, because a different reading would undermine the "permit's objective as the source-specific bible for Clean Air Act compliance."[42] To address this decision and to ensure that EPA's Credible Evidence and CAM rules are properly implemented in Texas, the Administrator should object to the Proposed Permit and require the Executive Director to revise the Proposed Permit to state that any credible evidence may be used to demonstrate non-compliance with applicable requirements.

- **Requested Revision to the Proposed Permit:**

To assure that applicable requirements in the Proposed Permit are practicably enforceable, the Administrator should require the Executive Director to revise the permit to include the following condition: "Nothing in this permit shall be interpreted to preclude the use of any credible evidence to demonstrate non-compliance with any term of this permit."

VII. CONCLUSION

For the foregoing reasons, the Proposed Permit is deficient and the Administrator should object to it.

Sincerely,

/s/

Gabriel Clark-Leach
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ATTORNEY FOR PETITIONERS

[41] Exhibit F, Order Granting Motion for Partial Summary Judgment, *Sierra Club v. Energy Future Holdings Corp.*, No. W-12-CV-108 (W.D. Tex. February 10, 2014) at 15-16.
[42] Exhibit F at 16 (citations omitted).

EXHIBIT A

Proposed Title V Permit No. O31

FEDERAL OPERATING PERMIT

A FEDERAL OPERATING PERMIT IS HEREBY ISSUED TO

Southwestern Electric Power Company

AUTHORIZING THE OPERATION OF

H.W. Pirkey Power Plant
Electric Services

LOCATED AT

Harrison County, Texas

Latitude 32° 27' 45" Longitude 094° 28' 58"

Regulated Entity Number: RN100214287

This permit is issued in accordance with and subject to the Texas Clean Air Act (TCAA), Chapter 382 of the Texas Health and Safety Code and Title 30 Texas Administrative Code Chapter 122 (30 TAC Chapter 122), Federal Operating Permits. Under 30 TAC Chapter 122, this permit constitutes the permit holder's authority to operate the site, emission units and affected source listed in this permit. Operations of the site, emission units and affected source listed in this permit are subject to all additional rules or amended rules and orders of the Commission pursuant to the TCAA.

This permit does not relieve the permit holder from the responsibility of obtaining New Source Review authorization for new, modified, or existing facilities in accordance with 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification.

The site, emission units and affected source authorized by this permit shall be operated in accordance with 30 TAC Chapter 122, the general terms and conditions, special terms and conditions, and attachments contained herein.

This permit shall expire five years from the date of issuance. The renewal requirements specified in 30 TAC § 122.241 must be satisfied in order to renew the authorization to operate the site, emission units and affected source.

Permit No: O31 Issuance Date: November 22, 2010

For the Commission

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GENERAL TERMS AND CONDITIONS

The permit holder shall comply with all terms and conditions contained in 30 TAC § 122.143 (General Terms and Conditions), 30 TAC § 122.144 (Recordkeeping Terms and Conditions), 30 TAC § 122.145 (Reporting Terms and Conditions), and 30 TAC § 122.146 (Compliance Certification Terms and Conditions).

In accordance with 30 TAC § 122.144(1), records of required monitoring data and support information required by this permit, or any applicable requirement codified in this permit, are required to be maintained for a period of five years from the date of the monitoring report, sample, or application unless a longer data retention period is specified in an applicable requirement. The five year record retention period supersedes any less stringent retention requirement that may be specified in a condition of a permit identified in the New Source Review Authorization attachment.

If the permit holder chooses to demonstrate that this permit is no longer required, a written request to void this permit shall be submitted to the Texas Commission on Environmental Quality (TCEQ) by the Responsible Official in accordance with 30 TAC § 122.161(e). The permit holder shall comply with the permit's requirements, including compliance certification and deviation reporting, until notified by the TCEQ that this permit is voided.

The permit holder shall comply with 30 TAC Chapter 116 by obtaining a New Source Review authorization prior to new construction or modification of emission units located in the area covered by this permit.

All reports required by this permit must include in the submittal a cover letter which identifies the following information: company name, TCEQ regulated entity number, air account number (if assigned), site name, area name (if applicable), and Air Permits Division permit number(s).

SPECIAL TERMS AND CONDITIONS:

Emission Limitations and Standards, Monitoring and Testing, and Recordkeeping and Reporting:

1. Permit holder shall comply with the following requirements:

   A. Emission units (including groups and processes) in the Applicable Requirements Summary attachment shall meet the limitations, standards, equipment specifications, monitoring, recordkeeping, reporting, testing, and other requirements listed in the Applicable Requirements Summary attachment to assure compliance with the permit.

   B. The textual description in the column titled "Textual Description" in the Applicable Requirements Summary attachment is not enforceable and is not deemed as a substitute for the actual regulatory language. The Textual Description is provided for information purposes only.

   C. A citation listed on the Applicable Requirements Summary attachment, which has a notation [G] listed before it, shall include the referenced section and subsection for

all commission rules, or paragraphs for all federal and state regulations and all subordinate paragraphs, subparagraphs and clauses, subclauses, and items contained within the referenced citation as applicable requirements.

D. Emission units subject to 40 CFR Part 63, Subpart ZZZZ as identified in the attached Applicable Requirements Summary table are subject to 30 TAC Chapter 113, Subchapter C, § 1090 which incorporates the 40 CFR Part 63 Subpart by reference.

E. For the purpose of generating discrete emission reduction credits through 30 TAC Chapter 101, Subchapter H, Division 4 (Discrete Emission Credit Banking and Trading), the permit holder shall comply with the following requirements:

(i) Title 30 TAC § 101.372 (relating to General Provisions)

(ii) Title 30 TAC § 101.373 (relating to Discrete Emission Reduction Credit Generation and Certification)

(iii) Title 30 TAC § 101.378 (relating to Discrete Emission Credit Banking and Trading)

(iv) The terms and conditions by which the emission limits are established to generate the discrete reduction credit are applicable requirements of this permit

2. The permit holder shall comply with the following sections of 30 TAC Chapter 101 (General Air Quality Rules):

A. Title 30 TAC § 101.1 (relating to Definitions), insofar as the terms defined in this section are used to define the terms used in other applicable requirements

B. Title 30 TAC § 101.3 (relating to Circumvention)

C. Title 30 TAC § 101.8 (relating to Sampling), if such action has been requested by the TCEQ

D. Title 30 TAC § 101.9 (relating to Sampling Ports), if such action has been requested by the TCEQ

E. Title 30 TAC § 101.10 (relating to Emissions Inventory Requirements)

F. Title 30 TAC § 101.201 (relating to Emission Event Reporting and Recordkeeping Requirements)

G. Title 30 TAC § 101.211 (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements)

H. Title 30 TAC § 101.221 (relating to Operational Requirements)

I. Title 30 TAC § 101.222 (relating to Demonstrations)

J. Title 30 TAC § 101.223 (relating to Actions to Reduce Excessive Emissions)

3. Permit holder shall comply with the following requirements of 30 TAC Chapter 111:

A. Visible emissions from stationary vents with a flow rate of less than 100,000 actual cubic feet per minute and constructed after January 31, 1972 that are not listed in the Applicable Requirements Summary attachment for 30 TAC Chapter 111, Subchapter A, Division 1 , shall not exceed 20% opacity averaged over a six-minute period. The permit holder shall comply with the following requirements for stationary vents at the site subject to this standard:

(i) Title 30 TAC § 111.111(a)(1)(B) (relating to Requirements for Specified Sources)

(ii) Title 30 TAC § 111.111(a)(1)(E)

(iii) Title 30 TAC § 111.111(a)(1)(F)(i), (ii), (iii), or (iv)

(iv) For emission units with vent emissions subject to 30 TAC § 111.111(a)(1)(B), complying with 30 TAC § 111.111(a)(1)(F)(ii), (iii), or (iv), and capable of producing visible emissions from (but not limited to) particulate matter, acid gases, and NO_x, the permit holder shall also comply with the following periodic monitoring requirements for the purpose of annual compliance certification under 30 TAC § 122.146. These periodic monitoring requirements do not apply to vents that do not emit visible emissions such as vents that emit only VOC or vents that provide passive ventilation, such as plumbing vents; or vents that are subject to the emission limitation of 30 TAC § 111.111(a)(1)(B) and Compliance Assurance Monitoring, as specified in the attached "Applicable Requirements Summary" and "Additional Monitoring Requirements:"

(1) An observation of stationary vents from emission units in operation shall be conducted at least once during each calendar quarter unless the emission unit is not operating for the entire quarter.

(2) For stationary vents from a combustion source, if an alternative to the normally fired fuel is fired for a period greater than or equal to 24 consecutive hours, the permit holder shall conduct an observation of the stationary vent for each such period to determine if visible emissions are present. If such period is greater than 3 months, observations shall be conducted once during each quarter. Supplementing the normally fired fuel with natural gas or fuel gas to increase the net heating value to the minimum required value does not constitute creation of an alternative fuel.

(3) Records of all observations shall be maintained.

(4) Visible emissions observations of emission units operated during daylight hours shall be conducted no earlier than one hour after sunrise and no later than one hour before sunset. Visible emissions observations of emission units operated only at night must be made with additional lighting and the temporary installation of contrasting backgrounds. Visible emissions observations shall be made during times when the activities described in 30 TAC § 111.111(a)(1)(E) are not taking place. Visible emissions shall be determined with each stationary vent in clear view of the observer. The observer shall be at least 15 feet, but not more than 0.25 mile, away from each stationary vent during the observation. For outdoor locations, the observer shall select a position where the sun is not directly in the observer's eyes. When condensed water vapor is present within the plume, as it emerges from the emissions outlet, observations must be made beyond the point in the plume at which condensed water vapor is no longer visible. When water vapor within the plume condenses and becomes visible at a distance from the emissions outlet, the observation shall be evaluated at the outlet prior to condensation of water vapor. A certified opacity reader is not required for visible emissions observations.

(5) Compliance Certification:

(a) If visible emissions are not present during the observation, the RO may certify that the source is in compliance with the applicable opacity requirement in 30 TAC § 111.111(a)(1) and (a)(1)(B).

(b) However, if visible emissions are present during the observation, the permit holder shall either list this occurrence as a deviation on the next deviation report as required under 30 TAC § 122.145(2) or conduct the appropriate opacity test specified in 30 TAC § 111.111(a)(1)(F) to determine if the source is in compliance with the opacity requirements. If an opacity test is performed and the source is determined to be in compliance, the RO may certify that the source is in compliance with the applicable opacity requirement. However, if an opacity test is performed and the source is determined to be out of compliance, the permit holder shall list this occurrence as a deviation on the next deviation report as required under 30 TAC § 122.145(2). The opacity test must be performed by a certified opacity reader.

(c) Some vents may be subject to multiple visible emission or monitoring requirements. All credible data must be

considered when certifying compliance with this requirement even if the observation or monitoring was performed to demonstrate compliance with a different requirement.

B. For visible emissions from a building, enclosed facility, or other structure; the permit holder shall comply with the following requirements:

(i) Title 30 TAC § 111.111(a)(7)(A) (relating to Requirements for Specified Sources)

(ii) Title 30 TAC § 111.111(a)(7)(B)(i) or (ii)

(iii) For a building containing an air emission source, enclosed facility, or other structure containing or associated with an air emission source subject to 30 TAC § 111.111(a)(7)(A), complying with 30 TAC § 111.111(a)(7)(B)(i) or (ii), and capable of producing visible emissions from (but not limited to) particulate matter, acid gases, and NO_x, the permit holder shall also comply with the following periodic monitoring requirements for the purpose of annual compliance certification under 30 TAC § 122.146:

(1) An observation of visible emissions from a building containing an air emission source, enclosed facility, or other structure containing or associated with an air emission source which is required to comply with 30 TAC § 111.111(a)(7)(A) shall be conducted at least once during each calendar quarter unless the air emission source or enclosed facility is not operating for the entire quarter.

(2) Records of all observations shall be maintained.

(3) Visible emissions observations of air emission sources or enclosed facilities operated during daylight hours shall be conducted no earlier than one hour after sunrise and no later than one hour before sunset. Visible emissions observations of air emission sources or enclosed facilities operated only at night must be made with additional lighting and the temporary installation of contrasting backgrounds. Visible emissions shall be determined with each emissions outlet in clear view of the observer. The observer shall be at least 15 feet, but not more than 0.25 mile, away from each emissions outlet during the observation. For outdoor locations, the observer shall select a position where the sun is not directly in the observer's eyes. When condensed water vapor is present within the plume, as it emerges from the emissions outlet, observations must be made beyond the point in the plume at which condensed water vapor is no longer visible. When water vapor within the plume condenses and becomes visible at a distance from the emissions outlet, the observation shall be evaluated at the outlet prior to condensation of water vapor. A

certified opacity reader is not required for visible emissions observations.

(4) Compliance Certification:

(a) If visible emissions are not present during the observation, the RO may certify that the source is in compliance with the applicable opacity requirement in 30 TAC § 111.111(a)(7) and (a)(7)(A)

(b) However, if visible emissions are present during the observation, the permit holder shall either list this occurrence as a deviation on the next deviation report as required under 30 TAC § 122.145(2) or conduct the appropriate opacity test specified in 30 TAC § 111.111(a)(7)(B) to determine if the source is in compliance with the opacity requirements. If an opacity test is performed and the source is determined to be in compliance, the RO may certify that the source is in compliance with the applicable opacity requirement. However, if an opacity test is performed and the source is determined to be out of compliance, the permit holder shall list this occurrence as a deviation on the next deviation report as required under 30 TAC § 122.145(2). The opacity test must be performed by a certified opacity reader.

C. For visible emissions from all other sources not specified in 30 TAC § 111.111(a)(1), (4), or (7); the permit holder shall comply with the following requirements:

(i) Title 30 TAC § 111.111(a)(8)(A) (relating to Requirements for Specified Sources)

(ii) Title 30 TAC § 111.111(a)(8)(B)(i) or (ii)

(iii) For a source subject to 30 TAC § 111.111(a)(8)(A), complying with 30 TAC § 111.111(a)(8)(B)(i) or (ii), and capable of producing visible emissions from, but not limited to, particulate matter, acid gases, and NO_x, the permit holder shall also comply with the following periodic monitoring requirements for the purpose of annual compliance certification under 30 TAC § 122.146:

(1) An observation of visible emissions from a source which is required to comply with 30 TAC § 111.111(a)(8)(A) shall be conducted at least once during each calendar quarter unless the source is not operating for the entire quarter.

(2) Records of all observations shall be maintained.

(3) Visible emissions observations of sources operated during daylight hours shall be conducted no earlier than one hour after sunrise and no later than one hour before sunset. Visible emissions observations of sources operated only at night must be made with additional lighting and the temporary installation of contrasting backgrounds. Visible emissions shall be determined with each source in clear view of the observer. The observer shall be at least 15 feet, but not more than 0.25 mile, away from each source during the observation. For outdoor locations, the observer shall select a position where the sun is not directly in the observer's eyes. When condensed water vapor is present within the plume, as it emerges from the emissions outlet, observations must be made beyond the point in the plume at which condensed water vapor is no longer visible. When water vapor within the plume condenses and becomes visible at a distance from the emissions outlet, the observation shall be evaluated at the outlet prior to condensation of water vapor. A certified opacity reader is not required for visible emissions observations.

(4) Compliance Certification:

(a) If visible emissions are not present during the observation, the RO may certify that the source is in compliance with the applicable opacity requirement in 30 TAC § 111.111(a)(8) and (a)(8)(A)

(b) However, if visible emissions are present during the observation, the permit holder shall either list this occurrence as a deviation on the next deviation report as required under 30 TAC § 122.145(2) or conduct the appropriate opacity test specified in 30 TAC § 111.111(a)(8)(B) to determine if the source is in compliance with the opacity requirements. If an opacity test is performed and the source is determined to be in compliance, the RO may certify that the source is in compliance with the applicable opacity requirement. However, if an opacity test is performed and the source is determined to be out of compliance, the permit holder shall list this occurrence as a deviation on the next deviation report as required under 30 TAC § 122.145(2). The opacity test must be performed by a certified opacity reader

D. Certification of opacity readers determining opacities under Method 9 (as outlined in 40 CFR Part 60, Appendix A) to comply with opacity monitoring requirements shall be accomplished by completing the Visible Emissions Evaluators Course, or approved agency equivalent, no more than 180 days before the opacity reading.

E. For emission units with contributions from uncombined water, the permit holder shall comply with the requirements of 30 TAC § 111.111(b).

F. Emission limits on nonagricultural processes, except for the steam generators specified in 30 TAC § 111.153, shall comply with the following requirements:

(i) Emissions of PM from any source may not exceed the allowable rates as required in 30 TAC § 111.151(a) (relating to Allowable Emissions Limits)

(ii) Sources with an effective stack height (h_e) less than the standard effective stack height (H_e), must reduce the allowable emission level by multiplying it by $[h_e/H_e]^2$ as required in 30 TAC § 111.151(b)

(iii) Effective stack height shall be calculated by the equation specified in 30 TAC § 111.151(c)

G. Outdoor burning, as stated in 30 TAC § 111.201, shall not be authorized unless the following requirements are satisfied:

(i) Title 30 TAC § 111.205 (relating to Exception for Fire Training)

(ii) Title 30 TAC § 111.207 (relating to Exception for Recreation, Ceremony, Cooking, and Warmth)

(iii) Title 30 TAC § 111.209 (relating to Exception for Disposal Fires)

(iv) Title 30 TAC § 111.219 (relating to General Requirements for Allowable Outdoor Burning)

(v) Title 30 TAC § 111.221 (relating to Responsibility for Consequences of Outdoor Burning)

4. Permit holder shall comply with the following 30 TAC Chapter 115, Subchapter C requirements:

A. When filling gasoline storage vessels with a nominal capacity greater than 1,000 gallons (Stage I) at motor vehicle fuel dispensing facilities, which have dispensed less than 125,000 gallons of gasoline in any calendar month after January 1, 1999, the permit holder shall comply with the following requirements specified in 30 TAC Chapter 115, Subchapter C:

(i) Title 30 TAC § 115.222(7) (relating to Control Requirements)

(ii) Title 30 TAC § 115.222(3), as it applies to liquid gasoline leaks

(iii) Title 30 TAC § 115.224(1) (relating to Inspection Requirements), as it applies to liquid gasoline leaks

(iv) Title 30 TAC § 115.226(2)(C) (relating to Recordkeeping Requirements)

5. The permit holder shall comply with the following requirements for units subject to any subpart of 40 CFR Part 60, unless otherwise stated in the applicable subpart:

   A. Title 40 CFR § 60.7 (relating to Notification and Recordkeeping)

   B. Title 40 CFR § 60.8 (relating to Performance Tests)

   C. Title 40 CFR § 60.11 (relating to Compliance with Standards and Maintenance Requirements)

   D. Title 40 CFR § 60.12 (relating to Circumvention)

   E. Title 40 CFR § 60.13 (relating to Monitoring Requirements)

   F. Title 40 CFR § 60.14 (relating to Modification)

   G. Title 40 CFR § 60.15 (relating to Reconstruction)

   H. Title 40 CFR § 60.19 (relating to General Notification and Reporting Requirements)

6. The permit holder shall comply with certified registrations submitted to the TCEQ for purposes of establishing federally enforceable emission limits. A copy of the certified registration shall be maintained with the permit. Records sufficient to demonstrate compliance with the established limits shall be maintained. The certified registration and records demonstrating compliance shall be provided, on request, to representatives of the appropriate TCEQ regional office and any local air pollution control agency having jurisdiction over the site. The permit holder shall submit updated certified registrations when changes at the site require establishment of new emission limits. If changes result in emissions that do not remain below major source thresholds, the permit holder shall submit a revision application to codify the appropriate requirements in the permit.

Additional Monitoring Requirements

7. Unless otherwise specified, the permit holder shall comply with the compliance assurance monitoring requirements as specified in the attached "CAM Summary" upon issuance of the permit. In addition, the permit holder shall comply with the following:

   A. The permit holder shall comply with the terms and conditions contained in 30 TAC § 122.147 (General Terms and Conditions for Compliance Assurance Monitoring).

   B. The permit holder shall report, consistent with the averaging time identified in the "CAM Summary," deviations as defined by the deviation limit in the "CAM Summary." Any monitoring data below a minimum limit or above a maximum limit, that is collected in accordance with the requirements specified in 40 CFR § 64.7(c), shall be reported as a deviation. Deviations shall be reported according to 30 TAC § 122.145 (Reporting Terms and Conditions).

C. The permit holder may elect to collect monitoring data on a more frequent basis and average the data, consistent with the averaging time specified in the "CAM Summary," for purposes of determining whether a deviation has occurred. However, the additional data points must be collected on a regular basis. In no event shall data be collected and used in particular instances in order to avoid reporting deviations. All monitoring data shall be collected in accordance with the requirements specified in 40 CFR § 64.7(c).

D. The permit holder shall operate the monitoring, identified in the attached "CAM Summary," in accordance with the provisions of 40 CFR § 64.7.

8. The permit holder shall comply with the periodic monitoring requirements as specified in the attached "Periodic Monitoring Summary" upon issuance of the permit. Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the permit holder shall conduct all monitoring in continuous operation (or shall collect data at all required intervals) at all times that the pollutant-specific emissions unit is operating. The permit holder may elect to collect monitoring data on a more frequent basis and average the data, consistent with the averaging time specified in the "Periodic Monitoring Summary," for purposes of determining whether a deviation has occurred. However, the additional data points must be collected on a regular basis. In no event shall data be collected and used in particular instances to avoid reporting deviations. Deviations shall be reported according to 30 TAC § 122.145 (Reporting Terms and Conditions).

New Source Review Authorization Requirements

9. 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, 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. These requirements:

A. Are incorporated by reference into this permit as applicable requirements

B. Shall be located with this operating permit

C. Are not eligible for a permit shield

10. The permit holder shall comply with the general requirements of 30 TAC Chapter 106, Subchapter A or the general requirements, if any, in effect at the time of the claim of any PBR.

11. The permit holder shall maintain records to demonstrate compliance with any emission limitation or standard that is specified in a permit by rule (PBR) or Standard Permit listed in the New Source Review Authorizations attachment. The records shall yield reliable data from the relevant time period that are representative of the emission unit's compliance with

the PBR or Standard Permit. These records may include, but are not limited to, production capacity and throughput, hours of operation, material safety data sheets (MSDS), chemical composition of raw materials, speciation of air contaminant data, engineering calculations, maintenance records, fugitive data, performance tests, capture/control device efficiencies, direct pollutant monitoring (CEMS, COMS, or PEMS), or control device parametric monitoring. These records shall be made readily accessible and available as required by 30 TAC § 122.144.

A. If applicable, monitoring of control device performance or general work practice standards shall be made in accordance with the TCEQ Periodic Monitoring Guidance document.

B. Any monitoring or recordkeeping data indicating noncompliance with the PBR or Standard Permit shall be considered and reported as a deviation according to 30 TAC § 122.145 (Reporting Terms and Conditions).

12. The permit holder shall comply with the following requirements for Air Quality Standard Permits:

A. Registration requirements listed in 30 TAC § 116.611, unless otherwise provided for in an Air Quality Standard Permit

B. General Conditions listed in 30 TAC § 116.615, unless otherwise provided for in an Air Quality Standard Permit

C. Applicable requirements of 30 TAC § 116.617 for Pollution Control Projects based on the information contained in the registration application.

Compliance Requirements

13. The permit holder shall certify compliance in accordance with 30 TAC § 122.146. The permit holder shall comply with 30 TAC § 122.146 using at a minimum (but not limited to) the continuous or intermittent compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other credible evidence or information. The certification period may not exceed 12 months and the certification must be submitted within 30 days after the end of the period being certified.

14. Permit holder shall comply with the following 30 TAC Chapter 117 requirements:

A. The permit holder shall comply with the compliance schedule as required in 30 TAC § 117.9300 for electric utilities in East and Central Texas.

15. Use of Discrete Emission Credits to comply with the applicable requirements:

A. Unless otherwise prohibited, the permit holder may use discrete emission credits to comply with the following applicable requirements listed elsewhere in this permit:

(i) Title 30 TAC Chapter 115

(ii) Title 30 TAC Chapter 117

(iii) If applicable, offsets for Title 30 TAC Chapter 116

(iv) Temporarily exceed state NSR permit allowables

B. The permit holder shall comply with the following requirements in order to use the credit to comply with the applicable requirements:

(i) The permit holder must notify the TCEQ according to 30 TAC § 101.376(d)

(ii) The discrete emission credits to be used must meet all the geographic, timeliness, applicable pollutant type, and availability requirements listed in 30 TAC Chapter 101, Subchapter H, Division 4

(iii) The executive director has approved the use of the discrete emission credits according to 30 TAC § 101.376(d)(1)(A)

(iv) The permit holder keeps records of the use of credits towards compliance with the applicable requirements in accordance with 30 TAC § 101.372(h) and 30 TAC Chapter 122

16. The permit holder may comply with the following 30 TAC Chapter 101, Subchapter H, Division 5 (System Cap Trading) Requirements for an electric generating facility participating in a system cap:

A. Title 30 TAC § 101.383 (relating to General Provisions)

B. Title 30 TAC § 101.385 (relating to Recordkeeping and Reporting)

Protection of Stratospheric Ozone

17. Permit holders at a site subject to Title VI of the FCAA Amendments shall meet the following requirements for protection of stratospheric ozone.

A. Any on-site servicing, maintenance, and repair on refrigeration and nonmotor vehicle air-conditioning appliances using ozone-depleting refrigerants or non-exempt substitutes shall be conducted in accordance with 40 CFR Part 82, Subpart F. Permit holders shall ensure that repairs on or refrigerant removal from refrigeration and nonmotor vehicle air-conditioning appliances using ozone-depleting refrigerants are performed only by properly certified technicians using certified equipment. Records shall be maintained as required by 40 CFR Part 82, Subpart F.

Temporary Fuel Shortages (30 TAC § 112.15)

18. The permit holder shall comply with the following 30 TAC Chapter 112 requirements:

A. Title 30 TAC § 112.15 (relating to Temporary Fuel Shortage Plan Filing Requirements)

B. Title 30 TAC § 112.16(a), (a)(1), and (a)(2)(B) - (c) (relating to Temporary Fuel Shortage Plan Operating Requirements)

C. Title 30 TAC § 112.17 (relating to Temporary Fuel Shortage Plan Notification Procedures)

D. Title 30 TAC § 112.18 (relating to Temporary Fuel Shortage Plan Reporting Requirements)

Agreed Order Requirements

19. The permit holder shall comply with the site specific requirements for the Pirkey Power Plant contained in the attached Agreed Order, Docket No. 201-0878-RUL, as part of the Northeast Texas Region Ozone (SIP) revision, dated March 13, 2002.

Permit Location

20. The permit holder shall maintain a copy of this permit and records related to requirements listed in this permit on-site.

Permit Shield (30 TAC § 122.148)

21. A permit shield is granted for the emission units, groups, or processes specified in the attached "Permit Shield." Compliance with the conditions of the permit shall be deemed compliance with the specified potentially applicable requirements or specified potentially applicable state-only requirements listed in the attachment "Permit Shield." Permit shield provisions shall not be modified by the executive director until notification is provided to the permit holder. No later than 90 days after notification of a change in a determination made by the executive director, the permit holder shall apply for the appropriate permit revision to reflect the new determination. Provisional terms are not eligible for this permit shield. Any term or condition, under a permit shield, shall not be protected by the permit shield if it is replaced by a provisional term or condition or the basis of the term and condition changes.

Acid Rain Permit Requirements

22. For unit P-16 (identified in the Certificate of Representation as unit 1), located at the affected source identified by ORIS/Facility code 7902, the designated representative and the owner or operator, as applicable, shall comply with the following Acid Rain Permit requirements.

A. General Requirements

(i) Under 30 TAC § 122.12(1) and 40 CFR Part 72, the Acid Rain Permit requirements contained here are a separable portion of the Federal Operating Permit (FOP) and have an independent public comment process which may be separate from, or combined with the FOP.

(ii) The owner and operator shall comply with the requirements of 40 CFR Part 72 and 40 CFR Part 76. Any noncompliance with the Acid Rain Permit will be considered noncompliance with the FOP and may be subject to enforcement action.

(iii) The owners and operators of the affected source shall operate the source and the unit in compliance with the requirements of this Acid Rain Permit and all other applicable State and federal requirements.

(iv) The owners and operators of the affected source shall comply with the General Terms and Conditions of the FOP that incorporates this Acid Rain Permit.

(v) The term for the Acid Rain permit shall commence with the issuance of the FOP that incorporates the Acid Rain permit and shall be run concurrent with the remainder of the term of the FOP. Renewal of the Acid Rain permit shall coincide with the renewal of the FOP that incorporates the Acid Rain permit and subsequent terms shall be no more than five years from the date of renewal of the FOP and run concurrent with the permit term of the FOP.

B. Monitoring Requirements

(i) The owners and operators, and the designated representative, of the affected source and each affected unit at the source shall comply with the monitoring requirements contained 40 CFR Part 75.

(ii) The emissions measurements recorded and reported in accordance with 40 CFR Part 75 and any other credible evidence shall be used to determine compliance by the affected source with the acid rain emissions limitations and emissions reduction requirements for SO_2 and NO_x under the ARP.

(iii) The requirements of 40 CFR Part 75 shall not affect the responsibility of the owners and operators to monitor emission of other pollutants or other emissions characteristics at the unit under other applicable requirements of the FCAA Amendments (42 U.S.C. 7401, as amended November 15, 1990) and other terms and conditions of the operating permit for the source.

C. SO_2 emissions requirements

(i) The owners and operators of each source and each affected unit at the source shall comply with the applicable acid rain emissions limitations for SO_2.

(ii) As of the allowance transfer deadline the owners and operators of the affected source and each affected unit at the source shall hold, in the unit's

compliance subaccount, allowances in an amount not less than the total annual emissions of SO_2 for the previous calendar year.

(iii) Each ton of SO_2 emitted in excess of the acid rain emissions limitations for SO_2 shall constitute a separate violation of the FCAA amendments.

(iv) An affected unit shall be subject to the requirements under (i) and (ii) of the SO_2 emissions requirements as follows:

(1) Starting January 1, 2000, an affected unit under 40 CFR § 72.6(a)(2); or

(2) Starting on the later of January 1, 2000 or the deadline for monitor certification under 40 CFR Part 75, an affected unit under 40 CFR § 72.6(a)(3).

(v) Allowances shall be held in, deducted from, or transferred into or among Allowance Tracking System accounts in accordance with the requirements of the ARP.

(vi) An allowance shall not be deducted, for compliance with the requirements of this permit, in a calendar year before the year for which the allowance was allocated.

(vii) An allowance allocated by the EPA Administrator or under the ARP is a limited authorization to emit SO_2 in accordance with the ARP. No provision of the ARP, Acid Rain permit application, this Acid Rain Permit, or an exemption under 40 CFR §§ 72.7 or 72.8 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(viii) An allowance allocated by the EPA Administrator under the ARP does not constitute a property right.

D. NO_x Emission Requirements

(i) The owners and operators of the source and each affected unit at the source shall comply with the applicable acid rain emissions limitations for NO_x under 40 CFR Part 76.

E. Excess emissions requirements for SO_2 and NO_x.

(i) The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan, as required under 40 CFR Part 77.

(ii) If an affected source has excess emissions in any calendar year shall, as required by 40 CFR Part 77:

(1) Pay, without demand, the penalty required and pay, upon demand, the interest on that penalty.

(2) Comply with the terms of an approved offset plan.

F. Recordkeeping and Reporting Requirements

(i) Unless otherwise provided, the owners and operators of the affected source and each affected unit at the source shall keep on-site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time before the end of five years, in writing by the permitting authority or the EPA Administrator.

(1) The certificate of representation for the designated representative for the source and each affected unit and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR § 72.24; provided that the certificate and documents shall be retained on-site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

(2) All emissions monitoring information, in accordance with 40 CFR Part 75, provided that to the extent that 40 CFR Part 75 provides for a three-year period for recordkeeping (rather than a five-year period cited in 30 TAC § 122.144), the three-year period shall apply.

(3) Copies of all reports, compliance certifications, and other submissions and all records made or required under the ARP or relied upon for compliance certification.

(4) Copies of all documents used to complete a acid rain permit application and any other submission under the ARP or to demonstrate compliance with the requirements of the ARP.

(ii) The designated representative of an affected source and each affected unit at the source shall submit the reports required under the ARP including those under 40 CFR Part 72, Subpart I and 40 CFR Part 75.

G. Liability

(i) Any person who knowingly violates any requirement or prohibition of the ARP, a complete acid rain permit application, an acid rain permit, or a written exemption under 40 CFR §§ 72.7 or 72.8, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement pursuant to FCAA § 113(c).

(ii) Any person who knowingly makes a false, material statement in any record, submission, or report under the ARP shall be subject to criminal enforcement pursuant to FCAA § 113(c) and 18 U.S.C. 1001.

(iii) No permit revision shall excuse any violation of the requirements of the ARP that occurs prior to the date that the revision takes effect.

(iv) The affected source and each affected unit shall meet the requirements of the ARP contained in 40 CFR Parts 72 through 78.

(v) Any provision of the ARP that applies to an affected source or the designated representative of an affected source shall also apply to the owners and operators of such source and of the affected units at the source.

(vi) Any provision of the ARP that applies to an affected unit (including a provision applicable to the DR of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under 40 CFR § 72.44 (Phase II repowering extension plans) and 40 CFR § 76.11 (NO_x averaging plans), and except with regard to the requirements applicable to units with a common stack under 40 CFR Part 75 (including 40 CFR §§ 75.16, 75.17, and 75.18), the owners and operators and the DR of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the DR and that is located at a source of which they are not owners or operators or the DR.

(vii) Each violation of a provision of 40 CFR Parts 72, 73, 74, 75, 76, 77, and 78 by an affected source or affected unit, or by an owner or operator or DR of such source or unit, shall be a separate violation of the FCAA Amendments.

H. Effect on other authorities. No provision of the ARP, an acid rain permit application, an acid rain permit, or an exemption under 40 CFR §§ 72.7 or 72.8 shall be construed as:

(i) Except as expressly provided in Title IV of the FCAA Amendments, exempting or excluding the owners and operators and, to the extent applicable, the DR of an affected source or affected unit from compliance with any other provision of the FCAA Amendments, including the provisions of Title I of the FCAA Amendments relating to applicable National Ambient Air Quality Standards or State Implementation Plans.

(ii) Limiting the number of allowances a unit can hold; provided, that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the FCAA Amendments.

(iii) Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state regulation, or

limiting such state regulation, including any prudence review requirements under such state law.

(iv) Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or,

(v) Interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.

I. The number of SO_2 allowances allocated by the EPA in 40 CFR Part 73 is enforceable only by the EPA Administrator.

Clean Air Interstate Permit Requirements

23. For unit P-16 (identified in the Certificate of Representation as Unit 1), located at the site identified by ORIS/Facility code 7902, the designated representative and the owner or operator, as applicable, shall comply with the following Clean Air Interstate Rule (CAIR) Permit requirements. Until approval of the Texas CAIR SIP, the permit holder shall comply with the equivalent requirements of 40 CFR Part 97 in place of the referenced 40 CFR Part 96 requirements in the Texas CAIR permit and 30 TAC Chapter 122 requirements.

A. General Requirements

(i) Under 30 TAC § 122.420(b) and 40 CFR §§ 96.120(b) and 96.220(b) the CAIR Permit requirements contained here are a separable portion of the Federal Operating Permit (FOP).

(ii) The owners and operators of the CAIR NO_x and the CAIR SO_2 source shall operate the source and the unit in compliance with the requirements of this CAIR permit and all other applicable State and federal requirements.

(iii) The owners and operators of the CAIR NO_x and the CAIR SO_2 source shall comply with the General Terms and Conditions of the FOP that incorporates this CAIR Permit.

(iv) The term for the initial CAIR permit shall commence with the issuance of the revision containing the CAIR permit and shall be the remaining term for the FOP that incorporates the CAIR permit. Renewal of the initial CAIR permit shall coincide with the renewal of the FOP that incorporates the CAIR permit and subsequent terms shall be no more than five years from the date of renewal of the FOP and run concurrent with the permit term of the FOP.

B. Monitoring and Reporting Requirements

(i) The owners and operators, and the CAIR designated representative, of the CAIR NO_x source and each CAIR NO_x unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements contained 40 CFR Part 96, Subpart HH.

(ii) The owners and operators, and the CAIR designated representative, of the CAIR SO_2 source and each CAIR SO_2 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements contained 40 CFR Part 96, Subpart HHH.

(iii) The emissions measurements recorded and reported in accordance with 40 CFR Part 96, Subpart HH and any other credible evidence shall be used to determine compliance by the CAIR NO_x source with the CAIR NO_x emissions limitation.

(iv) The emissions measurements recorded and reported in accordance with 40 CFR Part 96, Subpart HHH and any other credible evidence shall be used to determine compliance by the CAIR SO_2 source with the CAIR SO_2 emissions limitation.

C. NO_x emissions requirements

(i) As of the allowance transfer deadline for a control period, the owners and operators of the CAIR NO_x source and each CAIR NO_x unit at the source shall hold, in the source's compliance account, CAIR NO_x allowances available for compliance deductions for the control period under 40 CFR § 96.154(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_x units at the source, as determined in accordance the requirements 40 CFR Part 96, Subpart HH.

(ii) A CAIR NO_x unit shall be subject to the requirements of paragraph C(i) of this CAIR Permit starting on the later of January 1, 2009, or the deadline for meeting the unit's monitor certification requirements under 40 CFR § 96.170(b)(1), (2), or (5).

(iii) A CAIR NO_x allowance shall not be deducted, for compliance with the requirements of this permit, for a control period in a calendar year before the year for which the CAIR NO_x allowance was allocated.

(iv) CAIR NO_x allowances shall be held in, deducted from or transferred into or among CAIR NO_x Allowance Tracking System accounts in accordance with the requirements of 40 CFR Part 96, Subpart FF or Subpart GG.

(v) A CAIR NO_x allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_x Annual Trading Program. No provision of the CAIR NO_x Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under 40 CFR § 96.105 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(vi) A CAIR NO_x allowance does not constitute a property right.

(vii) Upon recordation by the Administrator under 40 CFR Part 96, Subpart FF or Subpart GG, every allocation, transfer, or deduction of a CAIR NO_x allowance to or from a CAIR NO_x unit's compliance account is incorporated automatically in this CAIR permit.

D. NO_x excess emissions requirement

(i) If a CAIR NO_x source emits nitrogen oxides during any control period in excess of the CAIR NO_x emissions limitation, the owners and operators of the source and each CAIR NO_x unit at the source shall surrender the CAIR NO_x allowances required for deduction under 40 CFR § 96.154(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law.

(ii) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of 40 CFR Part 96, Subpart AA, the Clean Air Act, and applicable State law.

E. SO_2 emissions requirements

(i) As of the allowance transfer deadline for a control period, the owners and operators of the CAIR SO_2 source and each CAIR SO_2 unit at the source shall hold, in the source's compliance account, CAIR SO_2 allowances available for compliance deductions for the control period under 40 CFR § 96.254(a) and (b) in an amount not less than the tons of total sulfur dioxides emissions for the control period from all CAIR SO_2 units at the source, as determined in accordance the requirements 40 CFR Part 96, Subpart HHH.

(ii) A CAIR SO_2 unit shall be subject to the requirements of paragraph E(i) of this CAIR Permit starting on the later of January 1, 2010, or the deadline for meeting the unit's monitor certification requirements under 40 CFR § 96.270(b)(1), (2), or (5).

(iii) A CAIR SO_2 allowance shall not be deducted, for compliance with the requirements of this permit, for a control period in a calendar year before the year for which the CAIR SO_2 allowance was allocated.

(iv) CAIR SO_2 allowances shall be held in, deducted from, or transferred into or among CAIR SO_2 Allowance Tracking System accounts in accordance with the requirements of 40 CFR Part 96, Subpart FFF or Subpart GGG.

(v) A CAIR SO_2 allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO_2 Trading Program. No provision of the CAIR SO_2 Trading Program, the CAIR permit application, the CAIR permit, or an

exemption under 40 CFR § 96.205 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(vi) A CAIR SO_2 allowance does not constitute a property right.

(vii) Upon recordation by the Administrator under 40 CFR Part 96, Subpart FFF or Subpart GGG, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from a CAIR SO_2 unit's compliance account is incorporated automatically in this CAIR permit.

F. SO_2 excess emissions requirements

(i) If a CAIR SO_2 source emits sulfur dioxides during any control period in excess of the CAIR SO_2 emissions limitation, the owners and operators of the source and each CAIR SO_2 unit at the source shall surrender the CAIR SO_2 allowances required for deduction under 40 CFR § 96.254(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law.

(ii) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of 40 CFR Part 96, Subpart AAA, the Clean Air Act, and applicable State law.

G. Recordkeeping and Reporting Requirements

(i) Unless otherwise provided, the owners and operators of the CAIR NO_x source and each CAIR NO_x unit at the source and the CAIR SO_2 source and each CAIR SO_2 unit at the source shall keep on-site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time before the end of five years, in writing by the permitting authority or the Administrator.

(1) The certificate of representation under 40 CFR §§ 96.113 and 96.213 for the CAIR NO_x designated representative for the source and each CAIR NO_x unit and the CAIR SO_2 designated representative for the source and each CAIR SO_2 unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on-site at the source beyond such five-year period until such documents are superseded because of the submission of a new

certificate of representation under 40 CFR §§ 96.113 and 96.213 changing the CAIR designated representative.

(2) All emissions monitoring information, in accordance with 40 CFR Part 96, Subpart HH and Subpart HHH, provided that to the extent that these subparts provide for a three-year period for recordkeeping, the three-year period shall apply.

(3) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_x Annual Trading Program and CAIR SO_2 Trading Program or relied upon for compliance determinations.

(4) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_x Annual Trading Program and CAIR SO_2 Trading Program or to demonstrate compliance with the requirements of the CAIR NO_x Annual Trading Program and CAIR SO_2 Trading Program.

(ii) The CAIR designated representative of a CAIR NO_x source and each CAIR NO_x unit at the source and a CAIR SO_2 source and each CAIR SO_2 unit at the source shall submit the reports required under the CAIR NO_x Annual Trading Program and the CAIR SO_2 Trading Program including those under 40 CFR Part 96, Subpart HH and Subpart HHH.

H. The CAIR NO_x source and each CAIR NO_x unit shall meet the requirements of the CAIR NO_x Annual Trading Program contained in 40 CFR Part 96, Subparts AA through II.

I. The CAIR SO_2 source and each CAIR SO_2 unit shall meet the requirements of the CAIR SO_2 Trading Program contained in 40 CFR Part 96, Subparts AAA through III.

J. Any provision of the CAIR NO_x Annual Trading Program and the CAIR SO_2 Trading Program that applies to a CAIR NO_x source or CAIR SO_2 source or the CAIR designated representative of a CAIR NO_x source or CAIR SO_2 source shall also apply to the owners and operators of such source and the units at the source.

K. Any provision of the CAIR NO_x Annual Trading Program and the CAIR SO_2 Trading Program that applies to a CAIR NO_x unit or CAIR SO_2 unit or the CAIR designated representative of a CAIR NO_x unit or CAIR SO_2 unit shall also apply to the owners and operators of such unit.

L. No provision of the CAIR NO_x Annual Trading Program, CAIR SO_2 Trading Program, a CAIR permit application, a CAIR permit, or an exemption under 40 CFR

§§ 96.105 or 96.205 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_x source or CAIR NO_x unit or a CAIR SO_2 source or CAIR SO_2 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

ATTACHMENTS

Applicable Requirements Summary

Additional Monitoring Requirements

Permit Shield

New Source Review Authorization References

Agreed Order Requirements

Applicable Requirements Summary

Note: A "none" entry may be noted for some emission sources in this permit's "Applicable Requirements Summary" under the heading of "Monitoring and Testing Requirements" and/or "Recordkeeping Requirements" and/or "Reporting Requirements." Such a notation indicates that there are no requirements for the indicated emission source as identified under the respective column heading(s) for the stated portion of the regulation when the emission source is operating under the conditions of the specified SOP Index Number. However, other relevant requirements pursuant to 30 TAC Chapter 122 including Recordkeeping Terms and Conditions (30 TAC § 122.144), Reporting Terms and Conditions (30 TAC § 122.145), and Compliance Certification Terms and Conditions (30 TAC § 122.146) continue to apply.

Unit Summary

Unit/Group/ Process ID No.	Unit Type	Group/Inclusive Units	SOP Index No.	Regulation	Requirement Driver
P-16	BOILERS/STEAM GENERATORS/STEAM GENERATING UNITS	N/A	R112	30 TAC Chapter 112, Sulfur Compounds	No changing attributes.
P-16	BOILERS/STEAM GENERATORS/STEAM GENERATING UNITS	N/A	R117	30 TAC Chapter 117, Subchapter E, Division 1	No changing attributes.
P-16	BOILERS/STEAM GENERATORS/STEAM GENERATING UNITS	N/A	60D-A1	40 CFR Part 60, Subpart D	D-SERIES FUEL TYPE #1 = Lignite.
P-16	BOILERS/STEAM GENERATORS/STEAM GENERATING UNITS	N/A	60D-A2	40 CFR Part 60, Subpart D	D-SERIES FUEL TYPE #1 = Lignite., D-SERIES FUEL TYPE #2 = Gaseous fossil fuel.
P-16	BOILERS/STEAM GENERATORS/STEAM GENERATING UNITS	N/A	60D-B1	40 CFR Part 60, Subpart D	D-SERIES FUEL TYPE #1 = Solid fossil fuel.
P-16	BOILERS/STEAM GENERATORS/STEAM GENERATING UNITS	N/A	60D-B2	40 CFR Part 60, Subpart D	D-SERIES FUEL TYPE #1 = Solid fossil fuel., D-SERIES FUEL TYPE #2 = Gaseous fossil fuel.
P-16	BOILERS/STEAM GENERATORS/STEAM GENERATING UNITS	N/A	60D-C	40 CFR Part 60, Subpart D	D-SERIES FUEL TYPE #1 = Gaseous fossil fuel.
P-1	COAL PREPARATION PLANTS	N/A	60Y	40 CFR Part 60, Subpart Y	No changing attributes.
P-2	COAL PREPARATION PLANTS	N/A	60Y	40 CFR Part 60, Subpart Y	No changing attributes.

Unit Summary

Unit/Group/ Process ID No.	Unit Type	Group/Inclusive Units	SOP Index No.	Regulation	Requirement Driver
P-3	COAL PREPARATION PLANTS	N/A	60Y	40 CFR Part 60, Subpart Y	No changing attributes.
P-5	COAL PREPARATION PLANTS	N/A	60Y	40 CFR Part 60, Subpart Y	No changing attributes.
P-6	COAL PREPARATION PLANTS	N/A	60Y	40 CFR Part 60, Subpart Y	No changing attributes.
P-7	COAL PREPARATION PLANTS	N/A	60Y	40 CFR Part 60, Subpart Y	No changing attributes.
P-16	EMISSION POINTS/STATIONARY VENTS/PROCESS VENTS	N/A	R1111-1	30 TAC Chapter 111, Visible Emissions	VENT SOURCE = The source of the vent is a steam generator fired by solid fossil fuel., OPACITY MONITORING SYSTEM = The executive director and Administrator have determined that 30 TAC § 111.111(a)(1)(F) may be used to comply with the appropriate opacity standard since the gas stream contains condensed water vapor which could interfere with proper CEMS operation., ANNUAL ACF = Annual average capacity factor is greater than 30%, as reported to the Federal Power Commission for calendar year 1974, HEAT INPUT = Heat Input is greater than 250 MMBtu/hr.

Unit Summary

Unit/Group/ Process ID No.	Unit Type	Group/Inclusive Units	SOP Index No.	Regulation	Requirement Driver
P-16	EMISSION POINTS/STATIONARY VENTS/PROCESS VENTS	N/A	R1111-3	30 TAC Chapter 111, Visible Emissions	VENT SOURCE = The source of the vent is not a steam generator fired by solid fossil fuel, oil or a mixture of oil and gas and is not a catalyst regenerator for a fluid bed catalytic cracking unit., OPACITY MONITORING SYSTEM = A continuous emissions monitoring system (CEMS) capable of measuring the opacity of emissions is installed in the vent in accordance with 30 TAC § 111.111(a)(1)(C).
P-16	MISCELLANEOUS UNITS	N/A	R153	30 TAC Chapter 111, Nonagricultural Processes	Fuel = Lignite or coal or any mix with natural gas
P-16	MISCELLANEOUS UNITS	N/A	R153Gas	30 TAC Chapter 111, Nonagricultural Processes	Fuel = natural gas
DFP	SRIC ENGINES	N/A	63ZZZZ	40 CFR Part 63, Subpart ZZZZ	No changing attributes.
DFP	SRIC ENGINES	N/A	60IIII	40 CFR Part 60, Subpart IIII	No changing attributes.
EMGEN	SRIC ENGINES	N/A	63ZZZZ	40 CFR Part 63, Subpart ZZZZ	No changing attributes.

Applicable Requirements Summary

Unit/Group/Process		SOP Index No.	Pollutant	Emission Limitation/Standard or Equipment Specification		Textual Description (See Special Term and Condition 1.B.)	Monitoring And Testing Requirements	Recordkeeping Requirements	Reporting Requirements
ID No.	Type			Name	Citation			(30 TAC § 122.144)	(30 TAC § 122.145)
P-16	EU	R112	SO_2	30 TAC Chapter 112, Sulfur Compounds	§ 112.8(a)	Except as in §112.8(b), no person may cause, suffer, allow, or permit emissions ofSO2 from solid fossil fuel-fired steam generators to exceed 3.0 lb/MMBtu heat input averaged over a 3-hour period.	§ 112.2(a) § 112.8(d) ** See CAM Summary	§ 112.2(c)	§ 112.2(b)
P-16	EU	R117	NO_X	30 TAC Chapter 117, Subchapter E, Division 1	§ 117.3020(c) § 117.3020(a) § 117.3020(b) § 117.3020(d) § 117.3020(e) § 117.3020(i) § 117.3020(j) § 117.3020(k) § 117.3020(l)	The annual average emission cap shall be calculated using the following equation.	§ 117.3020(d) § 117.3020(e) § 117.3020(e)(4) § 117.3020(h) § 117.3020(k) § 117.3040(a) § 117.3040(d) § 117.3040(d)(1) [G]§ 117.3040(d)(2) [G]§ 117.3040(d)(3) § 117.3040(h) § 117.3040(h)(1)	§ 117.3020(f) § 117.3045(a) [G]§ 117.3045(e)	§ 117.3020(g) § 117.3045(b) § 117.3045(b)(1) § 117.3045(b)(2) [G]§ 117.3045(c) [G]§ 117.3045(d) [G]§ 117.3054(a) [G]§ 117.3054(b) § 117.3054(c) § 117.3056
P-16	EU	60D-A1	PM	40 CFR Part 60, Subpart D	§ 60.42(a)(1)	On/after the §60.8 tests, no affected facility shall emit gases containing particulate matter in excess of 43 ng/J heat input (0.10 lb/MMBtu) derived from fossil fuel or fossil fuel and wood residue.	§ 60.46(a) § 60.46(b)(1) [G]§ 60.46(b)(2) [G]§ 60.46(d)(1) § 60.46(d)(2) [G]§ 60.46(d)(3) § 60.46(d)(6) § 60.46(d)(7) ** See CAM Summary	None	None
P-16	EU	60D-A1	PM (OPACITY)	40 CFR Part 60, Subpart D	§ 60.42(a)(2)	On/after the performance tests of §60.8, no affected facility shall emit gases exhibiting greater than 20% opacity except for one six-minute period per hour of not more than 27% opacity.	§ 60.45(a) § 60.45(c) § 60.45(c)(3) § 60.45(g) § 60.45(g)(1)(i) § 60.46(a) § 60.46(b)(3) ** See CAM Summary	§ 60.45(h) [G]§ 60.45(h)(1) [G]§ 60.45(h)(2)	§ 60.45(g)

Applicable Requirements Summary

Unit/Group/Process		SOP Index No.	Pollutant	Emission Limitation/Standard or Equipment Specification		Textual Description (See Special Term and Condition 1.B.)	Monitoring And Testing Requirements	Recordkeeping Requirements	Reporting Requirements
ID No.	Type			Name	Citation			(30 TAC § 122.144)	(30 TAC § 122.145)
P-16	EU	60D-A1	SO_2	40 CFR Part 60, Subpart D	§ 60.43(a)(2)	On/after the §60.8 tests, no affected facility shall emit gases containing SO2 in excess of 520 ng/J heat input (1.2 lb/MMBtu) derived from solid fossil fuel or solid fossil fuel and wood residue.	§ 60.45(a) § 60.45(c) § 60.45(c)(1) § 60.45(c)(2) § 60.45(c)(3) [G]§ 60.45(e) [G]§ 60.45(f) § 60.45(g) § 60.45(g)(2)(i) § 60.46(a) § 60.46(b)(1) [G]§ 60.46(b)(4) [G]§ 60.46(d)(1) [G]§ 60.46(d)(3) § 60.46(d)(4) § 60.46(d)(6) § 60.46(d)(7)	None	§ 60.45(g)
P-16	EU	60D-A1	NO_X	40 CFR Part 60, Subpart D	§ 60.44(a)(4)	On/after the §60.8 tests, no affected facility shall emit gases containing NOx, expressed as NO2, in excess of 260 ng/J heat input (0.60 lb/MMBtu) derived from the specified fuels.	§ 60.45(b)(3) § 60.45(b)(4) § 60.46(a) § 60.46(b)(1) [G]§ 60.46(b)(5) [G]§ 60.46(d)(1) § 60.46(d)(5) § 60.46(d)(6) § 60.46(d)(7)	None	None
P-16	EU	60D-A2	PM	40 CFR Part 60, Subpart D	§ 60.42(a)(1)	On/after the §60.8 tests, no affected facility shall emit gases containing particulate matter in excess of 43 ng/J heat input (0.10 lb/MMBtu) derived from fossil fuel or fossil fuel and wood residue.	§ 60.46(a) § 60.46(b)(1) [G]§ 60.46(b)(2) [G]§ 60.46(d)(1) § 60.46(d)(2) [G]§ 60.46(d)(3) § 60.46(d)(6) § 60.46(d)(7) ** See CAM Summary	None	None
P-16	EU	60D-A2	PM (OPACITY)	40 CFR Part 60, Subpart D	§ 60.42(a)(2)	On/after the performance tests of §60.8, no affected facility shall emit gases exhibiting greater than 20%	§ 60.45(a) § 60.45(c) § 60.45(c)(3) § 60.45(g)	§ 60.45(h) [G]§ 60.45(h)(1) [G]§ 60.45(h)(2)	§ 60.45(g)

Applicable Requirements Summary

Unit/Group/Process		SOP Index No.	Pollutant	Emission Limitation/Standard or Equipment Specification		Textual Description (See Special Term and Condition 1.B.)	Monitoring And Testing Requirements	Recordkeeping Requirements	Reporting Requirements
ID No.	Type			Name	Citation			(30 TAC § 122.144)	(30 TAC § 122.145)
						opacity except for one six-minute period per hour of not more than 27% opacity.	§ 60.45(g)(1)(i) § 60.46(a) § 60.46(b)(3) ** See CAM Summary		
P-16	EU	60D-A2	SO_2	40 CFR Part 60, Subpart D	§ 60.43(b) § 60.43(c)	When different fossil fuels are burned simultaneously in any combination, the applicable standard (ng/J) shall be determined by proration using the specified formula.	§ 60.45(a) § 60.45(c) § 60.45(c)(1) § 60.45(c)(2) § 60.45(c)(3) § 60.45(c)(4) [G]§ 60.45(e) [G]§ 60.45(f) § 60.45(g) § 60.45(g)(2)(i) § 60.46(a) § 60.46(b)(1) [G]§ 60.46(b)(4) [G]§ 60.46(c) [G]§ 60.46(d)(1) [G]§ 60.46(d)(3) § 60.46(d)(4) § 60.46(d)(6) § 60.46(d)(7)	None	§ 60.45(g)
P-16	EU	60D-A2	NO_X	40 CFR Part 60, Subpart D	§ 60.44(b)	Except as stated in §60.44(c) and (d), when different fossil fuels are burned simultaneously in any combination, the applicable standard is determined by proration using the specified formula.	§ 60.45(b)(3) § 60.45(b)(4) § 60.46(a) § 60.46(b)(1) [G]§ 60.46(b)(5) [G]§ 60.46(c) [G]§ 60.46(d)(1) § 60.46(d)(5) § 60.46(d)(6) § 60.46(d)(7)	None	None
P-16	EU	60D-B1	PM	40 CFR Part 60, Subpart D	§ 60.42(a)(1)	On/after the §60.8 tests, no affected facility shall emit gases containing particulate matter in excess of 43 ng/J heat input (0.10 lb/MMBtu) derived from fossil fuel or	§ 60.46(a) § 60.46(b)(1) [G]§ 60.46(b)(2) [G]§ 60.46(d)(1) § 60.46(d)(2) [G]§ 60.46(d)(3)	None	None

Applicable Requirements Summary

Unit/Group/Process		SOP Index No.	Pollutant	Emission Limitation/Standard or Equipment Specification		Textual Description (See Special Term and Condition 1.B.)	Monitoring And Testing Requirements	Recordkeeping Requirements	Reporting Requirements
ID No.	Type			Name	Citation			(30 TAC § 122.144)	(30 TAC § 122.145)
						fossil fuel and wood residue.	§ 60.46(d)(6) § 60.46(d)(7) ** See CAM Summary		
P-16	EU	60D-B1	PM (OPACITY)	40 CFR Part 60, Subpart D	§ 60.42(a)(2)	On/after the performance tests of §60.8, no affected facility shall emit gases exhibiting greater than 20% opacity except for one six-minute period per hour of not more than 27% opacity.	§ 60.45(a) § 60.45(c) § 60.45(c)(3) § 60.45(g) § 60.45(g)(1)(i) § 60.46(a) § 60.46(b)(3) ** See CAM Summary	§ 60.45(h) [G]§ 60.45(h)(1) [G]§ 60.45(h)(2)	§ 60.45(g)
P-16	EU	60D-B1	SO_2	40 CFR Part 60, Subpart D	§ 60.43(a)(2)	On/after the §60.8 tests, no affected facility shall emit gases containing SO2 in excess of 520 ng/J heat input (1.2 lb/MMBtu) derived from solid fossil fuel or solid fossil fuel and wood residue.	§ 60.45(a) § 60.45(c) § 60.45(c)(1) § 60.45(c)(2) § 60.45(c)(3) [G]§ 60.45(e) [G]§ 60.45(f) § 60.45(g) § 60.45(g)(2)(i) § 60.46(a) § 60.46(b)(1) [G]§ 60.46(b)(4) [G]§ 60.46(d)(1) [G]§ 60.46(d)(3) § 60.46(d)(4) § 60.46(d)(6) § 60.46(d)(7)	None	§ 60.45(g)
P-16	EU	60D-B1	NO_X	40 CFR Part 60, Subpart D	§ 60.44(a)(3)	On/after the §60.8 tests, no affected facility shall emit gases containing NOx, expressed as NO2, in excess of 300 ng/J heat input (0.7 lb/MMBtu) derived from the specified fuels.	§ 60.45(b)(3) § 60.45(b)(4) § 60.46(a) § 60.46(b)(1) [G]§ 60.46(b)(5) [G]§ 60.46(d)(1) § 60.46(d)(5) § 60.46(d)(6) § 60.46(d)(7)	None	None

Applicable Requirements Summary

Unit/Group/Process		SOP Index No.	Pollutant	Emission Limitation/Standard or Equipment Specification		Textual Description (See Special Term and Condition 1.B.)	Monitoring And Testing Requirements	Recordkeeping Requirements	Reporting Requirements
ID No.	Type			Name	Citation			(30 TAC § 122.144)	(30 TAC § 122.145)
P-16	EU	60D-B2	PM	40 CFR Part 60, Subpart D	§ 60.42(a)(1)	On/after the §60.8 tests, no affected facility shall emit gases containing particulate matter in excess of 43 ng/J heat input (0.10 lb/MMBtu) derived from fossil fuel or fossil fuel and wood residue.	§ 60.46(a) § 60.46(b)(1) [G]§ 60.46(b)(2) [G]§ 60.46(d)(1) § 60.46(d)(2) [G]§ 60.46(d)(3) § 60.46(d)(6) § 60.46(d)(7) ** See CAM Summary	None	None
P-16	EU	60D-B2	PM (OPACITY)	40 CFR Part 60, Subpart D	§ 60.42(a)(2)	On/after the performance tests of §60.8, no affected facility shall emit gases exhibiting greater than 20% opacity except for one six-minute period per hour of not more than 27% opacity.	§ 60.45(a) § 60.45(c) § 60.45(c)(3) § 60.45(g) § 60.45(g)(1)(i) § 60.46(a) § 60.46(b)(3) ** See CAM Summary	§ 60.45(h) [G]§ 60.45(h)(1) [G]§ 60.45(h)(2)	§ 60.45(g)
P-16	EU	60D-B2	SO_2	40 CFR Part 60, Subpart D	§ 60.43(b) § 60.43(c)	When different fossil fuels are burned simultaneously in any combination, the applicable standard (ng/J) shall be determined by proration using the specified formula.	§ 60.45(a) § 60.45(c) § 60.45(c)(1) § 60.45(c)(2) § 60.45(c)(3) § 60.45(c)(4) [G]§ 60.45(e) [G]§ 60.45(f) § 60.45(g) § 60.45(g)(2)(i) § 60.46(a) § 60.46(b)(1) [G]§ 60.46(b)(4) [G]§ 60.46(c) [G]§ 60.46(d)(1) [G]§ 60.46(d)(3) § 60.46(d)(4) § 60.46(d)(6) § 60.46(d)(7)	None	§ 60.45(g)
P-16	EU	60D-B2	NO_X	40 CFR Part 60, Subpart D	§ 60.44(b)	Except as stated in §60.44(c) and (d), when different fossil fuels are burned	§ 60.45(b)(3) § 60.45(b)(4) § 60.46(a)	None	None

Applicable Requirements Summary

Unit/Group/Process		SOP Index No.	Pollutant	Emission Limitation/Standard or Equipment Specification		Textual Description (See Special Term and Condition 1.B.)	Monitoring And Testing Requirements	Recordkeeping Requirements	Reporting Requirements
ID No.	Type			Name	Citation			(30 TAC § 122.144)	(30 TAC § 122.145)
						simultaneously in any combination, the applicable standard is determined by proration using the specified formula.	§ 60.46(b)(1) [G]§ 60.46(b)(5) [G]§ 60.46(c) [G]§ 60.46(d)(1) § 60.46(d)(5) § 60.46(d)(6) § 60.46(d)(7)		
P-16	EU	60D-C	PM	40 CFR Part 60, Subpart D	§ 60.42(a)(1)	On/after the §60.8 tests, no affected facility shall emit gases containing particulate matter in excess of 43 ng/J heat input (0.10 lb/MMBtu) derived from fossil fuel or fossil fuel and wood residue.	§ 60.46(a) § 60.46(b)(1) [G]§ 60.46(b)(2) [G]§ 60.46(d)(1) § 60.46(d)(2) [G]§ 60.46(d)(3) § 60.46(d)(6) § 60.46(d)(7) ** See CAM Summary	None	None
P-16	EU	60D-C	PM (OPACITY)	40 CFR Part 60, Subpart D	§ 60.42(a)(2)	On/after the performance tests of §60.8, no affected facility shall emit gases exhibiting greater than 20% opacity except for one six-minute period per hour of not more than 27% opacity.	§ 60.45(a) § 60.45(c) § 60.45(c)(3) § 60.45(g) § 60.45(g)(1)(i) § 60.46(a) § 60.46(b)(3) ** See CAM Summary	§ 60.45(h) [G]§ 60.45(h)(1) [G]§ 60.45(h)(2)	§ 60.45(g)
P-16	EU	60D-C	SO_2	40 CFR Part 60, Subpart D	§ 60.40(a)	The affected facility burns fuel (such as only gaseous fuels) that has no specific SO_2 emission requirements.	§ 60.45(a) § 60.45(c) § 60.45(c)(1) § 60.45(c)(2) § 60.45(c)(3) [G]§ 60.45(e) [G]§ 60.45(f) § 60.45(g) § 60.45(g)(2)(i)	None	§ 60.45(g)
P-16	EU	60D-C	NO_X	40 CFR Part 60, Subpart D	§ 60.44(a)(1)	On/after the §60.8 tests, no affected facility shall emit gases containing NOx, expressed as NO2, in excess of 86 ng/J heat input (0.2	§ 60.45(b)(3) § 60.45(b)(4) § 60.46(a) § 60.46(b)(1) [G]§ 60.46(b)(5)	None	None

Applicable Requirements Summary

Unit/Group/Process		SOP Index No.	Pollutant	Emission Limitation/Standard or Equipment Specification		Textual Description (See Special Term and Condition 1.B.)	Monitoring And Testing Requirements	Recordkeeping Requirements	Reporting Requirements
ID No.	Type			Name	Citation			(30 TAC § 122.144)	(30 TAC § 122.145)
						lb/MMBtu) derived from gaseous fossil fuel.	[G]§ 60.46(d)(1) § 60.46(d)(5) § 60.46(d)(6) § 60.46(d)(7)		
P-1	EU	60Y	PM (OPACITY)	40 CFR Part 60, Subpart Y	§ 60.252(c)	Gases, which exhibit 20 % opacity, shall not be discharged into the atmosphere from any coal processing/conveying equipment, coal storage system, or coal transfer/loading system processing coal.	§ 60.254(a) § 60.254(b)(2) ** See Periodic Monitoring Summary	None	None
P-2	EU	60Y	PM (OPACITY)	40 CFR Part 60, Subpart Y	§ 60.252(c)	Gases, which exhibit 20 % opacity, shall not be discharged into the atmosphere from any coal processing/conveying equipment, coal storage system, or coal transfer/loading system processing coal.	§ 60.254(a) § 60.254(b)(2) ** See Periodic Monitoring Summary	None	None
P-3	EU	60Y	PM (OPACITY)	40 CFR Part 60, Subpart Y	§ 60.252(c)	Gases, which exhibit 20 % opacity, shall not be discharged into the atmosphere from any coal processing/conveying equipment, coal storage system, or coal transfer/loading system processing coal.	§ 60.254(a) § 60.254(b)(2) ** See Periodic Monitoring Summary	None	None

Applicable Requirements Summary

Unit/Group/Process		SOP Index No.	Pollutant	Emission Limitation/Standard or Equipment Specification		Textual Description (See Special Term and Condition 1.B.)	Monitoring And Testing Requirements	Recordkeeping Requirements	Reporting Requirements
ID No.	Type			Name	Citation			(30 TAC § 122.144)	(30 TAC § 122.145)
P-5	EU	60Y	PM (OPACITY)	40 CFR Part 60, Subpart Y	§ 60.252(c)	Gases, which exhibit 20 % opacity, shall not be discharged into the atmosphere from any coal processing/conveying equipment, coal storage system, or coal transfer/loading system processing coal.	§ 60.254(a) § 60.254(b)(2) ** See Periodic Monitoring Summary	None	None
P-6	EU	60Y	PM (OPACITY)	40 CFR Part 60, Subpart Y	§ 60.252(c)	Gases, which exhibit 20 % opacity, shall not be discharged into the atmosphere from any coal processing/conveying equipment, coal storage system, or coal transfer/loading system processing coal.	§ 60.254(a) § 60.254(b)(2) ** See Periodic Monitoring Summary	None	None
P-7	EU	60Y	PM (OPACITY)	40 CFR Part 60, Subpart Y	§ 60.252(c)	Gases, which exhibit 20 % opacity, shall not be discharged into the atmosphere from any coal processing/conveying equipment, coal storage system, or coal transfer/loading system processing coal.	§ 60.254(a) § 60.254(b)(2) ** See Periodic Monitoring Summary	None	None
P-16	EP	R1111-1	OPACITY	30 TAC Chapter 111, Visible Emissions	§ 111.111(a)(1)(B) § 111.111(a)(1)(E) § 111.111(a)(3)	Visible emissions from any stationary vent shall not exceed an opacity of 20% averaged over a six minute period for any source on which construction was begun after January 31, 1972.	[G]§ 111.111(a)(1)(F) ** See CAM Summary	None	None

Applicable Requirements Summary

Unit/Group/Process		SOP Index No.	Pollutant	Emission Limitation/Standard or Equipment Specification		Textual Description (See Special Term and Condition 1.B.)	Monitoring And Testing Requirements	Recordkeeping Requirements	Reporting Requirements
ID No.	Type			Name	Citation			(30 TAC § 122.144)	(30 TAC § 122.145)
P-16	EP	R1111-3	OPACITY	30 TAC Chapter 111, Visible Emissions	§ 111.111(a)(1)(B) § 111.111(a)(1)(C) § 111.111(a)(1)(E)	Visible emissions from any stationary vent shall not exceed an opacity of 20% averaged over a six minute period for any source on which construction was begun after January 31, 1972.	§ 111.111(a)(1)(D) [G]§ 111.111(a)(1)(F) ** See CAM Summary	§ 111.111(a)(1)(C) § 111.111(a)(1)(D)	None
P-16	EU	R153	PM	30 TAC Chapter 111, Nonagricultural Processes	§ 111.153(b)	No person may cause, suffer, allow, or permit emissions of particulate matter from any solid fossil fuel-fired steam generator to exceed 0.3 pound of total suspended particulate per million Btu heat input, averaged over a two-hour period.	** See CAM Summary	None	None
P-16	EU	R153Gas	PM	30 TAC Chapter 111, Nonagricultural Processes	§ 111.153(c)	No person may cause, suffer, allow, or permit emissions of particulate matter from any oil or gas fuel-fired steam generator with a heat input greater than 2,500 million Btu per hour to exceed 0.1 pound of total suspended particulate per million Btu input averaged over a two-hour period	** See CAM Summary	None	None
DFP	EU	63ZZZZ	112(B) HAPS	40 CFR Part 63, Subpart ZZZZ	§ 63.6590(c) § 63.6590(c)(6)	A new or reconstructed emergency stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions must meet the requirements of this part by meeting the requirements of 40 CFR Part 60, Subpart IIII, for	None	None	None

Applicable Requirements Summary

Unit/Group/Process		SOP Index No.	Pollutant	Emission Limitation/Standard or Equipment Specification		Textual Description (See Special Term and Condition 1.B.)	Monitoring And Testing Requirements	Recordkeeping Requirements	Reporting Requirements
ID No.	Type			Name	Citation			(30 TAC § 122.144)	(30 TAC § 122.145)
						CI engines.			
DFP	EU	60IIII	No Pollutant Associated with these Requirements	40 CFR Part 60, Subpart IIII	§ 60.4200(a) The permit holder shall comply with the applicable limitation, standard and/or equipment specification requirements of 40 CFR Part 60, Subpart IIII	The permit holder shall comply with the applicable requirements of 40 CFR Part 60, Subpart IIII	The permit holder shall comply with the applicable monitoring and testing requirements of 40 CFR Part 60, Subpart IIII	The permit holder shall comply with the applicable recordkeeping requirements of 40 CFR Part 60, Subpart IIII	The permit holder shall comply with the applicable reporting requirements of 40 CFR Part 60, Subpart IIII
EMGEN	EU	63ZZZZ	112(B) HAPS	40 CFR Part 63, Subpart ZZZZ	§ 63.6602-Table2c.1 § 63.6595(a)(1) § 63.6605(a) § 63.6605(b) § 63.6625(e) § 63.6625(h) § 63.6625(i) § 63.6640(b) [G]§ 63.6640(f)(1)	For each existing emergency stationary CI RICE and black start stationary CI RICE, located at a major source, you must comply with the requirements as specified in Table 2c.1.a-c.	§ 63.6625(f) § 63.6625(i) § 63.6640(a) § 63.6640(a)-Table6.9.a.i § 63.6640(a)-Table6.9.a.ii § 63.6640(b)	§ 63.6625(i) § 63.6655(a) § 63.6655(a)(1) § 63.6655(a)(2) § 63.6655(a)(4) § 63.6655(a)(5) § 63.6655(d) § 63.6655(e) § 63.6655(f) § 63.6660(c)	§ 63.6640(b) § 63.6640(e) § 63.6650(f)

Additional Monitoring Requirements

CAM Summary

UNIT/GROUP/PROCESS INFORMATION	
ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
APPLICABLE REGULATORY REQUIREMENT	
Name: 30 TAC Chapter 111, Visible Emissions	SOP Index No.: R1111-1, R1111-3
Pollutant: OPACITY	Main Standard: § 111.111(a)(1)(B)
MONITORING INFORMATION	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20% Opacity (6 minute average)	
CAM Text: The COMS shall be operated in accordance with 40 CFR § 60.13.	

CAM Summary

UNIT/GROUP/PROCESS INFORMATION	
ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
APPLICABLE REGULATORY REQUIREMENT	
Name: 30 TAC Chapter 111, Nonagricultural Processes	SOP Index No.: R153
Pollutant: PM	Main Standard: § 111.153(b)
MONITORING INFORMATION	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: Opacity 20% (6 minute average)	
CAM Text: The COMS shall be operated in accordance with 40 CFR § 60.13.	

CAM Summary

UNIT/GROUP/PROCESS INFORMATION	
ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
APPLICABLE REGULATORY REQUIREMENT	
Name: 30 TAC Chapter 111, Nonagricultural Processes	SOP Index No.: R153Gas
Pollutant: PM	Main Standard: § 111.153(c)
MONITORING INFORMATION	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20 % Opacity (6 minute average)	
CAM Text: The COMS shall be operated in accordance with 40 CFR § 60.13.	

CAM Summary

UNIT/GROUP/PROCESS INFORMATION	
ID No.: P-16	
Control Device ID No.: FGD	Control Device Type: Wet Scrubber
APPLICABLE REGULATORY REQUIREMENT	
Name: 30 TAC Chapter 112, Sulfur Compounds	SOP Index No.: R112
Pollutant: SO_2	Main Standard: § 112.8(a)
MONITORING INFORMATION	
Indicator: Sulfur Dioxide Concentration	
Minimum Frequency: four times per hour	
Averaging Period: one hour	
Deviation Limit: 1.2 LB/MMBTU	
CAM Text: Use a continuous emission monitoring system (CEMS) to measure and record sulfur dioxide emissions in the exhaust stream of the control device. The CEMS shall be operated in accordance with the monitoring requirements of 40 CFR § 60.13 and the performance specifications of 40 CFR Part 60, Appendix B. In addition, monitor oxygen or carbon dioxide with a CEMS operated in accordance with above CEMS procedures.	

CAM Summary

UNIT/GROUP/PROCESS INFORMATION	
ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
APPLICABLE REGULATORY REQUIREMENT	
Name: 40 CFR Part 60, Subpart D	SOP Index No.: 60D-A1, A2, B1, B2, & C
Pollutant: PM	Main Standard: § 60.42(a)(1)
MONITORING INFORMATION	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20% Opacity (6 minute average)	
CAM Text: The COMS shall be operated in accordance with 40 CFR § 60.13.	

CAM Summary

UNIT/GROUP/PROCESS INFORMATION	
ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
APPLICABLE REGULATORY REQUIREMENT	
Name: 40 CFR Part 60, Subpart D	SOP Index No.: 60D-A1, A2, B1, B2, & C
Pollutant: PM (OPACITY)	Main Standard: § 60.42(a)(2)
MONITORING INFORMATION	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20% Opacity (6 minute average)	
CAM Text: The COMS shall be operated in accordance with 40 CFR § 60.13.	

Periodic Monitoring Summary

UNIT/GROUP/PROCESS INFORMATION	
ID No.: P-1, P-2, P-3, P-5, P-6, P-7	
Control Device ID No.: N/A	Control Device Type: N/A
APPLICABLE REGULATORY REQUIREMENT	
Name: 40 CFR Part 60, Subpart Y	SOP Index No.: 60Y
Pollutant: PM (OPACITY)	Main Standard: § 60.252(c)
MONITORING INFORMATION	
Indicator: Opacity	
Minimum Frequency: Once per month	
Averaging Period: Six-minutes	
Deviation Limit: 20% Opacity	
Periodic Monitoring Text: Opacity shall be monitored, by a certified observer, for at least one, six-minute period in accordance with Title 40 Code of Federal Regulations Part 60 (40 CFR Part 60), Appendix A, Test Method 9. Any opacity readings above the deviation limit shall be reported as a deviation.	

Permit Shield

Permit Shield

The Executive Director of the TCEQ has determined that the permit holder is not required to comply with the specific regulation(s) identified for each emission unit, group, or process in this table.

Unit/Group/Process		Regulation	Basis of Determination
ID No.	Group/Inclusive Units		
P-16	N/A	40 CFR Part 60, Subpart Da	Construction or Modification commenced prior to September 18, 1978
P-16	N/A	40 CFR Part 60, Subpart Db	Construction, Modification, or Reconstruction commenced prior to June 19, 1984
P-16	N/A	40 CFR Part 60, Subpart Dc	Construction, Modification, or Reconstruction commenced prior to June 9, 1989
P-4	N/A	40 CFR Part 60, Subpart Y	A coal storage facility is defined as any facility used to store coal except for open storage piles. P-4 is an open storage pile.
P-17	N/A	40 CFR Part 60, Subpart OOO	Construction, Modification, or Reconstruction commenced prior to August 31, 1983
P-18	N/A	40 CFR Part 60, Subpart OOO	Construction, Modification, or Reconstruction commenced prior to August 31, 1983
P-19	N/A	40 CFR Part 60, Subpart OOO	Construction, Modification, or Reconstruction commenced prior to August 31, 1983
P-20	N/A	40 CFR Part 60, Subpart OOO	Construction, Modification, or Reconstruction commenced prior to August 31, 1983
P-21	N/A	40 CFR Part 60, Subpart OOO	Limestone ball mill has a capacity of <25 tons/hr.

New Source Review Authorization References

New Source Review Authorization References

The New Source Review authorizations listed in the table below are applicable requirements under 30 TAC Chapter 122 and enforceable under this operating permit.

Prevention of Significant Deterioration (PSD) Permits	
PSD Permit No.: PSDTX64	Issuance Date: 03/30/1978
Title 30 TAC Chapter 116 Permits, Special Permits, and Other Authorizations (Other Than Permits By Rule, PSD Permits, or NA Permits) for the Application Area.	
Authorization No.: 6269	Issuance Date: 02/03/2012
Authorization No.: 6270	Issuance Date: 01/18/2006
Authorization No.: 49226	Issuance Date: 02/24/2011
Authorization No.: 76547	Issuance Date: 08/30/2005
Authorization No.: 102679	Issuance Date: 06/06/2012
Permits By Rule (30 TAC Chapter 106) for the Application Area	
Number: 106.227	Version No./Date: 09/04/2000
Number: 106.261	Version No./Date: 09/04/2000
Number: 106.262	Version No./Date: 09/04/2000
Number: 106.263	Version No./Date: 11/01/2001
Number: 106.265	Version No./Date: 09/04/2000
Number: 106.355	Version No./Date: 11/01/2001
Number: 106.412	Version No./Date: 09/04/2000
Number: 106.454	Version No./Date: 11/01/2001
Number: 106.472	Version No./Date: 09/04/2000
Number: 106.473	Version No./Date: 09/04/2000
Number: 106.511	Version No./Date: 09/04/2000
Number: 106.532	Version No./Date: 09/04/2000

New Source Review Authorization References by Emissions Unit

The following is a list of New Source Review (NSR) authorizations for emission units listed elsewhere in this operating permit. The NSR authorizations are applicable requirements under 30 TAC Chapter 122 and enforceable under this operating permit.

Unit/Group/Process ID No.	Emission Unit Name/Description	New Source Review Authorization
DFP	DIESEL FIRE PUMP	106.511/09/04/2000
EMGEN	EMERGENCY GENERATOR	106.511/09/04/2000
P-16	BOILER #1	6269, PSDTX64
P-17	LIMESTONE CAR DUMPER	6270
P-18	ACTIVE LIMESTONE STORAGE	6270
P-19	LIMESTONE SILO	6270
P-1	TRUCK HOPPER A1	6270, PSDTX64
P-20	LIMESTONE BALL MILL	6270
P-21	LIMESTONE BALL MILL	80150
P-2	TRUCK HOPPER A2	6270, PSDTX64
P-3	TRANSFER HOUSE	6270, PSDTX64
P-4	LIGNITE STORAGE PILE	6270, PSDTX64
P-5	CRUSHER HOUSE	6270, PSDTX64
P-6	TRANSFER CHUTES	6270, PSDTX64
P-7	CONVEYORS & TRANSFER POINTS	6270, PSDTX64

Agreed Order Requirements

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

March 13, 2002

Elizabeth Gunter
American Electric Power
400 W. 15th Street, Suite 1500
Austin, Texas 78701

Re: Docket No. 2001-0878-RUL, Final Adopted Agreed Order Concerning the Northeast Texas SIP

Dear Elizabeth,

Enclosed please find a copy of the Final Adopted Agreed Order, Docket No. 2001-0878-RUL, adopted by the Commission, signed, and filed with the Office of Chief Clerk today. Thank you again for your assistance in developing the Order.

Please let me know if you have any questions, or need anything further.

Sincerely,

Terry G. Salem
Staff Attorney

cc: Howard "Bud" Ground
Julie Albrecht

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

IN THE MATTER OF AN AGREED ORDER CONCERNING SOUTHWESTERN ELECTRIC POWER COMPANY: WILKES POWER PLANT, ACCOUNT NO. ME0006A PIRKEY POWER PLANT, ACCOUNT NO. HH0037F KNOX LEE POWER PLANT, ACCOUNT NO. GJ0043K..	§	BEFORE THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

DOCKET NO. 2001-0878-RUL

The Texas Natural Resource Conservation Commission (the Commission or TNRCC) and Southwestern Electric Power Company (SWEPCO or the Company) enter into this Agreed Order for the purpose of achieving early reductions of emissions of nitrogen oxide (NO_x) as part of the development of a voluntary one hour ozone state implementation plan (SIP) for the Northeast Texas Region, which is composed of Gregg, Harrison, Rusk, Smith and Upshur counties. The Northeast Texas Region has been operating under a Flexible Attainment Region (FAR) Agreement between the United States Environmental Protection Agency (EPA), TNRCC and Northeast Texas Air Care (NETAC) since September 16, 1996, which expired September 16, 2001. The FAR concept was developed to encourage local efforts to maintain levels of ground level ozone below the National Ambient Air Quality Standard (NAAQS). The Commission and the Northeast Texas Region agree that an early SIP proposal will continue to allow local officials to address air quality issues, while providing benefits for air

quality in the Northeast Texas Region. As part of this continuing local effort, the Company has agreed to voluntarily reduce emissions of NO_x as agreed herein.

The Commission hereby orders the Company to comply with the requirements herein regarding control of NO_x from the facilities referenced below, pursuant to §§ 382.011, 382.012, 382.023, 382.024, and 382.025 of the Texas Clean Air Act (TCAA or the Act), Texas Health & Safety Code, Chapter 382, and § 110 of the Federal Clean Air Act, 42 U.S.C. § 7401 et. seq., for the purpose of revising the Texas SIP for Ozone Control.

I. STIPULATIONS

For the purpose of this Agreed Order, the parties have agreed and stipulated as follows:

1. Section 110 of the Federal Clean Air Act, 42 U.S.C. 7401 et. seq., requires Texas to submit SIP revisions to the United States Environmental Protection Agency (EPA) for approval and to demonstrate that such SIP revisions provide for protection of the NAAQS.

2. Sections 382.011 and 382.012 of the TCAA provide authority for the Commission to control the quality of the state's air and prepare and develop a general, comprehensive plan for the proper control of the state's air, and sections 382.023, 382.024, and 382.025 of the TCAA provide the Commission's authority to issue orders. The issuance of this order is in compliance with the TCAA.

3. The Commission and the Company agree that the Commission has jurisdiction to enter this Agreed Order, and the Company is subject to the Commission's jurisdiction.

4. In order to better safeguard the air resources of this state, the Company agrees to comply with the terms of this Order.

5. The Commission and the Company acknowledge that the Company has entered into this Order voluntarily. Nothing in this Order shall be interpreted as evidence that the Company is causing or contributing to a violation of the NAAQS or is in any respect non-compliant with any federal, state or local law. Additionally, this Order shall not constitute a "compliance event" as defined in 30 TAC § 116.11 or any similar designation under federal, state or local law.

6. Nothing in this Order limits the Company's defenses in the TCAA or rules adopted pursuant to the TCAA, including 30 TAC §§ 101.6 (Upset Reporting and Recordkeeping Requirements), 101.7 (Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements), 101.11 (Demonstrations), and 101.12 (Temporary Exemptions During Drought Conditions).

7. Nothing in this Order supercedes any requirement of the TCAA or the rules and requirements of the Commission.

8. The Company owns and operates the following electric power plants (the Plants):

A. Wilkes Power Plant, P.O. Box 309, Hwy. 49 East, Avinger, TX 75630 (referred to specifically herein as Wilkes);

B. Pirkey Power Plant, 2400 Farm Rd. 3251, Hallsville, TX 75650 (referred to specifically herein as Pirkey); and

C. Knox Lee Power Plant, Route 6, Box 306A, Longview, TX 75603 (referred to specifically herein as Knox Lee).

9. The plants consist of one or more sources as defined in §382.003(12) of the Act.

10. All monitoring, recordkeeping, reporting, and testing shall be conducted in accordance with the provisions of 30 TAC §§ 117.141, 117.143, 117.145, 117.147 and 117.149 with the exception that sections 117.141(d), 117.145(c), and 117.149(e) shall be calculated on a 30 day rolling average. Initial demonstration of compliance testing at each plant shall be completed in accordance with the schedule specified in 30 TAC§ 117.512 (Compliance Schedule for Utility Electric Generation in East and Central Texas). The Company shall make records available upon request by the TNRCC or any other air pollution control agency with jurisdiction.

11. This Order does not authorize or prohibit any modification of the plants listed above, nor does it authorize or prohibit the construction of any abatement equipment that may be necessary to achieve the emission rates noted in this Order. The Company is ordered to submit the appropriate application or registration documentation to the TNRCC's Office of Permitting, Remediation and Registration for any authorization necessary to implement the requirements of this Order.

12. Nothing in this Order shall preclude the Company from including the reduction in NO_x emissions reflected in this Order, including any changes in operation or addition of controls to the facilities listed in paragraphs 16-19 below, in the Company's or plants' applications for any emissions permits, however, nothing in this Order shall assure the eligibility of such reductions for inclusion in any application for an emission permit.

13. Notwithstanding any other provision of this Order, any delays in or failure of performance by the Company under this Order caused by an act of God, war, strike, riot, or other catastrophe beyond the reasonable control of the company (Force Majeure) shall not constitute a

violation of this Order. The Company has the burden of establishing that such an event has occurred. In the event the Company's performance under this Order is prevented by the Force Majeure condition, the Company shall promptly notify the TNRCC of the particulars and estimated duration of such condition, shall keep TNRCC advised of the progress in eliminating such condition, and proceed with compliance with this Order as expeditiously as practicable.

14. In lieu of the Company's completion of one or more of the projects described in paragraph 16-19 below, Company may propose one or more alternative projects provided the emissions reductions from such alternative projects are at least equivalent to those of the projects in paragraphs 16-19 that will be replaced. If the Company elects to propose an alternative project, it will submit to TNRCC all information reasonably necessary as set forth in this stipulation for the TNRCC to evaluate and approve the alternative project. TNRCC will not unreasonably withhold such approval. Until TNRCC approves an alternative project or otherwise grants permission to the Company to cease performance of a project required under this Order, the Company shall remain obligated to perform the original project that the alternative project would otherwise replace. Approvals of alternative project(s) will be evaluated through the Alternative Means of Control (AMOC) process established in 30 TAC Chapter 115, Subchapter J, altered to allow multiple plant plans, §§ 115.913, Procedures for Alternate Means of Control Plan Submittal, with the submission limited to information relevant to the change, 115.914, Procedures for an Alternate Means of Control Plan Approval, and 115.915, Public Notice Format. Demonstration calculations and criteria for approval will be consistent with and limited to the NOx control and SIP demonstration purposes of this Agreed Order.

15. All notifications required by this Order (unless otherwise specified herein) shall be sent to:

Office of Environmental Policy, Analysis & Assessment
Strategic Implementation Plans Section, MC-206
P.O. Box 13087
Austin, Texas 78711-3087

Notifications required by this Order shall not substitute for any other notification requirement of the Commission or the TCAA.

16. The Company installed vane cascade flame stabilizers to reduce NO_x emissions on Wilkes Power Plant Unit Number 2 pursuant to application dated July 9, 1999. The Commission approved the application as Standard Permit Number 41815 by TNRCC letter dated September 20, 1999 as authorized by 30 TAC § 116.617. Wilkes Power Plant Unit Number 2 will achieve a ty-day rolling average NO_x emission rate of .17 lb/mmBtu.

17. The Company installed vane cascade flame stabilizers to reduce NO_x emissions on Wilkes Power Plant Unit Number 3 pursuant to application dated March 3, 2000. The Commission approved the application as Standard Permit Number 43804 by letter dated April 26, 2000 as authorized by 30 TAC §116.617. Wilkes Power Plant Unit Number 3 will achieve a thirty-day rolling average NO_x emission rate of .17 lb/mmBtu.

18. The Company installed a patented water injection system to reduce flame temperatures and NO_x emissions from Knox Lee Power Plant Unit Number 5 pursuant to application dated August 4, 2000. The application was approved as Standard Permit Number 45305 by the TNRCC in a letter dated October 17, 2000 as authorized under 30 TAC § 116.617.

116.617. Knox Lee Power Plant Unit Number 5 will achieve a thirty-day rolling average NO_x emission rate of .18 lb/mmBtu.

19. On or before June 30, 2003, the Company will install and operate a full complement of 56 low NO_x burners and add an Over Fire Air system to reduce NO_x emissions from Pirkey Power Plant. The Pirkey Power Plant will achieve a thirty-day rolling average NO_x emission rate of .22 lb/mmBtu.

20. As an alternative to achieving the reductions in stipulations 16-18 above, the Company may achieve equivalent reductions at the Pirkey plant, in excess of the reductions in stipulation 19 above. The Company shall follow the procedures in stipulation 14 for alternative projects in order to exercise this option. In no event shall reductions at plants other than the Pirkey plant be substituted for the reductions at the Wilkes or Knox Lee plants. However, nothing in this Order shall preclude the Company from utilizing the system cap flexibility under 30 TAC Chapter 117 or the Emissions Reduction Credit Banking and Trading Program under 30 TAC Chapter 101, provided additional reductions are achieved in excess of the total reductions required by stipulations 16-19.

21. As used herein, the term "thirty-day rolling average" means an average, calculated for each day that fuel is combusted in a unit, of all the hourly emissions data for the preceding 30 days that fuel was combusted in the unit.

II. ORDER

It is therefore ordered by the Texas Natural Resource Conservation Commission that Southwestern Electric Power Company, shall, from and after the date of this Agreed Order, limit its emissions of NO_x as specified in paragraphs 16-20 above, and maintain compliance with this Order.

The provisions of this Agreed Order shall apply to and be binding upon Southwestern Electric Power Company, its successors, assigns and upon those persons in active concert or participation with them who receive actual notice of this Agreed Order by personal service or otherwise. Southwestern Electric Power Company is hereby ordered to give notice of this Agreed Order to any successor in interest prior to transfer of ownership of all or any part of its plants, located at:

A. Wilkes Power Plant, P.O. Box 309, Hwy. 49 East, Avinger, TX 75630;

B. Pirkey Power Plant, 2400 Farm Rd. 3251, Hallsville, TX 75650; and

C. Knox Lee Power Plant, Route 6, Box 306A, Longview, TX 75603;

and within ten days of any such transfer, provide the Texas Natural Resource Conservation Commission with written notice via certified mail that such notice of transfer has been given.

The Chief Clerk shall provide a copy of this Order to each of the parties.

PASSED AND APPROVED at the regular meeting of the Texas Natural Resource Conservation Commission on MAR 13 2002.

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

For the Commission

I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and do hereby agree to the terms and conditions specified therein.

Margaret Hoffman
Deputy Director, Office of Legal Services
Texas Natural Resource Conservation Commission

3/13/02
Date

JOHN F. NORRIS JR
VICE PRESIDENT
Authorized representative of
Southwestern Electric Power Company

2/26/02
Date

APPENDIX A

Acronym List

The following abbreviations or acronyms may be used in this permit:

ACFM ..... actual cubic feet per minute
AMOC ..... alternate means of control
ARP ..... Acid Rain Program
ASTM ..... American Society of Testing and Materials
B/PA ..... Beaumont/Port Arthur (nonattainment area)
CAM ..... Compliance Assurance Monitoring
CD ..... control device
COMS ..... continuous opacity monitoring system
CVS ..... closed-vent system
D/FW ..... Dallas/Fort Worth (nonattainment area)
DR ..... Designated Representative
ElP ..... El Paso (nonattainment area)
EP ..... emission point
EPA ..... U.S. Environmental Protection Agency
EU ..... emission unit
FCAA Amendments ..... Federal Clean Air Act Amendments
FOP ..... federal operating permit
GF ..... grandfathered
gr/100 scf ..... grains per 100 standard cubic feet
HAP ..... hazardous air pollutant
H/G/B ..... Houston/Galveston/Brazoria (nonattainment area)
H_2S ..... hydrogen sulfide
ID No. ..... identification number
lb/hr ..... pound(s) per hour
MMBtu/hr ..... Million British thermal units per hour
MRRT ..... monitoring, recordkeeping, reporting, and testing
NA ..... nonattainment
N/A ..... not applicable
NADB ..... National Allowance Data Base
NO_x ..... nitrogen oxides
NSPS ..... New Source Performance Standard (40 CFR Part 60)
NSR ..... New Source Review
ORIS ..... Office of Regulatory Information Systems
Pb ..... lead
PBR ..... Permit By Rule
PM ..... particulate matter
ppmv ..... parts per million by volume
PSD ..... prevention of significant deterioration
RO ..... Responsible Official
SO_2 ..... sulfur dioxide
TCEQ ..... Texas Commission on Environmental Quality
TSP ..... total suspended particulate
TVP ..... true vapor pressure
U.S.C. ..... United States Code
VOC ..... volatile organic compound

EXHIBIT B

Proposed Title V Permit No. O31 Statement of Basis

Statement of Basis of the Federal Operating Permit

Southwestern Electric Power Company

Site/Area Name: H.W. Pirkey Power Plant
Physical location: 2400 Fm 3251
Nearest City: Hallsville
County: Harrison

Permit Number: O31
Project Type: Minor Revision

Standard Industrial Classification (SIC) Code: 4911
SIC Name: Electric Services

This Statement of Basis sets forth the legal and factual basis for the draft changes to the permit conditions resulting from the minor revision project in accordance with 30 TAC §122.201(a)(4). The applicant has submitted an application for a minor permit revision per §§ 122.215-217. This document may include the following information:

A description of the facility/area process description;
A description of the revision project;
A basis for applying permit shields;
A list of the federal regulatory applicability determinations;
A table listing the determination of applicable requirements;
A list of the New Source Review Requirements;
The rationale for periodic monitoring methods selected;
The rationale for compliance assurance methods selected;
A compliance status; and
A list of available unit attribute forms.

Prepared on: May 1, 2013
Revised for 7/15/14 PN-5
GW#67424V2

Operating Permit
Basis of Determination

Description of Revisions
This application was received on 3/27/13 for a minor revision initially submitted to incorporate MACT ZZZZ applicable requirements for 2 units. However, the revision application had to be updated to also incorporate new and amended to NSR permits. In addition, the pre-construction authorization listing had to be updated to include issuance dates for PSD, 2 NSR, and 3 Standard Permits.
The applicant submitted revision application updates to include the OP-REQ1 NSR page. The dates submitted were not consistent with those latest NSR issuance dates, so the OP-REQ1 NSR page had to be resubmitted.

Permit Area Process Description
The H.W. Pirkey Power Plant utilizes one boiler to produce power. Boiler #1 (P-16) began operation in 1985 and is authorized by Permit No. 6269 to burn either lignite, coal, or pipeline sweet natural gas. The gases and fly ash from the boiler are directed through an electrostatic precipitator for removal of particulate matter and subsequently through a wet scrubber limestone desulfurization system for removal of sulfur dioxide.

The emissions associated with lignite and coal handling are authorized by Permit No. 6270. The facilities associated with the lignite and coal handling include Truck Hopper A1 (P-1), Truck Hopper, A2 (P-2), Transfer House (P-4), Lignite Storage Pile (P-4), Crusher House (P-5), Transfer Chutes (P-6), and Conveyors and Transfer Points (P7).

Limestone for use in the flue gas desulfurization (FGD) system is brought in by truck or railcars (P-17). The limestone is hauled to the active limestone storage pile (P-18) and then transferred by hopper feeder to a storage silo (P-19). The limestone is transferred from the silo to ball mills (P-20, P-21) and then to a wet mill where it is mixed with water to form a wet slurry which is transferred to the FGD system.

FOPs at Site
The "application area" consists of the emission units and that portion of the site included in the application and this permit. Multiple FOPs may be issued to a site in accordance with 30 TAC § 122.201(e). When there is only one area for the site, then the application information and permit will include all units at the site. Additional FOPs that exist at the site, if any, are listed below.

Additional FOPs: None

Major Source Pollutants
The table below specifies the pollutants for which the site is a major source:

Major Pollutants	SO2, PM, NOX, HAPS, CO, NO

Reading State of Texas's Federal Operating Permit

The Title V Federal Operating Permit (FOP) lists all state and federal air emission regulations and New Source Review (NSR) authorizations (collectively known as "applicable requirements") that apply at a particular site or permit area (in the event a site has multiple FOPs). **The FOP does not authorize new emissions or new construction activities.** The FOP begins with an introductory page which is common to all Title V permits. This page gives the details of the company, states the authority of the issuing agency, requires the company to operate in accordance with this permit and 30 Texas Administrative Code (TAC) Chapter 122, requires adherence with NSR requirements of 30 TAC Chapter 116, and finally indicates the permit number and the issuance date.

This is followed by the table of contents, which is generally composed of the following elements. Not all permits will have all of the elements.

- General Terms and Conditions
- Special Terms and Conditions
    - Emissions Limitations and Standards, Monitoring and Testing, and Recordkeeping and Reporting
    - Additional Monitoring Requirements
    - New Source Review Authorization Requirements
    - Compliance Requirements
    - Protection of Stratosphere Ozone
    - Permit Location
    - Permit Shield (30 TAC § 122.148)
- Attachments
    - Applicable Requirements Summary
        - Unit Summary
        - Applicable Requirements Summary
    - Additional Monitoring Requirements
    - Permit Shield
    - New Source Review Authorization References
    - Compliance Plan
    - Alternative Requirements
- Appendix A
    - Acronym list

General Terms and Conditions

The General Terms and Conditions are the same and appear in all permits. The first paragraph lists the specific citations for 30 TAC Chapter 122 requirements that apply to all Title V permit holders. The second paragraph describes the requirements for record retention. The third paragraph provides details for voiding the permit, if applicable. The fourth paragraph states that the permit holder shall comply with the requirements of 30 TAC Chapter 116 by obtaining a New Source Review authorization prior to new construction or modification of emission units located in the area covered by this permit. The fifth paragraph provides details on submission of reports required by the permit.

Special Terms and Conditions

Emissions Limitations and Standards, Monitoring and Testing, and Recordkeeping and Reporting. The TCEQ has designated certain applicable requirements as site-wide requirements. A site-wide requirement is a requirement that applies uniformly to all the units or activities at the site. Units with only site-wide requirements are addressed on Form OP-REQ1 and are not required to be listed separately on a OP-UA Form or Form OP-SUM. Form OP-SUM must list all units addressed in the application and provide identifying information, applicable OP-UA Forms, and preconstruction authorizations. The various OP-UA Forms provide the characteristics of each unit from which applicable requirements are established. Some exceptions exist as a few units may have both site-wide requirements and unit specific requirements.

Other conditions. The other entries under special terms and conditions are in general terms referring to compliance with the more detailed data listed in the attachments.

Attachments

Applicable Requirements Summary. The first attachment, the Applicable Requirements Summary, has two tables, addressing unit specific requirements. The first table, the Unit Summary, includes a list of units with applicable requirements, the unit type, the applicable regulation, and the requirement driver. The intent of the requirement driver is to inform the reader that a given unit may have several different operating scenarios and the differences between those operating scenarios.

The applicable requirements summary table provides the detailed citations of the rules that apply to the various units. For each unit and operating scenario, there is an added modifier called the "index number," detailed citations specifying monitoring and testing requirements, recordkeeping requirements, and reporting requirements. The data for this table are based on data supplied by the applicant on the OP-SUM and various OP-UA forms.

Additional Monitoring Requirement. The next attachment includes additional monitoring the applicant must perform to ensure compliance with the applicable standard. Compliance assurance monitoring (CAM) is often required to provide a reasonable assurance of compliance with applicable emission limitations/standards for large emission units that use control devices to achieve compliance with applicant requirements. When necessary, periodic monitoring (PM) requirements are specified for certain parameters (i.e. feed rates, flow rates, temperature, fuel type and consumption, etc.) to determine if a term and condition or emission unit is operating within specified limits to control emissions. These additional monitoring approaches may be required for two reasons. First, the applicable rules do not adequately specify monitoring requirements (exception- Maximum Achievable Control Technology Standards (MACTs) generally have sufficient monitoring), and second, monitoring may be required to fill gaps in the monitoring requirements of certain applicable requirements. In situations where the NSR permit is the applicable requirement requiring extra monitoring for a specific emission unit, the preferred solution is to have the monitoring requirements in the NSR permit updated so that all NSR requirements are consolidated in the NSR permit.

Permit Shield. A permit may or may not have a permit shield, depending on whether an applicant has applied for, and justified the granting of, a permit shield. A permit shield is a special condition included in the permit document stating that compliance with the conditions of the permit shall be deemed compliance with the specified potentially applicable requirement(s) or specified applicable state-only requirement(s).

New Source Review Authorization References. All activities which are related to emissions in the state of Texas must have a NSR authorization prior to beginning construction. This section lists all units in the permit and the NSR authorization that allowed the unit to be constructed or modified. Units that do not have unit specific applicable requirements other than the NSR authorization do not need to be listed in this attachment. While NSR permits are not physically a part of the Title V permit, they are legally incorporated into the Title V permit by reference. Those NSR permits whose emissions exceed certain PSD/NA thresholds must also undergo a Federal review of federally regulated pollutants in addition to review for state regulated pollutants.

Compliance Plan. A permit may have a compliance schedule attachment for listing corrective actions plans for any emission unit that is out of compliance with an applicable requirement.

Alternative Requirements. This attachment will list any alternative monitoring plans or alternative means of compliance for applicable requirements that have been approved by the EPA Administrator and/or the TCEQ Executive Director.

Appendix A

Acronym list. This attachment lists the common acronyms used when discussing the FOPs.

Stationary vents subject to 30 TAC Chapter 111, Subchapter A, § 111.111(a)(1)(B) addressed in the Special Terms and Conditions

The site contains stationary vents with a flowrate less than 100,000 actual cubic feet per minute (acfm) and constructed after January 31, 1972 which are limited, over a six-minute average, to 20% opacity as required by 30 TAC § 111.111(a)(1)(B). As a site may have a large number of stationary vents that fall into this category, they are not required to be listed individually in the permit's Applicable Requirement Summary. This is consistent with EPA's White Paper for Streamlined Development of Part 70 Permit Applications, July 10, 1995, that states that requirements that apply identically to emission units at a site can be treated on a generic basis such as source-wide opacity limits.

Periodic monitoring is specified in Special Term and Condition 3 for stationary vents subject to 30 TAC § 111.111(a)(1)(B) to verify compliance with the 20% opacity limit. These vents are not expected to produce visible emissions during normal operation. The TCEQ evaluated the probability of these sources violating the opacity standards and determined that there is a very low potential that an opacity standard would be exceeded. It was determined that continuous monitoring for these sources is not warranted as there would be very limited environmental benefit in continuously monitoring sources that have a low potential to produce visible emissions. Therefore, the TCEQ set the visible observation monitoring frequency for these sources to once per calendar quarter.

The TCEQ has exempted vents that are not capable of producing visible emissions from periodic monitoring requirements. These vents include sources of colorless VOCs, non-fuming liquids, and other materials that cannot produce emissions that obstruct the transmission of light. Passive ventilation vents, such as plumbing vents, are also included in this category. Since this category of vents are not capable of producing opacity due to the physical or chemical characteristics of the emission source, periodic monitoring is not required as it would not yield any additional data to assure compliance with the 20% opacity standard of 30 TAC § 111.111(a)(1)(B).

In the event that visible emissions are detected, either through the quarterly observation or other credible evidence, such as observations from company personnel, the permit holder shall either report a deviation or perform a Test Method 9 observation to determine the opacity consistent with the 6-minute averaging time specified in 30 TAC § 111.111(a)(1)(B). An additional provision is included to monitor combustion sources more frequently than quarterly if alternate fuels are burned for periods greater than 24 consecutive hours. This will address possible emissions that may arise when switching fuel types.

Stationary Vents subject to 30 TAC Chapter 111 not addressed in the Special Terms and Conditions

All other stationary vents subject to 30 TAC Chapter 111 not covered in the Special Terms and Conditions are listed in the permit's Applicable Requirement Summary. The basis for the applicability determinations for these vents are listed in the Determination of Applicable Requirements table.

Federal Regulatory Applicability Determinations

The following chart summarizes the applicability of the principal air pollution regulatory programs to the permit area:

Regulatory Program	Applicability (Yes/No)
Prevention of Significant Deterioration (PSD)	Yes
Nonattainment New Source Review (NNSR)	No

Minor NSR	Yes
40 CFR Part 60 - New Source Performance Standards	Yes
40 CFR Part 61 - National Emission Standards for Hazardous Air Pollutants (NESHAPs)	No
40 CFR Part 63 - NESHAPs for Source Categories	Yes
Title IV (Acid Rain) of the Clean Air Act (CAA)	Yes
Title V (Federal Operating Permits) of the CAA	Yes
Title VI (Stratospheric Ozone Protection) of the CAA	Yes
CAIR (Clean Air Interstate Rule)	Yes

Basis for Applying Permit Shields

An operating permit applicant has the opportunity to specifically request a permit shield to document that specific applicable requirements do not apply to emission units in the permit. A permit shield is a special condition stating that compliance with the conditions of the permit shall be deemed compliance with the specified potentially applicable requirements or specified potentially applicable state-only requirements. A permit shield has been requested in the application for specific emission units. For the permit shield requests that have been approved, the basis of determination for regulations that the owner/operator need not comply with are located in the "Permit Shield" attachment of the permit.

Acid Rain Permit

The permitted area is subject to Federal Clean Air Act Title IV Acid Rain rules for Phase II units, as codified in 40 CFR Parts 72 through 78, because it meets the definition of "affected source." Applicability of affected sources are defined in 40 CFR § 72.6 and include those sources that burn fossil fuel, and generates electricity for sale. Under 40 CFR Part 72, incorporated by reference into 30 TAC Chapter 122, all acid rain permits must contain specific terms and conditions, including monitoring, reporting, recordkeeping and excess emission requirements, established by the U.S. EPA. The Title IV permitting procedures are described within 30 TAC Chapter 122, Subchapter E. The applicable requirements of the Acid Rain Permit are contained in the Special Terms and Conditions of the FOP. The Acid Rain permit is effective as of the date of the issuance of the FOP and has a term ending in concurrence with the FOP.

CAIR Permit

The Clean Air Interstate Rule (CAIR) was established to mitigate the interstate transport of NO_x and SO_2 which contribute to the formation of fine particles (PM 2.5) and ground-level ozone. The EPA has promulgated a model cap and trade program in 40 CFR Part 96 to implement CAIR. This rule has been adopted by reference into 30 TAC Chapter 122, Subchapter E, Division 2: Clean Air Interstate Rule.

The permitted area is subject to CAIR as it contains units that meet the definition of a NO_x budget unit in 40 CFR § 96.4(a)(1)-(2) and a CAIR SO_2 unit in 40 CFR § 96.204(a)(1)-(2). The applicable requirements of the CAIR permit are contained in the Special Terms and Conditions of the FOP. The CAIR permit is effective as of the date of the issuance of this revision and has a term ending in concurrence with the FOP.

Insignificant Activities

In general, units not meeting the criteria for inclusion on either Form OP-SUM or Form OP-REQ1 are not required to be addressed in the operating permit application. Examples of these types of units include, but are not limited to, the following:

1. Office activities such as photocopying, blueprint copying, and photographic processes.
2. Sanitary sewage collection and treatment facilities other than those used to incinerate wastewater treatment plant sludge. Stacks or vents for sanitary sewer plumbing traps are also included.
3. Food preparation facilities including, but not limited to, restaurants and cafeterias used for preparing food or beverages primarily for consumption on the premises.
4. Outdoor barbecue pits, campfires, and fireplaces.
5. Laundry dryers, extractors, and tumblers processing bedding, clothing, or other fabric items generated primarily at the premises. This does not include emissions from dry cleaning systems using perchloroethylene or petroleum solvents.
6. Facilities storing only dry, sweet natural gas, including natural gas pressure regulator vents.
7. Any air separation or other industrial gas production, storage, or packaging facility. Industrial gases, for purposes of this list, include only oxygen, nitrogen, helium, neon, argon, krypton, and xenon.
8. Storage and handling of sealed portable containers, cylinders, or sealed drums.
9. Vehicle exhaust from maintenance or repair shops.
10. Storage and use of non-VOC products or equipment for maintaining motor vehicles operated at the site (including but not limited to, antifreeze and fuel additives).
11. Air contaminant detectors and recorders, combustion controllers and shut-off devices, product analyzers, laboratory analyzers, continuous emissions monitors, other analyzers and monitors, and emissions associated with sampling activities. Exception to this category includes sampling activities that are deemed fugitive emissions and under a regulatory leak detection and repair program.
12. Bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including but not limited to, assorted vacuum producing devices and laboratory fume hoods.
13. Steam vents, steam leaks, and steam safety relief valves, provided the steam (or boiler feedwater) has not contacted other materials or fluids containing regulated air pollutants other than boiler water treatment chemicals.
14. Storage of water that has not contacted other materials or fluids containing regulated air pollutants other than boiler water treatment chemicals.
15. Well cellars.
16. Fire or emergency response equipment and training, including but not limited to, use of fire control equipment including equipment testing and training, and open burning of materials or fuels associated with firefighting training.
17. Crucible or pot furnaces with a brim full capacity of less than 450 cubic inches of any molten metal.
18. Equipment used exclusively for the melting or application of wax.
19. All closed tumblers used for the cleaning or deburring of metal products without abrasive blasting, and all open tumblers with a batch capacity of 1,000 lbs. or less.
20. Shell core and shell mold manufacturing machines.
21. Sand or investment molds with a capacity of 100 lbs. or less used for the casting of metals;
22. Equipment used for inspection of metal products.
23. Equipment used exclusively for rolling, forging, pressing, drawing, spinning, or extruding either hot or cold metals by some mechanical means.
24. Instrument systems utilizing air, natural gas, nitrogen, oxygen, carbon dioxide, helium, neon, argon, krypton, and xenon.
25. Battery recharging areas.
26. Brazing, soldering, or welding equipment.

Determination of Applicable Requirements

The tables below include the applicability determinations for the emission units, the index number(s) where applicable, and all relevant unit attribute information used to form the basis of the applicability determination. The unit attribute information is a description of the physical properties of an emission unit which is used to determine the requirements to which the permit holder must comply. For more information about the descriptions of the unit attributes specific Unit Attribute Forms may be viewed at www.tceq.texas.gov/permitting/air/nav/air_all_ua_forms.html.

A list of unit attribute forms is included at the end of this document. Some examples of unit attributes include construction date; product stored in a tank; boiler fuel type; etc.. Generally, multiple attributes are needed to determine the requirements for a given emission unit and index number. The table below lists these attributes in the column entitled "Basis of Determination." Attributes that demonstrate that an applicable requirement applies will be the factual basis for the specific citations in an applicable requirement that apply to a unit for that index number. The TCEQ Air Permits Division has developed flowcharts for determining applicability of state and federal regulations based on the unit attribute information in a Decision Support System (DSS). These flowcharts can be accessed via the internet at www.tceq.texas.gov/permitting/air/nav/air_supportsys.html. The Air Permits Division staff may also be contacted for assistance at (512) 239-1250.

The attributes for each unit and corresponding index number provide the basis for determining the specific legal citations in an applicable requirement that apply, including emission limitations or standards, monitoring, recordkeeping, and reporting. The rules were found to apply or not apply by using the unit attributes as answers to decision questions found in the flowcharts of the DSS. Some additional attributes indicate which legal citations of a rule apply. The legal citations that apply to each emission unit may be found in the Applicable Requirements Summary table of the draft permit. There may be some entries or rows of units and rules not found in the permit, or if the permit contains a permit shield, repeated in the permit shield area. These are sets of attributes that describe negative applicability, or; in other words, the reason why a potentially applicable requirement does not apply.

If applicability determinations have been made which differ from the available flowcharts, an explanation of the decisions involved in the applicability determination is specified in the column "Changes and Exceptions to RRT." If there were no exceptions to the DSS, then this column has been removed.

The draft permit includes all emission limitations or standards, monitoring, recordkeeping and reporting required by each applicable requirement. If an applicable requirement does not require monitoring, recordkeeping, or reporting, the word "None" will appear in the Applicable Requirements Summary table. If additional periodic monitoring is required for an applicable requirement, it will be explained in detail in the portion of this document entitled "Rationale for Compliance Assurance Monitoring (CAM)/ Periodic Monitoring Methods Selected."

When attributes demonstrate that a unit is not subject to an applicable requirement, the applicant may request a permit shield for those items. The portion of this document entitled "Basis for Applying Permit Shields" specifies which units, if any, have a permit shield.

Operational Flexibility
When an emission unit has multiple operating scenarios, it will have a different index number associated with each operating condition. This means that units are permitted to operate under multiple operating conditions. The applicable requirements for each operating condition are determined by a unique set of unit attributes. For example, a tank may store two different products at different points in time. The tank may, therefore, need to comply with two distinct sets of requirements, depending on the product that is stored. Both sets of requirements are included in the permit, so that the permit holder may store either product in the tank.

Determination of Applicable Requirements

Unit ID	Regulation	Index Number	Basis of Determination*	Changes and Exceptions to DSS**
P-16	30 TAC Chapter 111, Nonagricultural	R153	UNIT TYPE = EMISSION UNIT DATE CONSTRUCTED/PLACED IN SERVICE = ON/BEFORE NOVEMBER 15 1992 FUNCTIONALLY IDENTICAL REPLACEMENT [REG VII] = UNIT IS FUNCTIONALLY IDENTICAL REPLACEMENT (DATE CONSTRUCTED/PLACED IN SERVICE = '92+') MAXIMUM RATED CAPACITY [REG VII] = MAXIMUM RATED CAPACITY GREATER THAN 5 MMBTU/HR	
P-16	30 TAC Chapter 111, Nonagricultural	R153Gas	UNIT TYPE = EMISSION UNIT	
DFP	40 CFR Part 63, Subpart ZZZZ	63ZZZZ	Brake HP = Stationary RICE with a brake hp greater than or equal to 300 hp and less than or equal to 500 hp. Construction/Reconstruction Date = Commenced construction or reconstruction on or after June 12, 2006. Service Type = Emergency use. Installation Date = The emergency use stationary RICE was installed on or after June 12, 2006.	
DFP	40 CFR Part 60, Subpart IIII	63IIII	Brake HP = Stationary RICE with a brake hp greater than or equal to 300 hp and less than or equal to 500 hp. Construction/Reconstruction Date = Commenced construction or reconstruction on or after June 12, 2006. Service Type = Emergency use. Installation Date = The emergency use stationary RICE was installed on or after June 12, 2006.	
EMGEN	40 CFR Part 63, Subpart ZZZZ	63ZZZZ	Brake HP = Stationary RICE with a brake hp greater than or equal to 300 hp and less than or equal to 500 hp. Construction/Reconstruction Date = Commenced construction or reconstruction before December 19, 2002. Service Type = Emergency use. Stationary RICE Type = Compression ignition engine	
P-16	30 TAC Chapter 112, Sulfur Compounds	R112	30 TAC CHAPTER 112 (REG II) FUEL TYPE = Solid fossil fuel. 30 TAC CHAPTER 112 (REG II) HEAT INPUT = Design heat input is greater than 1500 MMBtu/hr. CONTROL EQUIPMENT [REG II] = Unit equipped with SO_2 control equipment. FEDERAL CLEAN AIR ACT (FCAA) SECTION 412(C) [REG II] = The unit is subject to the Federal Clean Air Act § 412(c) [FCAA § 412(c)] as amended in 1990.	
P-16	30 TAC Chapter 117, Subchapter E, Division 1	R117	DATE PLACED IN SERVICE = Before December 31, 1995. NOX EMISSION LIMITATION = Unit is complying with the System Cap under 30 TAC § 117.3020. UNIT EXEMPT = The unit does not qualify for any exemptions under the rule. LOCATION = The unit is not a gas-fired steam generator located in Palo Pinto County as specified in 30 TAC § 117.3005(a). NOX MONITORING = A continuous emissions monitoring system is used to monitor NO_x emissions. MAXIMUM EMISSION RATE = The owner or operator is using the maximum emission rate measured by the testing conducted in § 117.3035(d) to provide substitute emissions compliance when the NO_x monitor is off-line. AMMONIA USE = Ammonia injection is not used to control NO_x emissions.	

Unit ID	Regulation	Index Number	Basis of Determination*	Changes and Exceptions to DSS**
P-16	40 CFR Part 60, Subpart D	60D-A1	40 CFR 60 (NSPS) SUBPART D FUEL TYPE #1 = Lignite. CONSTRUCTION/MODIFICATION DATE = After December 22, 1976, and on or before September 18, 1978. COVERED UNDER SUBPART DA = The steam generating unit is not covered under 40 CFR Part 60, Subpart Da. 40 CFR 60 (NSPS) D CHANGES TO EXISTING AFFECTED FACILITY [NSPS D] = No change has been made to the existing fossil fuel-fired steam generating unit. 40 CFR 60 (NSPS) SUBPART D HEAT INPUT RATE = Heat input rate is greater than 250 MMBtu/hr (73 MW). ALTERNATE 43D = No alternative requirement is used for SO_2, unit is complying with requirements of § 60.43(a) and (b). ALTERNATE 42C = The facility is meeting the requirements of § 60.42(a) for PM. ALTERNATE 44E = The facility is meeting the requirements of § 60.44(a), (b), and (d) for NO_x. FLUE GAS DESULFURIZATION [NSPS D] = The unit utilizes a flue gas desulfurization device. PM CEMS = The facility does not use a CEMS to measure PM. FUEL SAMPLING AND ANALYSIS = The unit uses fuel sampling and analysis for monitoring of sulfur dioxide emissions. GAS OR LIQUID FUEL ONLY = Burns gaseous or liquid fossil fuel with potential SO_2 emissions rates greater than 0.060 lb/MMBtu, or other fuels, or uses post combustion technology to reduce of SO_2 or PM, or does not monitor SO_2 emissions by sampling or fuel receipts. CYCLONE-FIRED UNIT [NSPS D] = The unit is not a cyclone-fired unit. FUELS WITH 0.03 PERCENT OR LESS SULFUR = Facility uses post combustion technology (except a wet scrubber) for reducing PM, SO_2, or CO, burns gaseous fuels or fuel oils that contain more than 0.30 % sulfur by weight or other fuels, or operates so CO emissions are > 0.15 lb/MMBtu average. NOX MONITORING TYPE [NSPS D] = It was demonstrated during the performance test that emissions of NO_x are less than 70% of applicable standards in 40 CFR § 60.44. PM CEMS PETITION = No petition has been granted to install a PM CEMS as an alternative to the CEMS for monitoring opacity emissions.	
P-16	40 CFR Part 60, Subpart D	60D-A2	40 CFR 60 (NSPS) SUBPART D FUEL TYPE #1 = Lignite. CONSTRUCTION/MODIFICATION DATE = After December 22, 1976, and on or before September 18, 1978. 40 CFR 60 (NSPS) SUBPART D FUEL TYPE #2 = Gaseous fossil fuel. COVERED UNDER SUBPART DA = The steam generating unit is not covered under 40 CFR Part 60, Subpart Da. 40 CFR 60 (NSPS) D CHANGES TO EXISTING AFFECTED FACILITY [NSPS D] = No change has been made to the existing fossil fuel-fired steam generating unit. 40 CFR 60 (NSPS) SUBPART D HEAT INPUT RATE = Heat input rate is greater than 250 MMBtu/hr (73 MW). ALTERNATE 43D = No alternative requirement is used for SO_2, unit is complying with requirements of § 60.43(a) and (b). ALTERNATE 42C = The facility is meeting the requirements of § 60.42(a) for PM. ALTERNATE 44E = The facility is meeting the requirements of § 60.44(a), (b), and (d) for NO_x. FLUE GAS DESULFURIZATION [NSPS D] = The unit utilizes a flue gas desulfurization device. PM CEMS = The facility does not use a CEMS to measure PM. FUEL SAMPLING AND ANALYSIS = The unit uses fuel sampling and analysis for monitoring of sulfur dioxide	

Unit ID	Regulation	Index Number	Basis of Determination*	Changes and Exceptions to DSS**
			emissions. GAS OR LIQUID FUEL ONLY = Burns gaseous or liquid fossil fuel with potential SO_2 emissions rates greater than 0.060 lb/MMBtu, or other fuels, or uses post combustion technology to reduce of SO_2 or PM, or does not monitor SO_2 emissions by sampling or fuel receipts. CYCLONE-FIRED UNIT [NSPS D] = The unit is not a cyclone-fired unit. FUELS WITH 0.03 PERCENT OR LESS SULFUR = Facility uses post combustion technology (except a wet scrubber) for reducing PM, SO_2, or CO, burns gaseous fuels or fuel oils that contain more than 0.30 % sulfur by weight or other fuels, or operates so CO emissions are > 0.15 lb/MMBtu average. NOX MONITORING TYPE [NSPS D] = It was demonstrated during the performance test that emissions of NO_x are less than 70% of applicable standards in 40 CFR § 60.44. PM CEMS PETITION = No petition has been granted to install a PM CEMS as an alternative to the CEMS for monitoring opacity emissions.	
P-16	40 CFR Part 60, Subpart D	60D-B1	40 CFR 60 (NSPS) SUBPART D FUEL TYPE #1 = Solid fossil fuel. CONSTRUCTION/MODIFICATION DATE = After December 22, 1976, and on or before September 18, 1978. COVERED UNDER SUBPART DA = The steam generating unit is not covered under 40 CFR Part 60, Subpart Da. 40 CFR 60 (NSPS) D CHANGES TO EXISTING AFFECTED FACILITY [NSPS D] = No change has been made to the existing fossil fuel-fired steam generating unit. 40 CFR 60 (NSPS) SUBPART D HEAT INPUT RATE = Heat input rate is greater than 250 MMBtu/hr (73 MW). ALTERNATE 43D = No alternative requirement is used for SO_2, unit is complying with requirements of § 60.43(a) and (b). ALTERNATE 42C = The facility is meeting the requirements of § 60.42(a) for PM. ALTERNATE 44E = The facility is meeting the requirements of § 60.44(a), (b), and (d) for NO_x. FLUE GAS DESULFURIZATION [NSPS D] = The unit utilizes a flue gas desulfurization device. PM CEMS = The facility does not use a CEMS to measure PM. FUEL SAMPLING AND ANALYSIS = The unit uses fuel sampling and analysis for monitoring of sulfur dioxide emissions. GAS OR LIQUID FUEL ONLY = Burns gaseous or liquid fossil fuel with potential SO_2 emissions rates greater than 0.060 lb/MMBtu, or other fuels, or uses post combustion technology to reduce of SO_2 or PM, or does not monitor SO_2 emissions by sampling or fuel receipts. CYCLONE-FIRED UNIT [NSPS D] = The unit is not a cyclone-fired unit. FUELS WITH 0.03 PERCENT OR LESS SULFUR = Facility uses post combustion technology (except a wet scrubber) for reducing PM, SO_2, or CO, burns gaseous fuels or fuel oils that contain more than 0.30 % sulfur by weight or other fuels, or operates so CO emissions are > 0.15 lb/MMBtu average. NOX MONITORING TYPE [NSPS D] = It was demonstrated during the performance test that emissions of NO_x are less than 70% of applicable standards in 40 CFR § 60.44. PM CEMS PETITION = No petition has been granted to install a PM CEMS as an alternative to the CEMS for monitoring opacity emissions.	
P-16	40 CFR Part 60, Subpart D	60D-B2	40 CFR 60 (NSPS) SUBPART D FUEL TYPE #1 = Solid fossil fuel. CONSTRUCTION/MODIFICATION DATE = After December 22, 1976, and on or before September 18, 1978. 40 CFR 60 (NSPS) SUBPART D FUEL TYPE #2 = Gaseous fossil fuel. COVERED UNDER SUBPART DA = The steam generating unit is not covered under 40 CFR Part 60, Subpart Da. 40 CFR 60 (NSPS) D CHANGES TO EXISTING AFFECTED FACILITY [NSPS D] = No change has been made to	

Unit ID	Regulation	Index Number	Basis of Determination*	Changes and Exceptions to DSS**
			the existing fossil fuel-fired steam generating unit. 40 CFR 60 (NSPS) SUBPART D HEAT INPUT RATE = Heat input rate is greater than 250 MMBtu/hr (73 MW). ALTERNATE 43D = No alternative requirement is used for SO_2, unit is complying with requirements of § 60.43(a) and (b). ALTERNATE 42C = The facility is meeting the requirements of § 60.42(a) for PM. ALTERNATE 44E = The facility is meeting the requirements of § 60.44(a), (b), and (d) for NO_x. FLUE GAS DESULFURIZATION [NSPS D] = The unit utilizes a flue gas desulfurization device. PM CEMS = The facility does not use a CEMS to measure PM. FUEL SAMPLING AND ANALYSIS = The unit uses fuel sampling and analysis for monitoring of sulfur dioxide emissions. GAS OR LIQUID FUEL ONLY = Burns gaseous or liquid fossil fuel with potential SO_2 emissions rates greater than 0.060 lb/MMBtu, or other fuels, or uses post combustion technology to reduce of SO_2 or PM, or does not monitor SO_2 emissions by sampling or fuel receipts. CYCLONE-FIRED UNIT [NSPS D] = The unit is not a cyclone-fired unit. FUELS WITH 0.03 PERCENT OR LESS SULFUR = Facility uses post combustion technology (except a wet scrubber) for reducing PM, SO_2, or CO, burns gaseous fuels or fuel oils that contain more than 0.30 % sulfur by weight or other fuels, or operates so CO emissions are > 0.15 lb/MMBtu average. NOX MONITORING TYPE [NSPS D] = It was demonstrated during the performance test that emissions of NO_x are less than 70% of applicable standards in 40 CFR § 60.44. PM CEMS PETITION = No petition has been granted to install a PM CEMS as an alternative to the CEMS for monitoring opacity emissions.	
P-16	40 CFR Part 60, Subpart D	60D-C	40 CFR 60 (NSPS) SUBPART D FUEL TYPE #1 = Gaseous fossil fuel. CONSTRUCTION/MODIFICATION DATE = After December 22, 1976, and on or before September 18, 1978. COVERED UNDER SUBPART DA = The steam generating unit is not covered under 40 CFR Part 60, Subpart Da. 40 CFR 60 (NSPS) D CHANGES TO EXISTING AFFECTED FACILITY [NSPS D] = No change has been made to the existing fossil fuel-fired steam generating unit. 40 CFR 60 (NSPS) SUBPART D HEAT INPUT RATE = Heat input rate is greater than 250 MMBtu/hr (73 MW). ALTERNATE 43D = No alternative requirement is used for SO_2, unit is complying with requirements of § 60.43(a) and (b). ALTERNATE 42C = The facility is meeting the requirements of § 60.42(a) for PM. ALTERNATE 44E = The facility is meeting the requirements of § 60.44(a), (b), and (d) for NO_x. FLUE GAS DESULFURIZATION [NSPS D] = The unit utilizes a flue gas desulfurization device. PM CEMS = The facility does not use a CEMS to measure PM. FUEL SAMPLING AND ANALYSIS = The unit uses fuel sampling and analysis for monitoring of sulfur dioxide emissions. GAS OR LIQUID FUEL ONLY = Burns gaseous or liquid fossil fuel with potential SO_2 emissions rates greater than 0.060 lb/MMBtu, or other fuels, or uses post combustion technology to reduce of SO_2 or PM, or does not monitor SO_2 emissions by sampling or fuel receipts. CYCLONE-FIRED UNIT [NSPS D] = The unit is not a cyclone-fired unit. FUELS WITH 0.03 PERCENT OR LESS SULFUR = Facility uses post combustion technology (except a wet	

Unit ID	Regulation	Index Number	Basis of Determination*	Changes and Exceptions to DSS**
			scrubber) for reducing PM, SO_2, or CO, burns gaseous fuels or fuel oils that contain more than 0.30 % sulfur by weight or other fuels, or operates so CO emissions are > 0.15 lb/MMBtu average. NOX MONITORING TYPE [NSPS D] = It was demonstrated during the performance test that emissions of NO_x are less than 70% of applicable standards in 40 CFR § 60.44. PM CEMS PETITION = No petition has been granted to install a PM CEMS as an alternative to the CEMS for monitoring opacity emissions.	
P-1	40 CFR Part 60, Subpart Y	@1D	Coal Preparation Plant = Coal preparation plant contains thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systes or coal transfer and loading systems. Design Capacity = Design capacity is greater than 200 tons of coal per day. Federally Enforceable Limit Option = The plant chooses not to operate under a federally enforceable limit of less than 200 tons per day.	
P-1	40 CFR Part 60, Subpart Y	60Y	Affected Facility = Coal processing and conveying equipment (including breakers and crushers), coal storage systems (excluding open storage piles), or coal transfer and loading systems. Construction/Reconstruction/Modification Date =	
P-2	40 CFR Part 60, Subpart Y	@1D	Coal Preparation Plant = Coal preparation plant contains thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systes or coal transfer and loading systems. Design Capacity = Design capacity is greater than 200 tons of coal per day. Federally Enforceable Limit Option = The plant chooses not to operate under a federally enforceable limit of less than 200 tons per day.	
P-2	40 CFR Part 60, Subpart Y	60Y	Affected Facility = Coal processing and conveying equipment (including breakers and crushers), coal storage systems (excluding open storage piles), or coal transfer and loading systems. Construction/Reconstruction/Modification Date =	
P-3	40 CFR Part 60, Subpart Y	@1D	Coal Preparation Plant = Coal preparation plant contains thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systes or coal transfer and loading systems. Design Capacity = Design capacity is greater than 200 tons of coal per day. Federally Enforceable Limit Option = The plant chooses not to operate under a federally enforceable limit of less than 200 tons per day.	
P-3	40 CFR Part 60, Subpart Y	60Y	Affected Facility = Coal processing and conveying equipment (including breakers and crushers), coal storage systems (excluding open storage piles), or coal transfer and loading systems. Construction/Reconstruction/Modification Date =	
P-4	40 CFR Part 60, Subpart Y	@1D	Coal Preparation Plant = Coal preparation plant contains thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systes or coal transfer and loading systems. Design Capacity = Design capacity is greater than 200 tons of coal per day. Federally Enforceable Limit Option = The plant chooses not to operate under a federally enforceable limit of less than 200 tons per day.	

Unit ID	Regulation	Index Number	Basis of Determination*	Changes and Exceptions to DSS**
P-5	40 CFR Part 60, Subpart Y	@1D	Coal Preparation Plant = Coal preparation plant contains thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systes or coal transfer and loading systems. Design Capacity = Design capacity is greater than 200 tons of coal per day. Federally Enforceable Limit Option = The plant chooses not to operate under a federally enforceable limit of less than 200 tons per day.	
P-5	40 CFR Part 60, Subpart Y	60Y	Affected Facility = Coal processing and conveying equipment (including breakers and crushers), coal storage systems (excluding open storage piles), or coal transfer and loading systems. Construction/Reconstruction/Modification Date =	
P-6	40 CFR Part 60, Subpart Y	@1D	Coal Preparation Plant = Coal preparation plant contains thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systes or coal transfer and loading systems. Design Capacity = Design capacity is greater than 200 tons of coal per day. Federally Enforceable Limit Option = The plant chooses not to operate under a federally enforceable limit of less than 200 tons per day.	
P-6	40 CFR Part 60, Subpart Y	60Y	Affected Facility = Coal processing and conveying equipment (including breakers and crushers), coal storage systems (excluding open storage piles), or coal transfer and loading systems. Construction/Reconstruction/Modification Date =	
P-7	40 CFR Part 60, Subpart Y	@1D	Coal Preparation Plant = Coal preparation plant contains thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systes or coal transfer and loading systems. Design Capacity = Design capacity is greater than 200 tons of coal per day. Federally Enforceable Limit Option = The plant chooses not to operate under a federally enforceable limit of less than 200 tons per day.	
P-7	40 CFR Part 60, Subpart Y	60Y	Affected Facility = Coal processing and conveying equipment (including breakers and crushers), coal storage systems (excluding open storage piles), or coal transfer and loading systems. Construction/Reconstruction/Modification Date =	
PLTLIGHAND	40 CFR Part 60, Subpart Y	@1D	Coal Preparation Plant = Coal preparation plant contains thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systes or coal transfer and loading systems. Design Capacity = Design capacity is greater than 200 tons of coal per day. Federally Enforceable Limit Option = The plant chooses not to operate under a federally enforceable limit of less than 200 tons per day.	
P-17	40 CFR Part 60, Subpart HH	60HH	Rotary Lime Kiln = The unit is not a rotary lime kiln used in the manufacture of lime.	
P-17	40 CFR Part 60, Subpart OOO	@1D	Plant Type = Crushed stone plant. Portable or Fixed Plant = Fixed. Plant Capacity = Capacity is greater than 25 tons/hr.	

Unit ID	Regulation	Index Number	Basis of Determination*	Changes and Exceptions to DSS**
P-17	40 CFR Part 60, Subpart OOO	60OOO	Underground Mines = The facility is not located in an underground mine. Subpart Applicability = The facility is not subject to 40 CFR Part 60, Subparts F or I, nor does the facility follow, in the plant process, another facility subject to Subparts F or I. Construction/Modification Date = On or before August 31, 1983.	
P-18	40 CFR Part 60, Subpart HH	60HH	Rotary Lime Kiln = The unit is not a rotary lime kiln used in the manufacture of lime.	
P-18	40 CFR Part 60, Subpart OOO	@1D	Plant Type = Crushed stone plant. Portable or Fixed Plant = Fixed. Plant Capacity = Capacity is greater than 25 tons/hr.	
P-18	40 CFR Part 60, Subpart OOO	60OOO	Underground Mines = The facility is not located in an underground mine. Subpart Applicability = The facility is not subject to 40 CFR Part 60, Subparts F or I, nor does the facility follow, in the plant process, another facility subject to Subparts F or I. Facility Type = Individual storage bin. Construction/Modification Date = On or before August 31, 1983.	
P-19	40 CFR Part 60, Subpart HH	60HH	Rotary Lime Kiln = The unit is not a rotary lime kiln used in the manufacture of lime.	
P-19	40 CFR Part 60, Subpart OOO	@1D	Plant Type = Crushed stone plant. Portable or Fixed Plant = Fixed. Plant Capacity = Capacity is greater than 25 tons/hr.	
P-19	40 CFR Part 60, Subpart OOO	60OOO	Underground Mines = The facility is not located in an underground mine. Subpart Applicability = The facility is not subject to 40 CFR Part 60, Subparts F or I, nor does the facility follow, in the plant process, another facility subject to Subparts F or I. Facility Type = Individual storage bin. Construction/Modification Date = On or before August 31, 1983.	
P-20	40 CFR Part 60, Subpart HH	60HH	Rotary Lime Kiln = The unit is not a rotary lime kiln used in the manufacture of lime.	
P-20	40 CFR Part 60, Subpart OOO	@1D	Plant Type = Crushed stone plant. Portable or Fixed Plant = Fixed. Plant Capacity = Capacity is greater than 25 tons/hr.	
P-20	40 CFR Part 60, Subpart OOO	60OOO	Underground Mines = The facility is not located in an underground mine. Subpart Applicability = The facility is not subject to 40 CFR Part 60, Subparts F or I, nor does the facility follow, in the plant process, another facility subject to Subparts F or I. Facility Type = Grinding mill. Construction/Modification Date = On or before August 31, 1983.	
PLTLIMES1	40 CFR Part 60, Subpart OOO	@1D	Plant Type = Crushed stone plant. Portable or Fixed Plant = Fixed.	

Unit ID	Regulation	Index Number	Basis of Determination*	Changes and Exceptions to DSS**
			Plant Capacity = Capacity is greater than 25 tons/hr.	
P-16	30 TAC Chapter 111, Visible Emissions	R1111-1	Alternate Opacity Limitation = Not complying with an alternate opacity limit under 30 TAC § 111.113. Annual ACF = Annual average capacity factor is greater than 30%, as reported to the Federal Power Commission for calendar year 1974 Heat Input = Heat Input is greater than 250 MMBtu/hr. Vent Source = The source of the vent is a steam generator fired by solid fossil fuel. Opacity Monitoring System = The executive director and Administrator have determined that 30 TAC § 111.111(a)(1)(F) may be used to comply with the appropriate opacity standard since the gas stream contains condensed water vapor which could interfere with proper CEMS operation. Construction Date = After January 31, 1972 Effluent Flow Rate = Effluent flow rate is at least 100,000 actual cubic feet per minute.	
P-16	30 TAC Chapter 111, Visible Emissions	R1111-3	Alternate Opacity Limitation = Not complying with an alternate opacity limit under 30 TAC § 111.113. Vent Source = The source of the vent is not a steam generator fired by solid fossil fuel, oil or a mixture of oil and gas and is not a catalyst regenerator for a fluid bed catalytic cracking unit. Opacity Monitoring System = A continuous emissions monitoring system (CEMS) capable of measuring the opacity of emissions is installed in the vent in accordance with 30 TAC § 111.111(a)(1)(C). Construction Date = After January 31, 1972 Effluent Flow Rate = Effluent flow rate is at least 100,000 actual cubic feet per minute.	

* - The “unit attributes” or operating conditions that determine what requirements apply
** - Notes changes made to the automated results from the DSS, and a brief explanation why

NSR Versus Title V FOP

The state of Texas has two Air permitting programs, New Source Review (NSR) and Title V Federal Operating Permits. The two programs are substantially different both in intent and permit content.

NSR is a preconstruction permitting program authorized by the Texas Clean Air Act and Title I of the Federal Clean Air Act (FCAA). The processing of these permits is governed by 30 Texas Administrative Code (TAC) Chapter 116.111. The Title V Federal Operating Program is a federal program authorized under Title V of the FCAA that has been delegated to the state of Texas to administer and is governed by 30 TAC Chapter 122. The major differences between the two permitting programs are listed in the table below:

NSR Permit	Federal Operating Permit(FOP)
Issued Prior to new Construction or modification of an existing facility	For initial permit with application shield, can be issued after operation commences; significant revisions require approval prior to operation.
Authorizes air emissions	Codifies existing applicable requirements, does not authorize new emissions
Ensures issued permits are protective of the environment and human health by conducting a health effects review and that requirement for best available control technology (BACT) is implemented.	Applicable requirements listed in permit are used by the inspectors to ensure proper operation of the site as authorized. Ensures that adequate monitoring is in place to allow compliance determination with the FOP.
Up to two Public notices may be required. Opportunity for public comment and contested case hearings for some authorizations.	One public notice required. Opportunity for public comments. No contested case hearings.
Applies to all point source emissions in the state.	Applies to all major sources and some non-major sources identified by the EPA.
Applies to facilities: a portion of site or individual emission sources	One or multiple FOPs cover the entire site (consists of multiple facilities)
Permits include terms and conditions under which the applicant must construct and operate its various equipment and processes on a facility basis.	Permits include terms and conditions that specify the general operational requirements of the site; and also include codification of all applicable requirements for emission units at the site.
Opportunity for EPA review for Federal Prevention of Significant Deterioration (PSD) and Nonattainment (NA) permits for major sources.	Opportunity for EPA review, Affected states review, and a Public petition period for every FOP.
Permits have a table listing maximum emission limits for pollutants	Permit has an applicable requirements table and Periodic Monitoring (PM) / Compliance Assurance Monitoring (CAM) tables which document applicable monitoring requirements.
Permits can be altered or amended upon application by company. Permits must be issued before construction or modification of facilities can begin.	Permits can be revised through several revision processes, which provide for different levels of public notice and opportunity to comment. Changes that would be significant revisions require that a revised permit be issued before those changes can be operated.
NSR permits are issued independent of FOP requirements.	FOP are independent of NSR permits, but contain a list of all NSR permits incorporated by reference

New Source Review Requirements

Below is a list of the New Source Review (NSR) permits for the permitted area. These NSR permits are incorporated by reference into the operating permit and are enforceable under it. These permits can be found in the main TCEQ file room, located on the first floor of Building E, 12100 Park 35 Circle, Austin, Texas. The Public Education Program may be contacted at 1-800-687-4040 or the Air Permits Division (APD) may be contacted at 1-512-239-1250 for help with any question.

Additionally, the site contains emission units that are permitted by rule under the requirements of 30 TAC Chapter 106, Permits by Rule. The following table specifies the permits by rule that apply to the site. All current permits by rule are contained in Chapter 106. Outdated 30 TAC Chapter 106 permits by rule may be viewed at the following Web site:

www.tceq.texas.gov/permitting/air/permitbyrule/historical_rules/old106list/index106.html

Outdated Standard Exemption lists may be viewed at the following Web site:

www.tceq.texas.gov/permitting/air/permitbyrule/historical_rules/oldselist/se_index.html

Prevention of Significant Deterioration (PSD) Permits	
PSD Permit No.: PSDTX64	Issuance Date:
Title 30 TAC Chapter 116 Permits, Special Permits, and Other Authorizations (Other Than Permits By Rule, PSD Permits, or NA Permits) for the Application Area.	
Authorization No.: 49226	Issuance Date:
Authorization No.: 6269	Issuance Date:
Authorization No.: 6270	Issuance Date:
Authorization No.: 76547	Issuance Date:
Authorization No.: 80150	Issuance Date:
Permits By Rule (30 TAC Chapter 106) for the Application Area	
Number: 106.227	Version No./Date: 09/04/2000
Number: 106.261	Version No./Date: 09/04/2000
Number: 106.262	Version No./Date: 09/04/2000
Number: 106.263	Version No./Date: 11/01/2001
Number: 106.265	Version No./Date: 09/04/2000
Number: 106.355	Version No./Date: 11/01/2001
Number: 106.412	Version No./Date: 09/04/2000
Number: 106.454	Version No./Date: 11/01/2001
Number: 106.472	Version No./Date: 09/04/2000
Number: 106.473	Version No./Date: 09/04/2000
Number: 106.511	Version No./Date: 09/04/2000
Number: 106.532	Version No./Date: 09/04/2000

Emission Units and Emission Points

In air permitting terminology, any source capable of generating emissions (for example, an engine or a sandblasting area) is called an Emission Unit. For purposes of Title V, emission units are specifically listed in the operating permit when they have applicable requirements other than New Source Review (NSR), or when they are listed in the permit shield table.

The actual physical location where the emissions enter the atmosphere (for example, an engine stack or a sand-blasting yard) is called an emission point. For New Source Review preconstruction permitting purposes, every emission unit has an associated emission point. Emission limits are listed in an NSR permit, associated with an emission point. This list of emission points and emission limits per pollutant is commonly referred to as the "Maximum Allowable Emission Rate Table", or "MAERT" for short. Specifically, the MAERT lists the Emission Point Number (EPN) that identifies the emission point, followed immediately by the Source Name, identifying the emission unit that is the source of those emissions on this table.

Thus, by reference, an emission unit in a Title V operating permit is linked by reference number to an NSR authorization, and its related emission point.

Monitoring Sufficiency

Federal and state rules, 40 CFR § 70.6(a)(3)(i)(B) and 30 TAC § 122.142(c) respectively, require that each federal operating permit include additional monitoring for applicable requirements that lack periodic or instrumental monitoring (which may include recordkeeping that serves as monitoring) that yields reliable data from a relevant time period that are representative of the emission unit's compliance with the applicable emission limitation or standard. Furthermore, the federal operating permit must include compliance assurance monitoring (CAM) requirements for emission sources that meet the applicability criteria of 40 CFR Part 64 in accordance with 40 CFR § 70.6(a)(3)(i)(A) and 30 TAC § 122.604(b).

With the exception of any emission units listed in the Periodic Monitoring or CAM Summaries in the FOP, the TCEQ Executive Director has determined that the permit contains sufficient monitoring, testing, recordkeeping, and reporting requirements that assure compliance with the applicable requirements. If applicable, each emission unit that requires additional monitoring in the form of periodic monitoring or CAM is described in further detail under the Rationale for CAM/PM Methods Selected section following this paragraph.

Rationale for Compliance Assurance Monitoring (CAM)/ Periodic Monitoring Methods Selected

Periodic Monitoring:

The Federal Clean Air Act requires that each federal operating permit include monitoring sufficient to assure compliance with the terms and conditions of the permit. Most of the emission limits and standards applicable to emission units at Title V sources include adequate monitoring to show that the units meet the limits and standards. For those requirements that do not include monitoring, or where the monitoring is not sufficient to assure compliance, the federal operating permit must include such monitoring for the emission units affected. The following emission units are subject to periodic monitoring requirements because the emission units are subject to an emission limitation or standard for an air pollutant (or surrogate thereof) in an applicable requirement that does not already require monitoring, or the monitoring for the applicable requirement is not sufficient to assure compliance:

Unit/Group/Process Information

ID No.: P-1	
Control Device ID No.: N/A	Control Device Type: N/A
Applicable Regulatory Requirement	
Name: 40 CFR Part 60, Subpart Y	SOP Index No.: 60Y
Pollutant: PM (OPACITY)	Main Standard: § 60.252(c)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: Once per month	
Averaging Period: Six-minutes	
Deviation Limit: 20% Opacity	
Basis of monitoring: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

Unit/Group/Process Information	
ID No.: P-2	
Control Device ID No.: N/A	Control Device Type: N/A
Applicable Regulatory Requirement	
Name: 40 CFR Part 60, Subpart Y	SOP Index No.: 60Y
Pollutant: PM (OPACITY)	Main Standard: § 60.252(c)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: Once per month	
Averaging Period: Six-minutes	
Deviation Limit: 20% Opacity	
Basis of monitoring: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

Unit/Group/Process Information	
ID No.: P-3	
Control Device ID No.: N/A	Control Device Type: N/A
Applicable Regulatory Requirement	
Name: 40 CFR Part 60, Subpart Y	SOP Index No.: 60Y
Pollutant: PM (OPACITY)	Main Standard: § 60.252(c)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: Once per month	
Averaging Period: Six-minutes	
Deviation Limit: 20% Opacity	
Basis of monitoring: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

Unit/Group/Process Information	
ID No.: P-5	
Control Device ID No.: N/A	Control Device Type: N/A
Applicable Regulatory Requirement	
Name: 40 CFR Part 60, Subpart Y	SOP Index No.: 60Y
Pollutant: PM (OPACITY)	Main Standard: § 60.252(c)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: Once per month	
Averaging Period: Six-minutes	
Deviation Limit: 20% Opacity	
Basis of monitoring: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

Unit/Group/Process Information	
ID No.: P-6	
Control Device ID No.: N/A	Control Device Type: N/A
Applicable Regulatory Requirement	
Name: 40 CFR Part 60, Subpart Y	SOP Index No.: 60Y
Pollutant: PM (OPACITY)	Main Standard: § 60.252(c)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: Once per month	
Averaging Period: Six-minutes	
Deviation Limit: 20% Opacity	
Basis of monitoring: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

Unit/Group/Process Information	
ID No.: P-7	
Control Device ID No.: N/A	Control Device Type: N/A
Applicable Regulatory Requirement	
Name: 40 CFR Part 60, Subpart Y	SOP Index No.: 60Y
Pollutant: PM (OPACITY)	Main Standard: § 60.252(c)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: Once per month	
Averaging Period: Six-minutes	
Deviation Limit: 20% Opacity	
Basis of monitoring: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

Compliance Assurance Monitoring (CAM):

Compliance Assurance Monitoring (CAM) is a federal monitoring program established under Title 40 Code of Federal Regulations Part 64 (40 CFR Part 64).

Emission units are subject to CAM requirements if they meet the following criteria:

1. the emission unit is subject to an emission limitation or standard for an air pollutant (or surrogate thereof) in an applicable requirement;

2. the emission unit uses a control device to achieve compliance with the emission limitation or standard specified in the applicable requirement; and

3. the emission unit has the pre-control device potential to emit greater than or equal to the amount in tons per year for a site to be classified as a major source.

The following table(s) identify the emission unit(s) that are subject to CAM:

Unit/Group/Process Information	
ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
Applicable Regulatory Requirement	
Name: 30 TAC Chapter 111, Visible Emissions	SOP Index No.: R1111-1
Pollutant: OPACITY	Main Standard: § 111.111(a)(1)(B)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20% Opacity (6 minute average)	
Basis of CAM: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

Unit/Group/Process Information	
ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
Applicable Regulatory Requirement	
Name: 30 TAC Chapter 111, Visible Emissions	SOP Index No.: R1111-3
Pollutant: OPACITY	Main Standard: § 111.111(a)(1)(B)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20% Opacity (6 Minute average)	
Basis of CAM: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

Unit/Group/Process Information	
ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
Applicable Regulatory Requirement	
Name: 30 TAC Chapter 111, Nonagricultural Processes	SOP Index No.: R153
Pollutant: PM	Main Standard: § 111.153(b)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: Opacity 20% (6 minute average)	
Basis of CAM: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

Unit/Group/Process Information	
ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
Applicable Regulatory Requirement	
Name: 30 TAC Chapter 111, Nonagricultural Processes	SOP Index No.: R153Gas
Pollutant: PM	Main Standard: § 111.153(c)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20 % Opacity (6 minute average)	
Basis of CAM: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

Unit/Group/Process Information	
ID No.: P-16	
Control Device ID No.: FGD	Control Device Type: Wet Scrubber
Applicable Regulatory Requirement	
Name: 30 TAC Chapter 112, Sulfur Compounds	SOP Index No.: R112
Pollutant: SO_2	Main Standard: § 112.8(a)
Monitoring Information	
Indicator: Sulfur Dioxide Concentration	
Minimum Frequency: four times per hour	
Averaging Period: one hour	
Deviation Limit: 1.2LB/MMBTU	
Basis of CAM: It is widely practiced and accepted to calibrate and use a portable analyzer or CEMS to measure SO2 concentration with procedures such as EPA Test Method 6C. The measured concentration along with stack flow rate or AP-42 factors and fuel consumption records may be used to demonstrate compliance with an underlying emission limit or standard.	

Unit/Group/Process Information	
ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
Applicable Regulatory Requirement	
Name: 40 CFR Part 60, Subpart D	SOP Index No.: 60D-A1
Pollutant: PM	Main Standard: § 60.42(a)(1)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20% Opacity (6 minute average)	
Basis of CAM: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

Unit/Group/Process Information	
ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
Applicable Regulatory Requirement	
Name: 40 CFR Part 60, Subpart D	SOP Index No.: 60D-A2
Pollutant: PM	Main Standard: § 60.42(a)(1)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20% Opacity (6 minute average)	
Basis of CAM: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

Unit/Group/Process Information	
ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
Applicable Regulatory Requirement	
Name: 40 CFR Part 60, Subpart D	SOP Index No.: 60D-B1
Pollutant: PM	Main Standard: § 60.42(a)(1)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20% Opacity (6 minute average)	
Basis of CAM: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

Unit/Group/Process Information	
ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
Applicable Regulatory Requirement	
Name: 40 CFR Part 60, Subpart D	SOP Index No.: 60D-B2
Pollutant: PM	Main Standard: § 60.42(a)(1)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20% Opacity (6 minute average)	
Basis of CAM: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

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ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
Applicable Regulatory Requirement	
Name: 40 CFR Part 60, Subpart D	SOP Index No.: 60D-C
Pollutant: PM	Main Standard: § 60.42(a)(1)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20% Opacity (6 minute average)	
Basis of CAM: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

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Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
Applicable Regulatory Requirement	
Name: 40 CFR Part 60, Subpart D	SOP Index No.: 60D-A1
Pollutant: PM (OPACITY)	Main Standard: § 60.42(a)(2)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20% Opacity (6 minute average)	
Basis of CAM: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

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Applicable Regulatory Requirement	
Name: 40 CFR Part 60, Subpart D	SOP Index No.: 60D-A2
Pollutant: PM (OPACITY)	Main Standard: § 60.42(a)(2)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20% Opacity (6 minute average)	
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Pollutant: PM (OPACITY)	Main Standard: § 60.42(a)(2)
Monitoring Information	
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Pollutant: PM (OPACITY)	Main Standard: § 60.42(a)(2)
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ID No.: P-16	
Control Device ID No.: AD-16	Control Device Type: Wet or Dry Electrostatic Precipitator
Applicable Regulatory Requirement	
Name: 40 CFR Part 60, Subpart D	SOP Index No.: 60D-C
Pollutant: PM (OPACITY)	Main Standard: § 60.42(a)(2)
Monitoring Information	
Indicator: Opacity	
Minimum Frequency: six times per minute	
Averaging Period: six-minute	
Deviation Limit: 20% Opacity (6 minute average)	
Basis of CAM: The option to perform opacity readings or visible emissions to demonstrate compliance is consistent with EPA Reference Test Method 9 and 22. Opacity and visible emissions have been used as an indicator of particulate emissions in many federal rules including 40 CFR Part 60, Subpart F and Subpart HH. In addition, use of these indicators is consistent with the EPA's "Compliance Assurance Monitoring (CAM) Technical Guidance Document" (August 1998). Monitoring specifications and procedures for the opacity are consistent with federal requirements and include the EPA's Test Method 9 for determining opacity by visual observations and the requirements of 40 CFR § 60.13 for a continuous opacity monitoring system (COMS). The monitoring specifications and procedures for the visible emissions monitoring are similar to "EPA Reference Method 22" procedures.	

Available Unit Attribute Forms

OP-UA1 - Miscellaneous and Generic Unit Attributes
OP-UA2 - Stationary Reciprocating Internal Combustion Engine Attributes
OP-UA3 - Storage Tank/Vessel Attributes
OP-UA4 - Loading/Unloading Operations Attributes
OP-UA5 - Process Heater/Furnace Attributes
OP-UA6 - Boiler/Steam Generator/Steam Generating Unit Attributes
OP-UA7 - Flare Attributes
OP-UA8 - Coal Preparation Plant Attributes
OP-UA9 - Nonmetallic Mineral Process Plant Attributes
OP-UA10 - Gas Sweetening/Sulfur Recovery Unit Attributes
OP-UA11 - Stationary Turbine Attributes
OP-UA12 - Fugitive Emission Unit Attributes
OP-UA13 - Industrial Process Cooling Tower Attributes
OP-UA14 - Water Separator Attributes
OP-UA15 - Emission Point/Stationary Vent/Distillation Operation/Process Vent Attributes
OP-UA16 - Solvent Degreasing Machine Attributes
OP-UA17 - Distillation Unit Attributes
OP-UA18 - Surface Coating Operations Attributes
OP-UA19 - Wastewater Unit Attributes
OP-UA20 - Asphalt Operations Attributes
OP-UA21 - Grain Elevator Attributes
OP-UA22 - Printing Attributes
OP-UA24 - Wool Fiberglass Insulation Manufacturing Plant Attributes
OP-UA25 - Synthetic Fiber Production Attributes
OP-UA26 - Electroplating and Anodizing Unit Attributes
OP-UA27 - Nitric Acid Manufacturing Attributes
OP-UA28 - Polymer Manufacturing Attributes
OP-UA29 - Glass Manufacturing Unit Attributes
OP-UA30 - Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mill Attributes
OP-UA31 - Lead Smelting Attributes
OP-UA32 - Copper and Zinc Smelting/Brass and Bronze Production Attributes
OP-UA33 - Metallic Mineral Processing Plant Attributes
OP-UA34 - Pharmaceutical Manufacturing
OP-UA35 - Incinerator Attributes
OP-UA36 - Steel Plant Unit Attributes
OP-UA37 - Basic Oxygen Process Furnace Unit Attributes
OP-UA38 - Lead-Acid Battery Manufacturing Plant Attributes
OP-UA39 - Sterilization Source Attributes
OP-UA40 - Ferroalloy Production Facility Attributes
OP-UA41 - Dry Cleaning Facility Attributes
OP-UA42 - Phosphate Fertilizer Manufacturing Attributes
OP-UA43 - Sulfuric Acid Production Attributes
OP-UA44 - Municipal Solid Waste Landfill/Waste Disposal Site Attributes
OP-UA45 - Surface Impoundment Attributes
OP-UA46 - Epoxy Resins and Non-Nylon Polyamides Production Attributes
OP-UA47 - Ship Building and Ship Repair Unit Attributes
OP-UA48 - Air Oxidation Unit Process Attributes
OP-UA49 - Vacuum-Producing System Attributes
OP-UA50 - Fluid Catalytic Cracking Unit Catalyst Regenerator/Fuel Gas Combustion Device/Claus Sulfur Recovery Plant Attributes

OP-UA51 - Dryer/Kiln/Oven Attributes
OP-UA52 - Closed Vent Systems and Control Devices
OP-UA53 - Beryllium Processing Attributes
OP-UA54 - Mercury Chlor-Alkali Cell Attributes
OP-UA55 - Transfer System Attributes
OP-UA56 - Vinyl Chloride Process Attributes
OP-UA57 - Cleaning/Depainting Operation Attributes
OP-UA58 - Treatment Process Attributes
OP-UA59 - Coke By-Product Recovery Plant Attributes
OP-UA60 - Chemical Manufacturing Process Unit Attributes
OP-UA61 - Pulp, Paper, or Paperboard Producing Process Attributes
OP-UA62 - Glycol Dehydration Unit Attributes
OP-UA63 - Vegetable Oil Production Attributes

EXHIBIT C

Letter from John F. Steib, Jr. regarding EPA approval of TCEQ Emission Event Rules

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 17, 2007

Mr. John Blevins, Director
Compliance Assurance and Enforcement Division
USEPA, Region-6 Dallas
1445 Ross Avenue, Suite 1200
Mail Code: 6EN
Dallas, TX 75202-2733

Re: EPA Approval of the TCEQ Emission Events Rule

Dear Mr. Blevins:

On February 8, 2007, the Texas Commission on Environmental Quality (TCEQ) and Environmental Protection Agency (EPA) met to discuss issues related to the TCEQ Emission Events rule. Please find the TCEQ's responses to those issues raised by EPA staff regarding the approval of the TCEQ Emission Events rule and incorporation of the Emission Events rule into the State of Texas State Implementation Plan (SIP).

Issue 1: Texas' Creation of a Defense for Unplanned Maintenance Emissions
In the recently adopted emissions events rule[1] the concept of unplanned maintenance, startup and shutdown (MSS) activities was added. The EPA staff asked TCEQ to verify that unplanned MSS activities are functionally equivalent to EPA's definition of malfunction.

The TCEQ understands that EPA's policy is to allow an affirmative defense for malfunctions that are sudden, unavoidable, and unpredictable in nature, and could not have been avoided by better operation and maintenance practices; these are emergency type upset events. The TCEQ's limitation of the affirmative defense for unplanned MSS is limited to these same types of excess emissions and TCEQ has, therefore, not created a new category of emissions eligible for an affirmative defense. Unplanned MSS activities are not the type of emissions that could be authorized. Therefore, the TCEQ concurs with EPA that unplanned MSS activities can be generally considered as functionally

[1] Revisions to 30 Tex. Admin. Code Chapter 101, Subchapter F, effective January 5, 2006

equivalent to EPA's "malfunction" with regard to applicability of an affirmative defense. In support, the TCEQ cites language in the preamble of the most recent rule making:

The commission adopted the new definition of unplanned maintenance, startup, or shutdown activity in §101.1(109)[2]. Activities with unauthorized emissions that are expected to exceed a reportable quantity (RQ) or with excess opacity would be one of two types. The first type of unplanned maintenance, startup, or shutdown activity is a startup or shutdown activity that is not part of normal or routine facility operations, is unpredictable as to timing, and is not the type of event normally authorized by permit. The second type of unplanned activity is a maintenance activity that arises from sudden and unforeseeable events beyond the control of the operator that requires immediate corrective action to minimize or avoid an upset or malfunction. This is consistent with EPA guidance, which provides that scheduled maintenance is a predictable event that can be scheduled at the discretion of the operator, and can be coordinated with maintenance and, therefore, can be permitted. Examples of activities that would be considered to be planned would include plant turnarounds, scheduled plant outages, and preventative maintenance such as routine replacement of facility parts that are regular and quantifiable. Planned activities are the type that can be authorized by a permit, standard permit, or permit by rule. Evidence of predictability could include whether procedures and/or personnel assignments exist well in advance of the event.[3]

Issue 2: Defense Elements for "Planned Activities"

Until such time that planned MSS activities are phased out of the affirmative defense, EPA staff noted that TCEQ rule §101.222(h) refers owners and operators to §101.222(c)(1)-(9). EPA expressed concern that §101.222(c) appears to apply to unplanned MSS. EPA expressed further concern that only certain criteria in this section appear to apply to planned MSS activities.

The TCEQ acknowledges EPA's concern. In the interim, until the rule is modified, TCEQ staff have been instructed to apply appropriate demonstration criteria found in

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[2] The definition is as follows: **Unplanned maintenance, startup, or shutdown** activity - For activities with unauthorized emissions that are expected to exceed a reportable quantity or with excess opacity, an unplanned maintenance, startup, or shutdown activity is:
(A) a startup or shutdown that was not part of normal or routine facility operations, is unpredictable as to timing, and is not the type of event normally authorized by permit; or
(B) a maintenance activity that arises from sudden and unforeseeable events beyond the control of the operator that requires the immediate corrective action to minimize or avoid an upset or malfunction.

[3] 30 *Tex. Reg.* 8884, 8886 (December 30, 2005).

§101.222(c) to planned MSS activities until such time as they are phased out. The TCEQ plans to address this issue in the next rule-making.

Issue 3: Director's Discretion

The EPA staff requested clarification regarding the following rule, specifically, whether this rule would allow TCEQ to exempt owners and operators from complying with any federal requirements.

§101.221(d) Sources emitting air contaminants that cannot be controlled or reduced due to a lack of technological knowledge may be exempt from the applicable rules when so determined and ordered by the commission. The commission may specify limitations and conditions as to the operation of such exempt sources. The commission will not exempt sources from complying with any federal requirements, including New Source Performance Standards (40 Code of Federal Regulations Part 60) and National Emission Standards for Hazardous Air Pollutants (40 Code of Federal Regulations Parts 61 and 63).

The TCEQ agrees that this rule cannot be used by the agency to grant any requested relief from compliance with any State Implementation Plan (SIP) requirements, such as, for example, SIP approved rules in 30 Tex. Admin. Code Chapters 115 and 117, or in approved area-specific plans. Any such relief would be limited to state-only requirements for controlling air contaminants. Further, as stated in the last sentence, the commission will not exempt sources from compliance with any federal requirements.

We look forward to working with you and your staff in this endeavor. If you have any questions, or if we can be of further assistance please feel free to contact Ms. Jennifer Sidnell of my staff at 512/239-6663 or Mr. Ramiro Garcia of my staff at 512/239-4481.

Sincerely,

John F. Steib, Jr., Deputy Director
Office of Compliance and Enforcement
Texas Commission Environmental Quality

EXHIBIT D

Public Comments Regarding Draft Title V Permit No. O31

Environmental Integrity Project
1303 San Antonio, Suite 200
Austin, Texas 78701
Phone: (512) 637-9477
Fax: (512) 584-8019
www.environmentalintegrity.org

June 13, 2013

Ms. Bridget C. Bohac *Via Fax*
Chief Clerk, MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax: (512) 239-3311

Re: Comments Regarding a Minor Revision to Federal Title V Operating Permit O31 for Southwestern Electric Power Company's H.W. Pirkey Power Plant, Harrison County, Texas

Dear Ms. Bohac:

Enclosed, please find Environmental Integrity Project's comments regarding the above-referenced matter.

Sincerely,

Gabriel Clark-Leach
ENVIRONMENTAL INTEGRITY PROJECT

Enclosures

cc: Mr. Jeff Robinson, Chief, Air Permits Section, U.S. EPA Region 6
Ms. Stephanie Kordzi, Environmental Engineer, Air Permits Section, U.S. EPA Region 6

ENVIRONMENTAL INTEGRITY PROJECT

1303 San Antonio Street, Suite 200
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p: 512-637-9477 f: 512-584-8019
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June 13, 2013

Ms. Bridget C. Bohac
Chief Clerk, MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax: (512) 239-3311

Via Fax

COMMENTS REGARDING A MINOR REVISION TO FEDERAL TITLE V OPERATING PERMIT O31 FOR SOUTHWESTERN ELECTRIC POWER COMPANY'S H.W. PIRKEY POWER PLANT, HARRISON COUNTY, TEXAS

Title V Permit No. O31 ("Title V Permit") authorizes the operation of American Electric Power Company's ("AEP") Southwestern Electric Power Company ("SWEPCO") H.W. Pirkey Power Plant, an approximately 721 megawatt coal and lignite-fired power plant located in Harrison County, Texas. On May 14, 2013, the Executive Director of the Texas Commission on Environmental Quality ("TCEQ") publicly announced issuance of a draft permit for and recommended approval of SWEPCO's application for a "minor revision" to the Title V Permit.[1] The minor revision incorporates changes made to the power plant's State New Source Review permit (Permit No. 6269) in February 2012 (the "MSS Amendment") authorizing emissions from planned maintenance, startup, and shutdown activities at the power plant as federally enforceable conditions of the Title V Permit.[2]

I. INTRODUCTION

Environmental Integrity Project appreciates this opportunity to comment on the proposed minor revision to SWEPCO's Title V Permit. The Clean Air Act's Title V permit program should be implemented by Texas so as to improve compliance with, and enforcement of, federal air quality requirements. Correctly implemented, the Title V program "will enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements. Increased source accountability and better enforcement should result."[3] The proposed minor revision to SWEPCO's Title V Permit fails to meet these objectives. In particular, incorporation of the MSS Amendment into the Title

[1] The public announcement was made on the Commission's website and may be accessed electronically at: http://www.tceq.texas.gov/assets/public/permitting/air/Title_V/announcements/minor.htm#00031
[2] Amended Permit No. 6269 and the Executive Director's Technical Review Document for the MSS Amendment are provided as Attachments 1 and 2 to these comments.
[3] 57 Fed. Reg. 32,251 (July 21, 1992).

V Permit: (1) improperly relaxes and undermines the enforceability of applicable Texas State Implementation Plan ("SIP") limits; and (2) undermines the enforceability of permit limits by failing to establish specific reliable monitoring requirements to measure planned MSS emissions.

II. ISSUES

A. The TCEQ may not modify SIP requirements without EPA approval

The Clean Air Act establishes a system where both states and EPA have roles in developing, implementing, and enforcing regulations necessary to protect air quality. EPA is charged with, among other things, the task of establishing National Ambient Air Quality Standards ("NAAQS") for certain "criteria" pollutants. NAAQS reflect ambient air concentration levels necessary to adequately protect human health and public welfare. States are charged with the task of developing plans for controlling air quality within their borders, such that the NAAQS will be maintained and protected. These state implementation plans are submitted to EPA for approval. Once approved, a SIP becomes federal law, enforceable by the state, EPA, and citizens.[4] While the Clean Air Act recognizes that states will often need to revise their SIPs, SIP revisions may not be effected without EPA's approval.[5]

The Texas SIP includes many different kinds of provisions, from emission limits that apply to broad classes of sources to rules concerning the procedures the TCEQ must follow when issuing NSR permits.[6] The Clean Air Act forbids states from issuing permits, even pursuant to a SIP-approved permitting program, that modify or weaken SIP requirements with respect to any stationary source without approval of the EPA.[7] Emissions standards and limitations established

[4] *Union Elec. Co. v. EPA*, 515 F.2d 206, 211 (8th Cir. 1975) ("Upon approval or promulgation of a state implementation plan, the requirements thereof have the force and effect of federal law and may be enforced by the Administrator in federal courts.").

[5] 42 U.S.C. § 7410(l) ("Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . ., or any other applicable requirement of the chapter.); 40 C.F.R. § 51.105 ("Revisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part.").

[6] 40 C.F.R. § 52.2270 lists provisions included in the Texas SIP.

[7] 42 U.S.C. § 7410(i) ("Except for a primary nonferrous smelter order under section 7419 of this title, a suspension under subsection (f) or (g) of this section (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d) of this title (relating to compliance orders), a plan promulgation under subsection (c) of this section, or a plan revision under subsection (a)(3) of this section, no order, suspension, plan revision, or other action modifying any requirement of an applicable implantation plan may be taken with respect to any stationary source by the State or by the Administrator."); *Approval and Promulgation of Implementation Plans; Excess Emissions During Startup Shutdown, Maintenance, and Malfunction Activities*, 75 Fed Reg. 68,989, 68,995 (November 10, 2010) ("However, we note that the State cannot issue any NSR SIP permit that has a less stringent emission limit than already is contained in the approved SIP.").

as part of a state's SIP remain federally enforceable until EPA approves revisions to the SIP.[8] Thus, Texas cannot amend its SIP, "unless and until the EPA approve[s] any changes."[9] To hold otherwise would give Texas the authority to unilaterally amend its SIP, rendering the EPA approval process meaningless.[10]

On February 3, 2012, the TCEQ Executive Director issued the MSS Amendment, which purports to authorize PM emissions of up to 1,457 lbs/hour and opacity in excess of 20 percent during planned MSS activities. The MSS Amendment more than doubles the pre-existing emission limit of 682 lbs/hour and allows emissions of PM and opacity in excess of the applicable SIP limits during planned MSS activities.[11] Thus, these changes amount to a source-specific SIP revision that requires public notice and EPA approval.[12] Nonetheless, the Executive Director issued the MSS Amendment without EPA approval or public notice.[13] Notwithstanding that it was improper for the Executive Director to issue the MSS Amendment as it did, the amended PM and opacity limits contained in that permit, nonetheless, may not be incorporated into SWEPCO's Title V Permit as federally enforceable conditions.[14]

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[8] *See General Motors Corp. v. U.S.*, 496 U.S. 530, 540 (1990) (citing 42 U.S.C. § 7410(a)) ("There can be little or no doubt that the existing SIP remains the 'applicable implementation plan' even after the State has submitted a proposed revision."); 40 C.F.R. § 51.105.

[9] *Safe Air for Everyone v. EPA*, 488 F.3d 1088, 1097 (9th Cir. 2007).

[10] *United States v. Murphy Oil*, 143 F. Supp. 2d 1054, 1100-01 (W.D. Wis. 2001); *Sierra Club v. Tenn. Valley Auth.*, 430 F.3d 1337, 1346-51 (11th Cir. 2005).

[11] Permit No. 6269, Special Condition 18(B) ("Periods of opacity greater than 20 percent from planned online and offline maintenance activities identified in Attachment A or B are authorized for no more than 600 minutes in a calendar year.") and Maximum Allowable Emission Rates Table. The applicable SIP opacity limit is listed at 30 Tex. Admin. Code § 111.111(a)(2)(B) ("Opacity shall not exceed 20% averaged over a six-minute period for any source on which construction was begun after January 31, 1972."); 61 Fed. Reg. 20,732 (May 8, 1996) (approving 101.111(a) emission limits into the Texas SIP); 30 Tex. Admin. Code § 111.153(b); 74 Fed. Reg. 19144 (approving 101.153 emission limits into the Texas SIP); Permit No. 6269, Special Condition 18(D) ("For periods of MSS other than those subject to Paragraphs A-C of this condition, 30 TAC § 111.111, 111.153, and Chapter 101, Subchapter F apply.").

[12] *See*, e.g., *U.S. v. Ford Motor Co.*, 814 F.2d 1099, 1102 (6th Cir. 1987) ("Because the proposed Order reflects limits that are different than those in the currently approved Michigan SIP, the order must be submitted to EPA as a revision to the SIP."); *Tenn. Valley Auth*., 430 F.3d at 1346-47 ("The 2% *de minimis* rule [which provided a safe harbor from 20% opacity limit if excess emissions do not exceed 2% of source's quarterly operating hours] effectively revises the opacity limitation contained in the SIP—a revision by any other name is still a revision—and an unapproved revision of any part of a SIP is invalid under § 110(i) of the Clean Air Act."); *United States v. General Dynamics Corp.*, 755 F. Supp. 720, 722-24 (N.D. Tex. 1991) ("Because the effect of the agreed board order is to raise the emissions limitations set by the Texas SIP, the order requires approval by . . . [EPA] to be effective. Unless and until such approval is given, defendant must abide by the limitations of the Texas SIP."); 75 Fed. Reg. 68,995 ("Should the state wish to issue a NSR SIP permit addressing periods of excess emissions during planned MSS activities that will not meet all of the requirements in the Texas SIP, then that particular NSR SIP permit must be submitted by the State to EPA for approval as a source-specific SIP revision.").

[13] Attachment 2. Even though the MSS Amendment would, if effective, authorize drastic increases in hourly PM emissions, and establish PM and opacity limits that are less stringent than applicable SIP limits, the Executive Director took the position that the authorized emissions rate increases were below the TCEQ's *de minimis* levels and no public notice was required.

[14] 30 Tex. Admin. Code § 111.113, which is part of the Texas SIP, does allow the Commission, in certain limited circumstances, to establish an opacity limit that is less stringent than the 30 Tex. Admin. Code § 111.111(a)(2)(B)

B. Incorporation of the MSS Amendment into SWEPCO's Title V Permit is not a minor revision

Texas's federally approved Title V program provides that any changes to a Title V permit that violate any applicable standard or make significant changes to monitoring, reporting, or recordkeeping requirements may not be processed as a "minor" revision.[15] Because the draft permit includes these kinds of changes, it may not be processed as a minor revision.

i. The draft permit violates applicable requirements

Changes to a Title V permit that "violate any applicable requirement" are not minor revisions.[16] The proposed revision to SWEPCO's Title V Permit violates Clean Air Act Title I SIP revision requirements, Title V requirements, and the Texas SIP, because it incorporates opacity and PM limits that are less stringent than applicable Texas SIP limits as federally enforceable conditions in the Title V Permit without providing proper public notice or obtaining EPA approval.[17]

ii. The draft permit makes significant changes to existing monitoring requirements

Title V permit revisions that make significant changes to monitoring, reporting, or recordkeeping requirements are not minor revisions.[18] Incorporation of the MSS Amendment into SWEPCO's Title V Permit will significantly relax previously applicable monitoring requirements. For example, the MSS Amendment allows SWEPCO to use *any* method it deems "appropriate" to calculate planned MSS emissions that are not monitored by CEMS.[19] Indeed, the MSS Amendment allows use of data from other facilities in place of Pirkey plant data to calculate planned emissions during planned MSS activities at the Pirkey plant.[20] This vague monitoring condition, which affords SWEPCO unfettered discretion to determine how it will

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limit. However, these alternative limits may be established only after an applicant makes specific demonstrations and the Commission holds an adjudicative hearing. Neither condition was met in this case.

[15] 30 TEX. ADMIN. CODE §122.215; *See also* 40 C.F.R. § 70.7(e)(2).

[16] 30 TEX. ADMIN. CODE § 122.215(1).

[17] 42 U.S.C. § 7410(l) ("Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing."); 40 CFR § 51.105 ("Revisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part.").

[18] 30 TEX. ADMIN. CODE § 122.215(2).

[19] Permit No. 6269, Special Condition 16(B) ("In lieu of using the emissions of the pollutant during the planned MSS activity as represented in the planned MSS permit application to calculate . . . [planned MSS] emissions [that are not monitored by a CEMS], the permit holder may determine the emissions of the pollutant during the planned MSS activity using an appropriate method, including but not limited to, any of the methods described . . . below[.]").

[20] *Id*. at Special Condition 16(B)(2) ("Use of emissions data measured (by a CEMS or during emissions testing) during the same type of planned MSS activity occurring at or on a similar facility, and correlation of that data with the facility's relevant operating parameters . . . [is an acceptable method for determining planned MSS emissions at the Pirkey plant].").

calculate planned MSS emissions from non-CEMS sources to demonstrate compliance with emission limits, is different from and less stringent than the monitoring conditions that apply to measure emissions during the plant's normal operations. Thus, incorporation of the MSS Amendment significantly changes applicable monitoring requirements and is not a minor revision.

C. The Draft Permit fails to assure compliance with applicable SIP limits

Title V permits must include emissions limitations that assure compliance with all applicable requirements, including Texas SIP emission limits.[21] The Texas SIP includes opacity and PM limits that apply to the Pirkey power plant. The MSS Amendment, which the Executive Director proposes to incorporate into SWEPCO's Title V Permit, establishes opacity and PM limits that area less stringent than these SIP limits. Incorporation of these less stringent limits as federally enforceable conditions of SWEPCO's Title V Permit undermines the enforceability of the SIP limits. Additionally, the MSS Amendment monitoring requirements the draft permit incorporates are completely vague and undermine the enforceability of applicable emission limits.

III. CONCLUSION

In 2012, the Executive Director issued the MSS Amendment, which purports to relax applicable SIP limits, without any public notice. The draft permit incorporates these weaker limits into the operating permit as federally enforceable conditions. Incorporation of the MSS Amendment is not a minor revision. It is a significant permit revision that includes a SIP revision. Thus, incorporation of the MSS Amendment into the Title V Permit may only occur after members of the public receive adequate notice and an opportunity to comment on it, *and* EPA approves the changed PM and opacity limits as source-specific revisions to the Texas SIP. Until EPA approves a SIP revision for the Pirkey power plant and the Executive Director revises the draft permit to include specific, reliable monitoring requirements for planned MSS emissions sufficient to ensure that permit limits are enforceable, the draft permit may not be issued.

Thank you for your attention to this matter. Please call me at (512) 637-9478 should you have any questions.

[21] 42 U.S.C. § 7661c(a); 40 CFR § 70.6(a).

Sincerely,

Gabriel Clark-Leach
Environmental Integrity Project
1303 San Antonio Street, #200
Austin, Texas 78701

ATTACHMENT 1

Special Conditions

Permit Number 6269

1. Operation, monitoring, recording, and testing of the facility shall comply with the U.S. Environmental Protection Agency regulations on Standards of Performance for New Stationary Sources existing for Fossil-Fired Steam Generators in Title 40 Code of Federal Regulations Part 60.

2. Upon request by the Executive Director of the Texas Commission on Environmental Quality (TCEQ), or any local air pollution control program having jurisdiction, the holder of this permit shall provide a sample and/or an analysis of the fuel(s) utilized in this facility or shall allow air pollution control agency representatives to obtain a sample for analysis.

3. Disposal of ash must be accomplished in a manner which will minimize the ash from becoming airborne.

4. This permit covers only those sources of emissions listed in the attached table entitled "Emission Sources - Maximum Allowable Emission Rates," and those sources are limited to the emission limits and other conditions specified in that attached table.

Cold Solvent Degreaser Operating Conditions (Emission Point No. [EPN] 13) (10/03)

5. The unit shall be equipped with a cover which is closed whenever parts are not being handled in the cleaner.

6. A permanent label summarizing the operating requirements in Special Condition No. 7 of this paragraph shall be attached to the cleaner in a conspicuous location near the operator.

7. The operating procedures shall be as follows:

   A. Waste solvent shall not be disposed of or transferred to another party such that the waste solvent can evaporate into the atmosphere. Waste solvents shall be stored only in covered containers.

   B. The degreaser cover shall be kept closed whenever parts are not being handled in the cleaner.

   C. Porous or absorbent materials, such as cloth, leather, wood, or rope shall not be degreased.

New Fly Ash Silo Operating Conditions (EPN 2) (10/03)

8. Operating conditions for the new fly ash silo constructed as represented in the amendment application dated July 2, 2003 shall be as follows:

   A. The throughput for the new silo shall be limited to 400 tons per day.

   B. A visible and/or audible warning device shall be installed on the new fly ash silo to warn operators that the silo is full so that it will not be overloaded at any time. A visible and/or audible warning device shall be installed in conjunction with scales at the loading facility to warn operators during loading operations that the truck trailer is full so that it will not be overloaded at any time.

   C. Spillage of fly ash used in the silo unloading shall be cleaned up or controlled to maintain compliance with TCEQ rules and regulations.

Addition Of Soda Ash To Lignite

9. Soda ash, sodium carbonate (Na_2CO_3), may be added to the lignite fuel up to 0.08 percent to maintain Electrostatic Precipitator performance via the typical stages between the delivery and the burning of lignite. Those stages include the lignite handing area, silos, bunkers, conveyors and pulverizers. The soda ash must be of a composition in which particulate matter is maintained below nuisance levels. **(01/06)**

Maintenance, Startup, and Shutdown (MSS) (02/12)

10. This permit authorizes the emissions from the planned MSS activities listed in Attachment A, Attachment B, or the MAERT attached to this permit. Attachment A identifies the inherently low emitting (ILE) planned maintenance activities that this permit authorizes to be performed. Attachment B identifies the planned maintenance activities that are non-ILE planned maintenance activities that this permit authorizes to be performed.

11. When a planned maintenance activity identified in Attachment B is associated with a volatile organic compound (VOC) liquid storage facility and may result in VOC emissions from that facility, the permit holder shall not open that facility to the atmosphere in connection with the planned maintenance activity until the VOC liquids are removed from that facility to the maximum extent practicable.

12. No vacuum pump on a vacuum truck that is used to move solids (such as ash) during planned maintenance activities shall be operated unless the vacuum system exhaust is controlled by a filtering system.

13. The holder of this permit shall minimize emissions during planned MSS activities by operating the facility and associated air pollution control equipment in accordance with good air pollution control practices, safe operating practices, and protection of the facility and associated air pollution control equipment.

14. Emissions during planned startup and shutdown activities will be minimized by limiting the duration of operation in planned startup and shutdown modes as follows:

    A. A planned startup of the boilers begins when fans are placed in service for the initiating of combustion and is complete when the boiler has achieved the lowest sustainable load on lignite for at least 60 consecutive minutes while coal is being fired. Normal startup shall not exceed 2,880 minutes. An extended startup is allowed for greater than 2,880 minutes after a major outage, but the cumulative annual minutes of extended startups shall not exceed 18,000 minutes.

    B. A planned shutdown of the boilers begins when the boiler has dropped below the lowest sustainable load for at least 30 consecutive minutes and is complete 24 hours after combustion has ceased. Each shutdown shall not exceed 2,880 minutes.

15. Compliance with the emissions limits for planned MSS activities identified in the MAERT attached to this permit may be demonstrated as follows.

    A. For each pollutant emitted during ILE planned maintenance activities, the permit holder shall annually confirm the continued validity of the estimated potential to emit represented in the permit application for all ILE planned maintenance activities. The total emissions from all ILE planned maintenance activities (See Attachment A) shall be considered to be no more than the estimated potential to emit for those activities that are represented in the permit application.

    B. For each pollutant emitted during non-ILE planned maintenance activities (See Attachment B) whose emissions are measured using a continuous emission monitoring system (CEMS), as per Special Condition No. 16A, the permit holder shall do the following for each calendar month.

        (1) Compare the pollutant's short-term (hourly) emissions during planned maintenance activities as measured by the CEMS to the applicable short-term planned MSS emissions limit in the MAERT.

C. For each pollutant emitted during non-ILE planned maintenance activities (See Attachment B) whose emissions occur through a stack, but are not measured using CEMS, as per Special Condition 16A, the permit holder shall do the following for each calendar month.

(1) Determine the total emissions of the pollutant through the stack that result from such non-ILE planned maintenance activities in accordance with Special Condition No. 16B.

D. For each pollutant emitted during non-ILE planned maintenance activities (see Attachment B) whose emissions do not occur through a stack, the permit holder shall do the following for each calendar month.

(1) Determine the total emissions of the pollutant from such non-ILE planned maintenance activities in accordance with Special Condition No. 16B.

(2) Once monthly emissions have been determined in accordance with Special Condition No. 15D(1) for 12 months after the MSS permit amendment has been issued, the permit holder shall compare the sum of the rolling 12-month emissions for the pollutant for all non-ILE planned maintenance activities to the annual EPN MSS-FUG emissions limit for the pollutant in the MAERT.

16. The permit holder shall determine the emissions during planned MSS activities for use in Special Condition No. 15 as follows.

A. For each pollutant whose emissions during normal facility operations are measured with a CEMS that has been certified to measure the pollutant's emissions over the entire range of a planned MSS activity, the permit holder shall measure the emissions of the pollutant during the planned MSS activity using the CEMS.

B. For each pollutant not described in Special Condition No. 16A, the permit holder shall calculate the pollutant's emissions during all occurrences of each type of planned MSS activity for each calendar month using the frequency of the planned MSS activity identified in work orders or equivalent records and the emissions of the pollutant during the planned MSS activity as represented in the planned MSS permit application. In lieu of using the emissions of the pollutant during the planned MSS activity as represented in the planned MSS permit application to calculate such emissions, the permit holder may determine the emissions of the pollutant during the planned MSS activity using an appropriate method, including but not limited to, any

of the methods described in paragraphs 1 through 4 below, provided that the permit holder maintains appropriate records supporting such determination:

(1) Use of emission factor(s), facility-specific parameter(s), and/or engineering knowledge of the facility's operations.

(2) Use of emissions data measured (by a CEMS or during emissions testing) during the same type of planned MSS activity occurring at or on a similar facility, and correlation of that data with the facility's relevant operating parameters, including, but not limited to, electric load, temperature, fuel input, and fuel sulfur content.

(3) Use of emissions testing data collected during a planned MSS activity occurring at or on the facility, and correlation of that data with the facility's relevant operating parameters, including, but not limited to, electric load, temperature, fuel input, and fuel sulfur content.

(4) Use of parametric monitoring system data applicable to the facility.

17. With the exception of the emission limits in the MAERT attached to this permit, the permit conditions relating to planned MSS activities do not become effective until 180 days after issuance of the permit amendment that added such conditions.

18. Opacity greater than 20 percent from the boiler is authorized when the permit holder complies with the planned MSS duration limitations in Special Condition No. 14 and the applicable work practices identified below.

A. Opacity during planned startup and shutdown activities shall be minimized by employing the following work practices: During planned startup and shutdown activities, the permit holder shall comply with the parts of the boiler and ESP manufacturer's operating procedures or the procedures in the permittee's written Standard Operating Procedures manual that impact opacity, and shall operate the boiler and ESP in a manner consistent with those procedures to minimize opacity by placing the ESP into service as soon as practical during planned startups or removing the ESP from service as late as possible during planned shutdowns. The boiler and ESP manufacturer's operating procedures or written Standard Operating Procedure manual shall be located on-site and available to the TCEQ regional investigator.

B. Periods of opacity greater than 20 percent from planned online and offline maintenance activities identified in Attachment A or B are authorized for no more than 600 minutes in a calendar year.

C. The permit holder shall keep records to identify periods of planned MSS, the opacity measured by the continuous opacity monitoring system (COMS) for the duration of the planned startups and shutdowns, and the planned maintenance activities identified in Attachments A or B, and the work practices in Special Condition No. 18A followed during the planned MSS activities for the purpose of demonstrating compliance with this permit special condition.

D. For periods of MSS other than those subject to Paragraphs A - C of this condition, 30 TAC § 111.111, 111.153, and Chapter 101, Subchapter F apply.

Dated February 3, 2012

ATTACHMENT A

Permit Number 6269

Inherently Low Emitting (ILE) Planned Maintenance Activities

Planned Maintenance Activity	Emissions					
	NH_3 /urea	VOC	NO_x	CO	PM	SO_2
Water-based washing		x				
Miscellaneous particulate filter maintenance[1]					x	
Degassing for maintenance of storage vessels storing material with vapor pressure <0.5 psia, or material with vapor pressure > 0.5 psia that does not require clearing of the vessels to allow for entry of personnel		x				
Boiler general maintenance[2]					x	
Management of sludge from pits, ponds, sumps, and water conveyances[3]		x				
Organic chemical usage		x				
Inspection, repair, replacement, adjusting, testing, and calibration of analytical equipment, process instruments including sight glasses, meters, gauges, and CEMS.		x	x	x		x
Deslagging of boiler[4]		x	x	x	x	
Material handling system maintenance[5]					x	
Small equipment and fugitive component repair/replacement in VOC and NH_3 service[6]	x	x				

Notes:

1. Includes, but is not limited to, baghouse filters, ash silo/transfer filters, coal handling filters, process-related building air filters, and combustion turbine air intake filters.
2. Includes pre-heater basket handling and maintenance, refractory change-out, fan maintenance and balancing, damper, air heater, and soot blower maintenance, and any other general boiler maintenance that does not exceed the worst-case emissions representation in the application.
3. Includes, but is not limited to, management by vacuum truck/dewatering of materials in open pits and ponds, sumps, tanks, and other closed or open vessels. Materials managed include water and sludge mixtures containing miscellaneous VOCs such as diesel, lube oil, and other waste oils.
4. Includes, but is not limited to, explosive blasting, clinker shooting, and other boiler deslagging activities; does not include dry abrasive blasting that may occur in boilers.
5. Material handling system equipment includes, but is not limited to, silos, transport systems, coal bunkers, coal crushing equipment, coal handling, nuvafeeders, hoppers, FGD sludge handling system. Materials handled include coal, ash, limestone, gypsum, and sorbents.
6. Includes, but is not limited to, (i) repair/replacement of pumps, compressors, valves, pipes, flanges, transport lines, filters and screens in natural gas, fuel oil, diesel oil, ammonia, lube oil, and gasoline service, (ii) vehicle and mobile equipment maintenance that may involve small VOC emissions, such as oil changes, transmission service, and hydraulic system service, and (iii) off-line NO_x control device maintenance (including maintenance of the anhydrous ammonia systems and aqueous ammonia systems associated with SCR systems and SNCR systems).

Dated February 3, 2012

ATTACHMENT B

Permit Number 6269

Non-ILE Planned Maintenance Activities

Planned Maintenance Activity	EPN	Emissions					
		NH_3 /urea	VOC	NO_x	CO	PM	SO_2
Combustion optimization[1]	1		x	x	x	x	x
Vacuum truck solids loading[2]	MSS-FUG					x	
Vacuum truck solids unloading	MSS-FUG					x	
Degassing for maintenance of storage vessels storing gasoline or other material with vapor pressure >0.5 psia that requires clearing of the vessels to allow for entry of personnel	MSS-FUG	x	x				
Flue Gas Conditioning System maintenance	1	x					
Use of fans during maintenance - unit offline	1	x				x	

Notes:

1. Includes, but is not limited to (i) leak and operability checks, (ii) balancing, and (iii) tuning activities that occur during seasonal tuning or after the completion of initial construction, a burner change-out, a major repair, maintenance to a burner, or other similar circumstances.
2.
3. Includes site-wide solids vacuuming operations (e.g. baghouse, ESP, ducts, furnace, loop seals, stripper coolers, and airlocks).

Dated February 3, 2012

Emission Sources - Maximum Allowable Emission Rates

Permit Number 6269

This table lists the maximum allowable emission rates and all sources of air contaminants on the applicant's property covered by this permit. The emission rates shown are those derived from information submitted as part of the application for permit and are the maximum rates allowed for these facilities, sources, and related activities. Any proposed increase in emission rates may require an application for a modification of the facilities covered by this permit.

Air Contaminants Data

Emission Point No. (1)	Source Name (2)	Air Contaminant Name (3)	Emission Rates	
			lbs/hour (4)	TPY (5)
1	Unit 1 Boiler Stack	NO_x	1,543	5,745
		CO	11,144	33,816
		SO_2	8,180	35,829
		VOC	18	65
		PM/PM_{10}	682	2,987
		$PM/PM_{10}/PM_{2.5}$ (MSS)	1,457	-
		H_2SO_4	8.6	37.8
		HCl	9.15	36.05
		HF	10.77	42.45
		Hg (6)	0.340	1.488
2	Fly Ash Handling System (7)	PM/PM_{10}	7.2	31.5
13	Cold Solvent Degreaser	VOC	0.96	0.7
MSS-FUG	MSS Fugitives	VOC	94.26	0.65
		$PM/PM_{10}/PM_{2.5}$	7.45	3.48
		NO_x	0.05	0.01
		CO	0.22	0.04
		SO_2	<0.01	<0.01
		NH_3	26.81	0.22

Emission Sources - Maximum Allowable Emission Rates

(1) Emission point identification - either specific equipment designation or emission point number from plot plan.
(2) Specific point source name. For fugitive sources, use area name or fugitive source name.
(3) VOC - volatile organic compounds as defined in Title 30 Texas Administrative Code § 101.1
NO_x - total oxides of nitrogen
SO_2 - sulfur dioxide
PM - total particulate matter, suspended in the atmosphere, including PM_{10} and $PM_{2.5}$, as represented
PM_{10} - total particulate matter equal to or less than 10 microns in diameter, including $PM_{2.5}$, as represented
$PM_{2.5}$ - particulate matter equal to or less than 2.5 microns in diameter
CO - carbon monoxide
H_2SO_4 - sulfuric acid mist
HCl - hydrogen chloride
HF - hydrogen fluoride
Hg - mercury
NH_3 - ammonia
(4) Planned maintenance, startup, and shutdown (MSS) lbs/hour emissions for all pollutants are authorized even if not specifically identified as MSS. During any clock hour that includes one or more minutes of planned MSS, that pollutant's maximum hourly emission rate shall apply during that clock hour.
(5) Compliance with annual emission rates is based on a 12-month rolling period. Annual emission rates for each source include planned MSS emissions.
(6) Mercury lb/hr levels are based on a 30-day rolling average.
(7) The fly ash system includes emissions from the two silo loadouts, the sludge pile, the sludge/flyash landfill, and the pug mill vent pipe.

Date: February 3, 2012

ATTACHMENT 2

Permit Amendment
Source Analysis & Technical Review

Company	**Southwestern Electric Power Company**	Permit Number	**6269**
City	**Hallsville**	Project Number	**162580**
County	**Harrison**	Account Number	**HH-0037-F**
Project Type	**Amend**	Regulated Entity Number	**RN100214287**
Project Reviewer	**Mr. Sean O'Brien**	Customer Reference Number	**CN600126767**
Site Name	**H W Pirkey Power Plant**		

Project Overview

AEP Pirkey Power Plant is authorizing planned maintenance, startup, and shutdown (MSS).

Emission Summary

Air Contaminant	Current Allowable Emission Rates (tpy)	Proposed Allowable Emission Rates (tpy)	Change in Allowable Emission Rates (tpy)
PM	3018.5	3022.0	3.50
PM_{10}	3018.5	3022.0	3.50
$PM_{2.5}$	3018.5	3022.0	3.50
VOC	65.7	66.4	0.70
NO_X	5745	5745.01	0.01
CO	33816	33816.04	0.04
SO_2	35829	35829.01	0.01
Hg	1.49	1.49	0.00
NH_3	0	0.22	0.22

Compliance History Evaluation - 30 TAC Chapter 60 Rules

A compliance history report was reviewed on:	**1/19/2012**
Compliance period:	**1/19/2012-1/5/2006**
Site rating & classification:	**0.11, avg**
Company rating & classification:	**1.75, avg**
If the rating is 40<RATING<45, what was the outcome, if any, based on the findings in the formal report:	**n/a**
Has the permit changed on the basis of the compliance history or rating?	**no**

Public Notice Information - 30 TAC Chapter 39 Rules

Rule Citation	Requirement	
39.403	Is Public Notice Required?	**No**
	If no, give reason:	**increases are below thresholds in 30 TAC 39.402(a)(3)**

Construction Permit & Amendment Requirements - 30 TAC Chapter 116 Rules

Rule Citation	Requirement	
116.111(a)(2)(G)	Is the facility expected to perform as represented in the application?	**yes**
116.111(a)(2)(A)(i)	Are emissions from this facility expected to comply with all TCEQ air quality Rules & Regulations, and the intent of the Texas Clean Air Act?	**yes**
116.111(a)(2)(B)	Emissions will be measured using the following method:	**Continuous emissions monitoring system (CEMS) will measure NO_X, SO_2, opacity, and diluent gases from the utility boiler. Emissions of other**

Rule Citation	Requirement	
		pollutants will be calculated based on emission factors.
	Comments on emission verification:	
116.111(a)(2)(D)	Subject to NSPS?	**yes**
	Subparts **A** & **Da**	
116.111(a)(2)(E)	Subject to NESHAP?	**no**
	Subparts &	
116.111(a)(2)(F)	Subject to NESHAP (MACT) for source categories?	**yes**
	Subparts **A** & **UUUUU**	
116.111(a)(2)(H)	**Nonattainment review applicability:** not in a nonattainment county	
116.111(a)(2)(I)	**PSD review applicability:** no modification is occurring	
116.111(a)(2)(L)	Is Mass Emissions Cap and Trade applicable to the new or modified facilities?	**no**
	If yes, did the proposed facility, group of facilities, or account obtain allowances to operate:	**n/a**
116.140 - 141	Permit Fee: $ **900**	Fee certification:yes

Title V Applicability - 30 TAC Chapter 122 Rules

Rule Citation	Requirement
122.10(13)	**Title V applicability:** Title V permit O31
122.602	**Periodic Monitoring (PM) applicability:** Periodic monitoring is applicable because this site is subject to 30 TAC Chapter 122. Periodic monitoring of planned MSS activities in the form of recordkeeping is used for the ILE activities listed in Attachment A consisting of an annual confirmation of the estimated PTE represented for those ILE activities. Recordkeeping and CEMS (for some emissions) are used for periodic monitoring of all other planned MSS activities in which emissions are determined based on the duration and frequency of each event.
122.604	**Compliance Assurance Monitoring (CAM) applicability:** The site is a major source with CAM requirements in their existing Title V permits. Existing CAM, including CEMS and COMS, may be used for sources during periods of planned MSS.

Request for Comments

Received From	Program/Area Name	Reviewed By	Comments
Region:	**5**	**Jason Sutherland**	**minor numbering issues**
City:	**Hallsville**		
County:	**Harrison**		
Toxicology:			
Compliance:			
Legal:			
Comment resolution and/or unresolved issues:			**issues are resolved**

Process/Project Description

AEP Pirkey Power Plant is a lignite-fired power plant that produces electrical power from steam. Flue gas from the utility boiler is routed through an electrostatic precipitator (ESP) and flue gas desulfurization system (FGD) which removes fly ash and sulfur dioxide from the

flue gas before the flue gas is exhausted through the stack to the atmosphere. Fly ash removed by the ESP is collected in hoppers and pneumatically conveyed to storage silos prior to loading for disposal or sales. AEP Pirkey Power Plant utilizes low NO_x burners and over fired air system to minimize emissions of nitrogen oxides.

Planned MSS activities and associated emissions at this site are being authorized in this permit amendment. This permit amendment will not change the existing annual allowable emissions for the boiler since the existing permit allowable is sufficient to include emissions due to MSS activities. The hourly emission rate for particulate from the boiler will increase to reflect planned MSS activities. The amendment also will authorize an increase in allowable emissions associated with EPN MSS-FUG, which are general maintenance activities at the site. Short-term and annual emissions were quantified for these MSS activities using appropriate calculation methodologies. The maintenance activities associated with these emissions are listed in the permit (Attachments A and B) and are classified as either planned inherently low emitting (ILE) maintenance activities or planned non-ILE maintenance activities. The aggregate MSS emissions from all the miscellaneous MSS activities that are not emitted through a stack are included in the permit MAERT under the EPN MSS-FUG.

Several MSS related activities at the site are currently authorized under PBRs or as de minimis sources (30 TAC §116.119), and will continue to operate under these authorizations. These activities are not listed for reference purposes in the permit; however, they are identified in the permit application.

Special Condition Nos. 10 through 18 and Attachments A and B were added to the permit as a result of this permit amendment. These special conditions identify authorized MSS activities, related work practices that will minimize emissions, and monitoring and record keeping requirements necessary to demonstrate compliance.

Pollution Prevention, Sources, Controls and BACT- [30 TAC 116.111(a)(2)(C)]

During planned periods of MSS, control devices and process equipment are operated outside the optimal range they were designed to work most effectively and it is technically infeasible to meet the primary BACT emission rates. Therefore, secondary BACT limits are necessary during these periods. These secondary BACT requirements are designed to limit emissions during planned MSS activities and are included in Special Condition Nos. 10 through 18. Special Condition No. 18 specifies limitations and conditions to minimize emissions and opacity from the main utility boiler when the ESP is not energized and not operational. Special Condition No. 14 defines the startup and shutdown periods for the utility boiler and limits these periods and those of maintenance to minimize the amount of time the equipment is outside the optimal performance mode. Emissions resulting from MSS activities must be minimized by using good air pollution control practices and safe operating practices. The newly added special conditions also outline steps for demonstrating compliance with the emission limits for other planned general maintenance activities at the site which include verifying all ILE activities on an annual basis and evaluating emissions from non-ILE activities for each calendar month. The authorized ILE and non-ILE planned general maintenance activities at the site listed in Attachments A and B result in only small quantities of emissions, generally occur infrequently, and generally last for a relatively short period of time. Minimizing emissions using good air pollution control procedures and best management practices are considered BACT for these activities.

Impacts Evaluation - 30 TAC 116.111(a)(2)(J)

Was modeling conducted? Yes	Type of Modeling:	**SCREEN3**
Will GLC of any air contaminant cause violation of NAAQS?		**no**
Is this a sensitive location with respect to nuisance?		**no**
[§116.111(a)(2)(A)(ii)] Is the site within 3000 feet of any school?		**no**
Additional site/land use information: rural		

Summary of Modeling Results

An impacts analysis was performed to confirm that newly quantified emission rates for existing emissions from existing MSS activities would not cause an exceedance of the NAAQS, even though the county in which the power plant is located is attainment. Additionally, newly quantified emissions for existing non-criteria pollutants associated with MSS were also evaluated to insure off-property impacts would not endanger human health or the environment. The impacts analysis was performed only for pollutants that had a permit allowable emission increase as a result of this MSS amendment.

The MSS amendment will increase the one hour allowable emission rate from the utility boiler for particulate matter. Annual allowable emissions from the main utility boiler were not changed and were therefore not evaluated. Increases in short-term emissions rates from the

utility boiler for particulate matter were evaluated and compared to the NAAQS. Emission concentrations associated with MSS emission rates from the utility boiler were screen modeled and a background concentration was added to the result. MSS emission rates were adjusted to particle sizing for $PM_{2.5}$ and PM_{10} based upon AP-42 factors. Predicted concentration of $PM_{2.5}$ and PM_{10} were below their respective NAAQS.

This MSS amendment authorizes small emission increases in annual and hourly criteria and non-criteria pollutants associated with miscellaneous maintenance activities at the site. These emission increases are quantified on the MAERT as EPN MSS-FUG and they are listed in Attachments A and B of the permit. Impacts associated with miscellaneous maintenance activities at the site were evaluated with SCREEN3 air dispersion modeling; agency practices, including the Modeling and Effects Review Applicability (MERA) flow chart; engineering judgment based upon similar permitted facilities and previous impacts analyses; the relatively small emissions increases associated with the planned MSS activities; the intermittent occurrences of the MSS activities; the size of the property boundary; and other relevant factors. Previous screen modeling for Coleto Creek (permit number 3687) was used for tanks due to the similarity of emissions and property boundaries between the sites. Off-property impacts from planned maintenance activity emissions for non-criteria pollutants dropped off the MERA flow chart on Step 4 or Step 9 because of the small quantity of emissions or the infrequency of the maintenance activity. Given that emissions from each of the MSS activities would not cause an exceedance of the NAAQS and that non-criteria pollutant emissions were either below the ESL or fell off the MERA flow chart, no adverse impacts to public health and the environment are anticipated as a result of quantifying and permitting emission rates for existing emissions from existing MSS activities.

Permit Concurrence and Related Authorization Actions

Is the applicant in agreement with special conditions?	**yes**
Company representative(s):	**Kimberly Hughes**
Contacted Via:	**phone**
Date of contact:	**1/13/2012**
Other permit(s) or permits by rule affected by this action:	**no**
List permit and/or PBR number(s) and actions required or taken:	

Project Reviewer Date Team Leader/Section Manager/Backup Date

EXHIBIT E

Executive Director's Response to Public Comments

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 15, 2014

MR PAUL FRANKLIN
VICE PRESIDENT
SOUTHWESTERN ELECTRIC POWER COMPANY
PO BOX 660164
DALLAS TX 75266-0164

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment
Minor Revision
Permit Number: O31
Southwestern Electric Power Company
H.W. Pirkey Power Plant
Hallsville, Harrison County
Regulated Entity Number: RN100214287
Customer Reference Number: CN600126767
Account Number: HH-0037-F

Dear Mr. Franklin:

The Texas Commission on Environmental Quality (TCEQ) executive director's proposed final action is to submit a proposed federal operating permit (FOP) to the U.S. Environmental Protection Agency (EPA) for review. Prior to taking this action, all timely public comments have been considered and are addressed in the enclosed Executive Director's Response to Public Comment (RTC). The executive director's RTC also includes resulting modifications to the FOP, if applicable.

Changes unrelated to comments have been made to the permit since commencement of the public notice period. A detailed explanation of these changes is enclosed. Additionally, the enclosed statement of basis has been updated to reflect changes made to the permit.

As of July 22, 2014 the proposed permit is subject to an EPA review for 45 days, ending on September 5, 2014.

If the EPA does not file an objection to the proposed FOP, or the objection is resolved, the TCEQ will issue the FOP. If you are affected by the decision of the Executive Director (even if you are the applicant) you may petition the EPA within 60 days of the expiration of the EPA's 45-day review period in accordance with Texas Clean Air Act § 382.0563, as codified in the Texas Health and Safety Code and the rules [Title 30 Texas Administrative Code Chapter 122 (30 TAC Chapter 122)] adopted under that act. This paragraph explains the steps to submit a petition to the EPA for further consideration. The petition shall be based only on objections to the permit raised with reasonable specificity during the public comment period, unless you demonstrate that it was impracticable to raise such objections within the public comment period, or the grounds for such objections arose after the public comment period. The EPA may only object to

the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of 30 TAC Chapter 122. The 60-day public petition period begins on September 6, 2014 and ends on November 4, 2014. Public petitions should be submitted during the petition period to the TCEQ, the EPA, and the applicant at the following addresses:

Texas Commission on Environmental Quality
Office of Air
Air Permits Division
Technical Program Support Section, MC-163
P.O. Box 13087
Austin, Texas 78711-3087

U.S. Environmental Protection Agency
(EPA)
Attn: Air Permit Section Chief (6PD-R)
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

U.S. Environmental Protection Agency
Administrator Mike O. Leavitt
Ariel Rios Building (AR 1101A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Mr Paul Franklin
Vice President
Southwestern Electric Power Company
PO Box 660164
Dallas TX 75266-0164

Thank you for your cooperation in this matter. If you have questions concerning the processing of this permit application, please contact Mr. Sandy Simko, P.E. at (512) 239-5733.

Sincerely,

Jesse E. Chacon, P.E., Manager
Operating Permits Title V Section
Air Permits Division
Texas Commission on Environmental Quality

JEC/ss

cc: Ms. Kimberly M. Hughes P.E., Air Quality Engineer, Southwestern Electric Power Company, Dallas
Mr. Drew Seidel, Plant Manager, AEP Texas North Company, Hallsville
Air Section Manager, Region 5 - Tyler
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas (Electronic copy)

Enclosures: Executive Director's Response to Public Comment
Proposed Permit
Statement of Basis
Modifications Made from the Draft to the Proposed Permit

Project Number: 19319

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 15, 2014

MR GABRIEL CLARK-LEACH
ENVIRONMENTAL INTEGRITY PROJECT
1303 SAN ANTONIO STREET, #200
AUSTIN TX 78701

Re: Notice of Proposed Permit and Executive Director's Response to Public Comment
Minor Revision
Permit Number: O31
Southwestern Electric Power Company
H.W. Pirkey Power Plant
Hallsville, Harrison County
Regulated Entity Number: RN100214287
Customer Reference Number: CN600126767
Account Number: HH-0037-F

Dear Mr. Clark-Leach:

The Texas Commission on Environmental Quality (TCEQ) executive director's proposed final action is to submit a proposed federal operating permit (FOP) to the U.S. Environmental Protection Agency (EPA) for review. Prior to taking this action, all timely public comments have been considered and are addressed in the enclosed Executive Director's Response to Public Comment (RTC). The executive director's RTC also includes resulting modifications to the FOP, if applicable. The proposed permit and statement of basis are available through the TCEQ Web site and can be accessed at https://webmail.tceq.texas.gov/gw/webpub.

Changes unrelated to comments have been made to the permit since commencement of the public notice period. A detailed explanation of these changes is enclosed. Additionally, the statement of basis has been updated to reflect changes made to the permit.

As of July 22, 2014 the proposed permit is subject to an EPA review for 45 days, ending on September 5, 2014.

If the EPA does not file an objection to the proposed FOP, or the objection is resolved, the TCEQ will issue the FOP. If you are affected by the decision of the Executive Director (even if you are the applicant) you may petition the EPA within 60 days of the expiration of the EPA's 45-day review period in accordance with Texas Clean Air Act § 382.0563, as codified in the Texas Health and Safety Code and the rules [Title 30 Texas Administrative Code Chapter 122 (30 TAC Chapter 122)] adopted under that act. This paragraph explains the steps to submit a petition to the EPA for further consideration. The petition shall be based only on objections to the permit raised with reasonable specificity during the public comment period, unless you demonstrate that it was impracticable to raise such objections within the public comment period, or the grounds for such objections arose after the public comment period. The EPA may only object to

the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of 30 TAC Chapter 122. The 60-day public petition period begins on September 6, 2014 and ends on November 4, 2014. Public petitions should be submitted during the petition period to the TCEQ, the EPA, and the applicant at the following addresses:

Texas Commission on Environmental Quality
Office of Air
Air Permits Division
Technical Program Support Section, MC-163
P.O. Box 13087
Austin, Texas 78711-3087

U.S. Environmental Protection Agency
(EPA)
Attn: Air Permit Section Chief (6PD-R)
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

U.S. Environmental Protection Agency
Administrator Mike O. Leavitt
Ariel Rios Building (AR 1101A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Mr Paul Franklin
Vice President
Southwestern Electric Power Company
PO Box 660164
Dallas TX 75266-0164

Thank you for your cooperation in this matter. If you have questions concerning the processing of this permit application, please contact Mr. Sandy Simko, P.E. at (512) 239-5733.

Sincerely,

Jesse E. Chacon, P.E., Manager
Operating Permits Title V Section
Air Permits Division
Texas Commission on Environmental Quality

JEC/ss

cc: Ms. Kimberly M. Hughes P.E., Air Quality Engineer, Southwestern Electric Power Company, Dallas
Mr. Drew Seidel, Plant Manager, AEP Texas North Company, Hallsville
Air Section Manager, Region 5 - Tyler
Air Permit Section Chief, U.S. Environmental Protection Agency, Region 6-Dallas (Electronic copy)

Enclosures: Executive Director's Response to Public Comment
Modifications Made from the Draft to the Proposed Permit

Project Number: 19319

bcc: Mr. Brian Christian, Public Education Program, MC-108, Austin
Ms. Deanna Avalos, Final Documents Team, TCEQ Office of the Chief Clerk, MC-105, Austin
Mr. Booker Harrison, TCEQ Environmental Law Division (MC-173), Austin
File Copy

Modifications Made from the Draft to the Proposed Permit

1. On page 51, listing the New Source Authorization References by Emission Unit, Unit ID P-16 was erased by typographical error in the Revised Draft Permit. Unit P-16 was included in the Proposed Revised Permit.

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (RTC or Response) on the application for a Federal Operating Permit (FOP) No. O31 minor revision filed by Southwestern Electric Power Company (Applicant or SWEPCO).

As required by Title 30 Texas Administrative Code (TAC) § 122.345, the ED shall send a notice of the proposed final action, which includes a response to any comments submitted during the comment period, to any person who commented during the public comment period, the applicant, and to the EPA. The Office of the Chief Clerk (OCC) timely received a comment letter from Gabriel Clark-Leach of the Environmental Integrity Project (EIP). These comments are summarized in this response. If you need more information about this permit application or the permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

BACKGROUND

Procedural Background

The Texas Operating Permit Program requires that owners and operators of sites subject to 30 TAC Chapter 122 obtain a FOP that contains all applicable requirements in order to facilitate compliance and improve enforcement. The FOP does not authorize construction or modifications to facilities, nor does the FOP authorize emission increases. In order to construct or modify a facility, the facility must have the appropriate new source review authorization. If the site is subject to 30 TAC Chapter 122, the owner or operator must submit a timely FOP application for the site, and ultimately must obtain the FOP in order to operate. SWEPCO applied to the TCEQ for a FOP minor revision for an electric services plant located in Hallsville, Harrison County on March 27, 2013. The minor revision incorporated 40 CFR Part 63, Subpart ZZZZ and 40 CFR Part 60, Subpart IIII requirements for the Diesel Fire Pump (DFP) and the Emergency Generator (EMGEN) and the amendment dated February 3, 2012 (MSS Amendment) to New Source Review (NSR) Permit No. 6269 for planned MSS activities and associated emissions at this site. The public comment period began on May 14, 2013 and the public comment period ended on June 14, 2013.

Description of Site

SWEPCO has applied to the TCEQ for an FOP minor revision that would authorize the Applicant to operate the H.W. Pirkey Power Plant. The plant is located east of Hallsville Texas, south of Interstate 20 off Farm to Market Road 3251 in Harrison County, Texas 75650.

The H.W. Pirkey Power Plant utilizes one boiler to produce up to 721 megawatts (MW) of power. Boiler 1 (P-16) began operation in 1985 and is authorized by NSR Permit No. 6269 to burn either lignite or coal. The gases and fly ash from the boiler are directed through an electrostatic precipitator (ESP) for removal of particulate matter (PM) and subsequently through a wet limestone scrubber desulfurization system for removal of sulfur dioxide.

The emissions associated with lignite and coal handling are authorized by Permit No. 6270. The facilities associated with the lignite and coal handling include Truck Hopper A1 (P-1), Truck Hopper A2 (P-2), Transfer House (P-3), Lignite Storage Pile (P-4), Crusher House (P-5), Transfer Chutes (P-6), and Conveyors and Transfer Points (P-7).

COMMENT 1: EIP commented that the Clean Air Act (CAA) forbids states from issuing permits, even pursuant to a State Implementation Plan (SIP) approved permitting program, that modify or weaken SIP requirements with respect to any stationary source without approval of the EPA. Emissions standards and limitations established as part of a state's SIP remain federally enforceable until EPA approves revisions to the SIP. Thus, Texas cannot amend its SIP, "unless and until the EPA approve[s] any changes." To hold otherwise would give Texas the authority to unilaterally amend its SIP, rendering the EPA approval process meaningless.

On February 3, 2012, the TCEQ ED issued the MSS Amendment, which authorizes PM emissions of up to 1,457 lbs/hour and opacity in excess of 20 percent during planned MSS activities. The MSS Amendment more than doubles the pre-existing emission limit of 682 lbs/hour and allows emissions of PM and opacity in excess of the applicable SIP limits during planned MSS activities. Thus, these changes amount to a source-specific SIP revision that requires public notice and EPA approval. Nonetheless, the ED issued the MSS Amendment without EPA approval or public notice. Notwithstanding that it was improper for the ED to issue the MSS Amendment as it did, the amended PM and opacity limits contained in that permit, nonetheless, may not be incorporated into SWEPCO's Title V Permit as federally enforceable conditions.

RESPONSE 1: The NSR items are beyond the scope of the Title V permit review. However, the ED offers the following response. The MSS Amendment, issued February 3, 2012, has been incorporated in the proposed minor revision to the Title V FOP No. O31. The MSS Amendment was issued in a SIP approved program and does not require additional EPA approval for it to be incorporated in FOP No. O31 as federally enforceable conditions.

During periods of start-up and shutdown the utility boiler passes through phases of operation where it is unsafe to operate the ESP, and there is no technological knowledge available to ensure safe operation of the ESP during these specific periods. The MSS Amendment specifies the emission limits and opacity limits during start-up and shutdown and also specifies the total amount of time the equipment may operate in this mode, both annually and per event, to further limit operations. The MSS Amendment does not modify permit requirements in a way that violates the SIP. Rather, the Commission has specified limitations and conditions for certain specific operational phases. The Texas SIP includes 30 TAC § 101.221(d). That rule provides that sources emitting air contaminants that cannot be controlled or reduced due to a lack of technological knowledge may be exempt from the applicable rules when so determined and ordered by the Commission," and allows the Commission to "specify limitations and conditions as to the operation of such exempt sources."

As part of the review of the MSS Amendment application, the increase in the short-term emission rates from the utility boiler for PM were evaluated and compared to the National Ambient Air Quality Standards (NAAQS) and the predicted concentrations of PM less than or equal to 2.5 micrometers in aerodynamic diameter (PM2.5) and PM less than or equal to 10 micrometers in aerodynamic diameter (PM10) (adjusted for background concentration) were below their respective NAAQS. Therefore, the specified limits for PM and opacity contained in NSR Permit 6269 do not cause or contribute to a violation of the NAAQS.

The MSS activities and emissions were authorized under the requirements of 30 TAC Chapter 116, Subchapter B, which includes providing public notice as prescribed in 30 TAC Chapter 39. The annual MSS emissions from the existing pieces of equipment are limited to the previously authorized emission rates. New emissions of PM were 3.5 tons per year (TPY) which falls below the 5 TPY trigger for public notice; therefore, as provided in § 39.402, no public notice was required.

In summary, this was not a site-specific SIP for which notice was required.

COMMENT 2: EIP commented that incorporation of the MSS Amendment into SWEPCO's Title V Permit is not a minor revision because it violates applicable requirements and makes significant changes to existing monitoring requirements.

Texas's federally approved Title V program provides that any changes to a Title V permit that violate any applicable standard or make significant changes to monitoring, reporting, or recordkeeping requirements may not be processed as a "minor" revision. Because the draft permit includes these kinds of changes, it may not be processed as a minor revision.

A. The proposed revision to SWEPCO's Title V Permit violates CAA Title I SIP revision requirements, Title V requirements, and the Texas SIP because it incorporates opacity and PM limits that are less stringent than applicable Texas SIP limits as federally enforceable conditions in the Title V Permit without providing proper public notice or obtaining EPA approval.

B. Incorporation of the MSS Amendment into SWEPCO's Title V Permit will significantly relax previously applicable monitoring requirements. For example, the MSS Amendment allows SWEPCO to use any method it deems "appropriate" to calculate planned MSS emissions that are not monitored by CEMS. Indeed, the MSS Amendment allows use of data from other facilities in place of Pirkey Plant data to calculate planned emissions during planned MSS activities at the Pirkey Plant. This vague monitoring condition, which affords SWEPCO unfettered discretion to determine how it will calculate planned MSS emissions from non-CEMS sources to demonstrate compliance with emission limits, is different from and less stringent than the monitoring conditions that apply to measure emissions during the plant's normal operations.

RESPONSE 2: The incorporation of the NSR MSS Amendment into the FOP meets the requirements of a minor FOP revision as defined by 30 TAC §122.215.

The requirements for public announcement, defined by 30 TAC §122.312 for minor permit revisions, were properly implemented by means of the commission's publicly accessible electronic media.

The NSR items are beyond the scope of the Title V permit review. However, the ED offers the following response. As stated in Response 1 above, the draft permit does not violate any applicable requirement since NSR Permit 6269 was issued under a SIP approved program and meets all applicable requirements.

The draft permit includes acceptable monitoring requirements and does not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit. The MSS activities and emissions were not previously authorized by NSR Permit 6269. The existing monitoring requirements apply to the previously authorized "routine" operating mode of the facility. Although there is no increase in the TPY of emissions, the MSS activities and associated emissions are new authorizations and the level of monitoring and recordkeeping is included in NSR Permit 6269 to meet the requirements of 30 TAC Chapter 116, Subchapter B. Specifically, the permit conditions provide a list of approved options which may be used in determining the most appropriate method of calculating the planned MSS emissions from a non-CEMS source. The options include the use of approved factors, parameter monitoring, emission test results

correlated to specific operating parameters, and engineering calculations. These general maintenance activities listed in Attachments A and B of Permit 6269 result in small quantities of emissions, generally occur infrequently, and usually last for a short period of time. The nature and frequency of these activities makes testing difficult and the use of relevant data from similar facilities where the operational parameters correlate will allow more accurate calculation of emissions for these activities. There are no significant changes to existing monitoring requirements in the NSR permit because the MSS activities and emissions were never subject to the existing requirements.

COMMENT 3: EIP commented that the draft permit fails to assure compliance with applicable SIP limits.

The Texas SIP includes opacity and PM limits that apply to the Pirkey Power Plant. The MSS Amendment, which the ED proposes to incorporate into SWEPCO's Title V Permit, establishes opacity and PM limits that are less stringent than these SIP limits. Incorporation of these less stringent limits as federally enforceable conditions of SWEPCO's Title V Permit undermines the enforceability of the SIP limits. Additionally, the MSS Amendment monitoring requirements the draft permit incorporates are completely vague and undermine the enforceability of applicable emission limits.

RESPONSE 3: The NSR items are beyond the scope of the Title V permit review. However, the ED offers the following response. The NSR Permit 6269 MSS Amendment includes emission limitations and monitoring requirements that are in compliance with the approved Texas SIP.

As stated in Response 1 above, the MSS Amendment specifies emission limits and opacity limits during start-up and shutdown. Special Condition #18 specifies limitations and conditions to minimize emissions when the ESP is not operational. Special Condition #14 also specifies the start-up and shutdown periods and limits these periods.

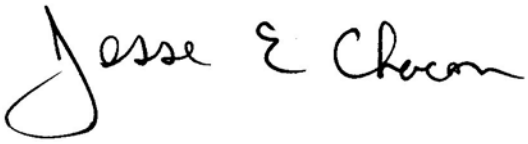
The ED has determined that the monitoring required by this permit demonstrates compliance with the applicable state and federal requirements.

NSR Permit 6269 meets all applicable state rules and regulations and contains monitoring suitable for the magnitude and frequency of the MSS activities and emissions as previously discussed. Periodic monitoring in the form of recordkeeping is used for the Inherently Low Emitting (ILE) activities listed on Attachment A of NSR Permit 6269 consisting of an annual confirmation of the estimated potential to emit represented for those ILE activities. Recordkeeping and CEMS (for some emissions) are used for periodic monitoring of all other planned MSS activities in which emissions are determined based on the duration and frequency of each event.

CHANGES MADE IN RESPONSE TO COMMENT

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,



Jesse E. Chacon, P.E., Manager
Operating Permits Title V Section
Air Permits Division

EXHIBIT F

Order Granting Motion for Partial Summary Judgement

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

SIERRA CLUB, **Plaintiff,**	§	
v.	§	**Civil Action No. W-12-CV-108**
ENERGY FUTURE HOLDINGS CORPORATION and LUMINANT GENERATION COMPANY LLC, **Defendants.**	§	

ORDER

Before the Court is Defendants' Motion for Partial Summary Judgment as to Plaintiff's Second Cause of Action (Particulate Matter). Defendants request partial summary judgment on the second cause of action pursued by Plaintiff, which focuses on alleged violations of Particulate Matter limits. Having reviewed the motion, response, reply, and applicable law, the Court **GRANTS** Defendants' Motion and dismisses Plaintiff's cause of action with respect to particulate matter violations.

I. Factual and Procedural Background

Defendants own and operate a coal-fired electric generating plant, located in Freestone County, Texas, known as Big Brown Steam Electric Station ("Big Brown Plant"). The plant's two units generate electricity with a blend of coal. The electricity generated is supplied to 23 million Texas customers via the electric grid operated by the Electric Reliability Council of Texas ("ERCOT"). Plaintiff Sierra Club pursued a citizen suit under Section 304 of the federal Clean

Air Act ("CAA"), 42 U.S.C. § 7604. Plaintiff claims that Defendants violated, and continue to violate two emission limit provisions that apply to Big Brown Plant.

Big Brown Plant is required to operate under a permitting process that limits the amount of pollutants the plant may legally emit into the air. One measurement of air pollutants is opacity. Opacity is an indicator of the excessive levels of particles or other substances being emitted by a facility. Essentially, opacity measures the level of soot in the facility's exhaust. Texas rules define opacity as the "degree to which an emission of air contaminants obstruct the transmission of light expressed as a percentage of light obstructed as measured by an optical instrument or trained observer." 30 TEX. ADMIN. CODE § 101.1(72). In other words, the higher the opacity, the less light that passes through a plume of air pollution.

Another measure of pollutants is based on the amount of particulate matter ("PM") a facility emits. PM refers to liquid or solid particles of various sizes that can include ash, metals, and other organic chemicals. Pursuant to the Texas State Implementation Plan ("SIP")[1], the emissions of a power plant may not exceed "0.3 pound of total suspended particulate per million [British thermal units ("Btu")] heat input, averaged over a two-hour period."[2] 30 TEX. ADMIN CODE § 111.153(b).

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[1] The Clean Air Act ("CAA") requires that each state submit a State Implementation Plan ("SIP") to the Environmental Protection Agency ("EPA") for approval. *See* 42 U.S.C. § 7210.
[2] EPA approved this standard as an applicable requirement of the Texas SIP. *See* 74 Fed. Reg. 19,144 (Apr. 28, 2009) (approving 30 TEX. ADMIN. CODE § 111.153(b) into the Texas SIP).

Plaintiff contends that Defendants violated the PM limits outlined in the Texas SIP and Big Brown Plant's Title V permit. Using Defendants' self-reported heat input and sulfur dioxide emissions data, Plaintiff avers that Big Brown Plant exceeded the 0.3 lb/mmBtu PM limit on at least 370 occasions between January 2008 and July 2011. Despite its claimed compliance with Big Brown Plant's Title V permit, Plaintiffs argue that Defendants' interpretation of the 2008 Title V permit is inconsistent with the "minor revision" application used to revise the plant's permit. Furthermore, according to Plaintiff, other credible evidence, as provided by Plaintiff's experts, can also demonstrate that PM violations have and continue to take place at Big Brown Plant.

Defendants do not contest the fact that there were instances between January 2008 and July 2011, when emissions exceeded 0.3 lb/mmBtu. Instead, Defendants argue that it is entitled to summary judgment because those PM exceedances still complied with the PM limits in Big Brown Plant's Title V permit, which was ultimately approved by the Texas Commission on Environmental Quality ("TCEQ") and EPA on December 1, 2008. For that reason, the jurisdictional bar in 42 U.S.C. § 7607(b)(2) prohibits Plaintiff from pursuing a lawsuit for PM violations that occurred *after* December 1, 2008. Defendants additionally argue that claims of PM exceedances that occurred *before* December 1, 2008, should also be dismissed because the Title V permit rendered those claims moot. Defendants finally maintain that considerations of

"credible evidence" outside the requirements of the Title V permit would be inappropriate in this lawsuit.

II. Standard of Review

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). The movant is entitled to summary judgment if, after an adequate time for discovery, the non-movant fails to make a sufficient showing on an essential element of his case with respect to which he bears the burden of proof. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The movant must initially demonstrate the lack of evidence supporting the non-movant's case. *See id.* at 323. The burden then shifts to the non-movant to present some evidence showing that there is a genuine issue for trial. *See id.* at 324.

A genuine issue for trial exists if "the evidence is such that a reasonable jury could return a verdict for the non-movant." *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Because that issue cannot be resolved without reference to "the criteria governing what evidence would enable the jury to find for [the non-movant]," the Court "must view the evidence presented through the prism of the substantive evidentiary burden." *See id.* at 254. However, in making this determination, the Court may not weigh the evidence or evaluate the credibility of the witnesses. *See id.* at 255. Instead, it must view all facts in the light most favorable to the non-movant and make all justifiable inferences in her favor. *See id.*

III. The Statutory Framework of Applicable Provisions

a. Title V Permits

Title V of the Clean Air Act, 42 U.S.C. §§ 7661–7661f, establishes an operating permit program for major sources of air contaminants. Under the CAA, "[I]t shall be unlawful for any person to violate any requirement of a permit issued under this subchapter, or to operate [a regulated source] ... except in compliance with a permit issued by a permitting authority under this subchapter." 42 U.S.C. § 7661a(a). A Title V permit *compiles* all the various applicable requirements for a facility into a single federally-enforceable air pollution permit. *See United States v. Cemex, Inc.*, 864 F. Supp. 2d 1040, 1045 (D. Colo. 2012) (emphasis added); 42 U.S.C. §§ 7661c(a),(b).

The permit is crucial to the implementation of the Act: it contains, in a single, comprehensive set of documents, all CAA requirements relevant to the particular polluting source. *Com. of Va. v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996). A Title V permit has been described as a "source-specific bible for Clean Air Act compliance." *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996). "Similar to other CAA programs, Title V permits are issued by the state permitting authority, but are subject to EPA review and veto." *Sierra Club v. Otter Tail Power Co.*, 615 F.3d 1008, 1012 (8th Cir. 2010) (citations omitted). Once approved by a state authority like the TCEQ, the "Title V permit assure[s] compliance with all emission limitations and other substantive CAA requirements that apply to the source." *Id.*

b. Minor Permit Modifications

Minor permit modifications can be utilized to amend a previously-approved Title V permit, provided that the changes: (1) does not violate any applicable requirement of the permit; (2) does not significantly alter existing monitoring, reporting, or recordkeeping requirements in the permit; (3) does not require or modify a case-by-case determination of an emission limitation or other standard; (4) does not seek to establish or change a permit term or condition to avoid an applicable requirement that the source would otherwise be subject; and (5) does not constitute a modification under Title I of the CAA. 30 TEX. ADMIN. CODE § 122.215.[3] The TCEQ's requirements for minor revisions closely resemble the EPA's Title V regulations.[4]

As are required for "significant revisions," "public announce requirements apply to minor permit revisions." 30 TEX. ADMIN. CODE § 122.215(a).[5] The application for a minor revision must also comply with § 122.217 of the Texas Administrative Code, and be submitted to the executive director at the TCEQ for review. Minor permit revision applications are then submitted to the EPA

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[3] *See* 66 Fed. Reg. 63,318 (Dec. 6, 2011) (EPA approval of Texas's Title V program).

[4] Minor permit modification procedures may only be used for changes that: (1) do not violate any applicable requirement; (2) do not involve significant changes to existing monitoring, reporting or recordkeeping requirements; (3) do not require or change a case-by-case determination of an emission limit or other standard; (4) do not seek to establish or change a permit term or condition assumed to avoid an applicable requirement such as an emission cap; (5) are not modifications under Title I of the Act; and (6) are not required by the state program to be processed as a significant modification. 40 C.F.R. § 70.7(e)(2)(i).

[5] "The public notice requirements for minor permit revisions are satisfied by the TCEQ providing notice of the minor revision on its website." 45 TEX. PRAC. ENVT'L LAW § 5:10 (2d ed.).

administrator and the "affected states" for any objections. 30 TEX. ADMIN. CODE § 122.217(d). Once the completed application satisfies all the procedural steps, including the notice requirements, the executive director can approve the minor revision for incorporation into the applicant's Title V permit.[6]

IV. Summary of the Arguments

a. Defendants' Arguments

Big Brown Plant's Title V permit was originally approved in 2005. In 2008, Defendants submitted a "Minor Revision Application," which was reviewed and approved by the TCEQ. A notice of the minor permit revision was published on the TCEQ website;[7] however, neither Plaintiff nor any other individual submit any comments contesting the draft permit during the 30-day public comment period.[8] Defendants argue that it is entitled to summary judgment on any PM violations because it complied with its Title V permit. Defendants note that its Title V permit specifies how Defendant is to comply with the PM limitations set out in the Texas SIP. The Compliance Assurance Monitoring ("CAM") provision of the 2008 version of the Title V permit requires the measurement of stack opacity and

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[6] *See* 30 TEX. ADMIN. CODE § 122.217(e) ("A minor permit revision may be issued by the executive director provided the following: (1) the changes meet the criteria for a minor permit revision; (2) the executive director has received a complete application; (3) the conditions of the permit provide for compliance with the requirements of this chapter; and (4) the requirements of this chapter for public announcement, affected state review, and EPA review have been satisfied.").

[7] Doc. 198-3.

[8] The notice of Big Brown Plant's minor permit application on the TCEQ website explained: "Any person may submit written comments on the draft permit. Comments relating to the accuracy, completeness, and appropriateness of the revised permit conditions may result in changes to the draft permit. *See id.*

records readings every six minutes.[9] These readings are measured by the plant's Continuous Opacity Monitoring System ("COMS"), and are reviewed according to two-hour blocks that "will start at the beginning of each hour of the day and end at the second clock hour (i.e. 0000 – 0200, 0200 – 0400, etc)."[10] Compliance is determined by averaging the COM readings of each two-hour block.[11] However, "[f]or each valid 2-hour block that *does not include* boiler startup, shutdown, maintenance, or malfunction activities, if the opacity exceeds 20% over the 2 hour block period, it shall be considered and reported as a deviation."[12]

Based on this revised CAM provision, Defendants claim that any opacity increases that occurred during "boiler startup, shutdown, maintenance, or malfunction activities," ("SSMM") would not be a PM violation. Defendants further argue that it complied with the requisite rules and procedures the minor permit revision to Big Brown Plant's Title V permit. Therefore, since Plaintiff limited their claims to PM exceedances that occurred during the SSMM periods of Big Brown Plant, Defendants maintain that there were no PM limit violations during the timeframe alleged by Plaintiff. In reality, Defendants argue, Plaintiff is attacking the revised Title V permit, which amounts to an impermissible collateral attack.

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[9] Doc. 126-5 at 39.
[10] *Id.*
[11] *Id.*
[12] *Id.* (emphasis added).

b. Plaintiff's Arguments

Plaintiff disagrees with Defendants' interpretation and argues that Defendants actually violated its Title V permit. Plaintiff notes that the CAM provision of the 2005 version of the Title V permit did not address SSMM activities.[13] Defendants had the CAM provision altered through a "Minor Revision Application" in 2008. While "minor revisions" are permitted by the Texas SIP, and Plaintiff does not contest the proceedings surrounding its approval, Plaintiff argues that Defendants' interpretation of the CAM provision goes beyond a permissible "minor revision." According to Plaintiff, the revised CAM provision could not exclude SSMM periods from complying with the PM limits set by the Texas SIP. Such a change would not be a "minor revision" because it would have altered an emissions limitation. Pursuant the Texas Administrative Code, any change to emissions limits cannot be approved through a minor revision. *See generally* 30 TEX. ADMIN. CODE § 122.215. Since Defendants' interpretation of the CAM revision necessarily changed the emissions limits, albeit during SSMM periods, Plaintiff contends that summary judgment must be denied because such an interpretation would not be consistent with a "minor permit revision."

[13] Doc. 126-4 at 28.

V. Legal Analysis of Plaintiff's Second Cause of Action

a. Plaintiff's Second Cause of Action is an Impermissible Collateral Attack of Big Brown Plant's Title V Permit

After considering the arguments, it is clear that Plaintiff is challenging the TCEQ and EPA's decision of passively approving the minor modifications to Big Brown Plant's Title V permit. Therefore, Plaintiff's second cause of action must be dismissed as such a challenge "divests district courts of jurisdiction over any claim that is the functional equivalent of a challenge to the appropriate provisions of a Title V permit that has been issued." *Texas Campaign for the Env't v. Lower Colorado River Auth.*, CIV.A. H-11-791, 2012 WL 1067211 (S.D. Tex. Mar. 28, 2012).

This case is analogous to *Sierra Club v. Otter Tail Power Co.*, 615 F.3d 1008 (8th Cir. 2010). There, the Sierra Club filed a similar citizen suit arguing that a power plant violated the limits imposed by the CAA's New Source Performance Standards ("NSPS"), despite the fact the power plant's amended Title V permit did not mandate NSPS compliance.[14] *Id.* The power plant in *Otter Tail Power* underwent physical and operational modification and applied for an amendment to its Title V permit. *Otter Tail Power*, 615 F.3d at 1012. The South Dakota Department of Environment and Natural Resources, approved the amended Title V permit, but did not require the defendants to comply with the

[14] The NSPS program provides "technology-based performance standards" that limits emissions from major new sources of pollution. *See* 42 U.S.C. § 7411(b). In other words, newly constructed or modified facilities would be subjected to the emissions limits established by the NSPS.

NSPS provisions of the CAA. *Id.* The EPA never took any action on the permit, and Sierra Club failed to petition the EPA to object to the issuance of the permit. *See id.* In its suit, Sierra Club contended that since there was a modification to the power plant, the defendant was liable for violations of the CAA's NSPS limits, even though the Title V permit authorized the activity. *See id.*

After considering the foregoing facts, the Eighth Circuit held the district court lacked subject matter jurisdiction to hear the claim. *See Otter Tail Power*, 615 F.3d at 1021. Since Sierra Club was alleging that the permit was "not in compliance with the requirements of the CAA," the court determined that lawsuit amounted to a collateral attack of the Title V permit. *Id.* at 1020. The Eighth Circuit concluded that Sierra Club needed to assert its objections to the plant's permit *during*, not after, the permitting process. *Id.* at 1022. The court reasoned, "[T]o allow plaintiffs to raise issues resolved during the permitting process long after that process is complete would upset the reasonable expectations of facility operators and undermine the significant investment of regulatory resources made by state permitting agencies."[15] *Id.* Thus, "judicial review through civil or criminal enforcement proceedings is unavailable whenever an individual could have...obtained such review." *Id.* at 1021 (quoting *Romoland School District v.*

[15] This rule was also stated in *Romoland School District v. Inland Empire Energy Center LLC,* 548 F.3d 738 (9th Cir. 2008), where the court stated, "By creating in 42 U.S.C. § 7661d(b)(2) an avenue of judicial review that passes through 42 U.S.C. § 7607, Congress effectively foreclosed the alternative avenue of citizen suit enforcement through 42 U.S.C. § 7604." *Id.* at 755.

Inland Empire Energy Center LLC, 548 F.3d 738, 755 (9th Cir. 2008) (internal citations omitted).

In the case before this Court, there are no material fact issues to support a claim that Defendants failed to report a PM deviation that occurred during normal plant operations. Additionally, there is no claim that Defendant failed to comply with the statutory requirements for a minor permit revision. As the jurisdictional limit here is paramount, the Court must be careful that it does not exceed its jurisdiction and consider claims that are "cleverly packaged" challenges of an EPA decision or ruling. *United Steelworkers of Am. v. Oregon Steel Mills, Inc.,* 322 F.3d 1222, 1225 (10th Cir. 2003). A plain reading of the Title V permit provides that Defendants are only required to report deviations that occur outside of SSMM activities. Plaintiff argues that the Title V permit, as construed by Defendants, violates the Texas SIP on emissions limits because the Texas rules do not exclude emissions compliance for periods outside of normal plant operations.

While Plaintiff may not agree with the compliance provisions of the Title V permit, Plaintiff is judicially barred from challenging the permit. S*ee Sierra Club v. Dairyland Power Co-op.*, 10-CV-303-BBC, 2010 WL 4294622, * 17 (W.D. Wis. Oct. 22, 2010) ("Judicial review of the administrator's decision is available only through the applicable court of appeals, not in the district court."). Once approved, a plaintiff is foreclosed from collaterally attacking the Title V permit that is issued to a power plant. 42 U.S.C. §§ 7661d(b)(2), 7607; *see also Otter Tail*

Power, 615 F.3d 1008. Such is the case even if the "deficiencies are overlooked and remain undiscovered until after the permit is issued." *United States v. EME Homer City Generation, L.P.*, 727 F.3d 274, 300 (3d Cir. 2013) (explaining that a collateral attack of a permit is impermissible, even if the approved permit was incomplete or its approval was improper). Should a permit deficiency go unnoticed for a period of time, the appropriate procedure would be for the EPA or the states to reopen the permit and add an omitted "applicable requirement," or amend any defect in the permit approving process.[16] *Id.* (citing 40 C.F.R. § 70.7(f)).

b. CAA Jurisdictional Limit Applies to Minor Permit Modifications

In light of the requirements for minor permit modifications, Plaintiff argues that it did not have a "meaningful opportunity" to comment or object to Defendants' 2008 permit revision. Plaintiff directs this Court to 42 U.S.C. § 7607, which provides: "Action of the Administrator with respect to which review could have been obtained...shall not be subject to judicial review in civil or criminal proceedings for enforcement." While the Texas Title V rules establishes public petition requirements for significant permit revisions, which includes the public's ability to object to the EPA's response to a proposed permit, that provision does not apply to "minor" permit revisions. 30 TEX. ADMIN. CODE § 122.360(a) & (b).

[16] In fact, Plaintiff has taken advantage of this process with respect to the renewal of Big Brown Plant's Title V permit. Plaintiff raised general and specific objections to the renewal permit application, which has remained pending at the TCEQ since 2011. *See* Doc. 195-8.

As such, Plaintiff argues that it was unable to contest the approval of Defendants' 2008 minor revision.

It is clear that the statutory language of Texas's Title V rules offers less stringent notice requirements for minor permit revisions. However, Plaintiff has not convinced the Court that the Title V rules explicitly prevented Plaintiff or any other affected person from contesting a proposed minor permit revision. Section 7607 forecloses district court intervention on permit approval actions that *could* have been reviewed by the appropriate judicial authority. *See* 42 U.S.C. § 7607. Although Texas Title V rules do not enumerate any procedures for objections to applications for minor permit revisions, the rules likewise do not expressly prohibit concerned individuals from objecting to such a revision.

Additionally, Plaintiff has not identified a case where an affected person was barred from objecting to a minor permit modification. While admittedly difficult, Plaintiff still *could* have filed its objections to the 2008 minor permit revision during the permitting process. *See Lower Colorado River Auth.*, 2012 WL 1067211, at *9 (S.D. Tex. Mar. 28, 2012) ("Thus, where a challenge could have been raised to a Title V permit during the permit process, no judicial review can thereafter be obtained through enforcement proceedings."). Absent any allegations of legal inadequacies with respect to the public notice requirements, Plaintiff fails to demonstrate that judicial review was unavailable during the minor permit process. *See Otter Tail Power*, 615 F.3d at 1020 n. 9 (acknowledging that although the public notice requirements of a permit amendment may not have

been sufficiently specific for a proper objection, such a circumstance will not excuse a plaintiff from commenting on or contesting a proposed amendment during the permitting process). Moreover, even if Plaintiff contends that the TCEQ administrator abused his discretion in approving the application as a minor permit modification, "a petition to review his action may be filed only in the Courts of Appeals." *Hagedorn v. Union Carbide Corp.*, 363 F. Supp. 1061, 1067 (N.D.W. Va. 1973). Since the jurisdictional bar also applies to minor permit modifications, the Court lacks jurisdiction over the PM violations claim, as that claim should have been raised during the permitting process.

c. "Credible Evidence Rule" Does Not Apply to Citizen Lawsuits

Notwithstanding the CAM monitoring requirements specified in the Title V permit, Plaintiff maintains that it can still submit other "credible evidence" to demonstrate a violation of the CAA and Title V permit. However, as Defendants correctly note, the credible evidence rule applies only to federal enforcement of an emission standard, and is "unavailable in citizen suites to enforce the emissions limitations contained in a state implementation plan." *Sierra Club v. TVA*, 430 F.3d 1337, 1352-53 (11th Cir. 2005). While the Texas SIP and Defendants' Title V permit does not preclude the use of other credible evidence or information, that provision is limited to compliance certification by the EPA or a state agency. 30 TEX. ADMIN. CODE § 122.132(e)(4)(B). In other words, other credible evidence can be utilized in determining "whether a source would have

been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed." 40 C.F.R. § 51.212(c).

Here, the Big Brown Plant Title V permit outlines the provisions of compliance with respect to CAM reporting during periods of shutdown, startup, or maintenance. While the credible evidence rule can be incorporated into a Title V permit as a means to determine compliance, the rule "creates no new rights or powers for citizen enforcers." *TVA*, 430 F.3d at 1353 (quoting *Credible Evidence Revisions*, 62 Fed. Reg. 8314-01, 8318). If expanded to citizen suits, a permit holder would have to defend itself against every conceivable measurement, test, or theory that can be submitted as credible evidence to challenge a power plant's compliance with its Title V permit. *See EME Homer City*, 727 F.3d at 298 ("The plain text of Title V, in turn, lists only two ways in which it can be violated: operating without a Title V permit or violating the terms of a Title V permit while operating a source."). Such a position would undermine the permit's objective as the "source-specific bible for Clean Air Act compliance." *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996). For that reason, a concerned citizen is limited to the compliance requirements, as defined in the Title V permit, when pursuing a civil lawsuit for CAA violations. *TVA*, 430 F.3d at 1353.

d. Prior PM Violations Rendered Moot by Permit Modification

Finally, all claims of PM violations that occurred prior to December 1, 2008, which was the date of Big Brown Plaint's Title V permit, must be dismissed as moot. Once a Title V permit is issued, a civil action seeking civil penalties for

conduct allowed by the permit becomes moot. Similarly, "[a] case seeking injunctive relief based on conduct that has become lawful due to a change in the law is rendered moot by the change in law." *Sierra Club v. TVA*, 592 F. Supp. 2d 1357, 1376-77 (N.D. Ala. 2009). Thus, when the threat of a future violation or harm has been nullified by an approved permit, "there is no factual or legal ground to impose injunctive relief, and the case has become moot." *Id.*

Plaintiff concedes that the PM violations that occurred before December 1, 2008, were attributed to SSMM activities. Since CAA compliance as defined in Big Brown Plant's current Title V permit excludes the reporting of PM deviations that occurred during "boiler startup, shutdown, maintenance, and malfunction activities," claims of PM violations that transpired prior to December 1, 2008, were rendered moot by the issuance of the revised Title V permit.

VI. Conclusion

Plaintiff failed to demonstrate that Defendants violated the CAA or Big Brown Plant's Title V permit with respect to PM limitations. Allegations that the minor permit application improperly changed Texas's SIP emissions amounts to an impermissible collateral challenge of the Title V permit. As such, the Court is divested of subject matter jurisdiction to consider such claims. Additionally, Plaintiff may not rely on other credible evidence to sustain a PM violation because the credible evidence rule is inapplicable in citizen-initiated lawsuits. Finally, the EPA-approved Title V permit mooted Plaintiff's assertions of PM violations that occurred prior to December 1, 2008. Since there are no genuine

fact issues to sustain a claim that Defendants failed to comply with its Title V permit, Defendants' summary judgment motion on the PM compliance issue must be granted. Accordingly, it is

ORDERED that Defendants' Motion for Partial Summary Judgment as to Plaintiff's Second Cause of Action (Particulate Matter) is **GRANTED** in its entirety (Doc. 172). Plaintiff's second cause of action with respect to its PM violations claim is hereby **DISMISSED WITH PREJUDICE**. All other claims and pending motions remain unaffected by this Order.

IT IS SO ORDERED.

SIGNED this 10th day of February, 2014.

WALTER S. SMITH, JR.
UNITED STATES DISTRICT JUDGE