

Message

---

**From:** Andrew Oldham [Andrew.Oldham@gov.texas.gov]  
**Sent:** 12/14/2017 4:50:11 PM  
**To:** Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]  
**Subject:** Title V

PRIVILEGED / CONFIDENTIAL / ATTORNEY WORK PRODUCT

Dear Bill and Justin:

It was nice to speak with both of you about the Title V issue. At your request, I visited at length with the folks at TCEQ and asked them to walk me through the PBR-IBR, monitoring, and confidentiality provisions of our Title V program. We centered that conversation around a particular Title V permit—for Exxon’s Baytown Refinery—that Justin flagged for me. I am obviously no expert in this area. I nonetheless hope that I can explain how Texas’s Title V program works by using Baytown as an illustration.

First, PBR-IBR. As you know, the Fifth Circuit has held nothing in the Clean Air Act precludes incorporation by reference of permit conditions: “The Title V and Part 70 provisions specify *what* Title V permits ‘shall include’ but do not state *how* the items must be included.” *Public Citizen v. EPA*, 343 F.3d 449, 460 (5th Cir. 2003). And both Texas and EPA have a long history of relying on PBR-IBR. *See, e.g.*, Administrator’s Order, Pet. Nos. VI-2014-04 & VI-2014-05, at 6 (EPA Sept. 24, 2015); Administrator’s Order, Pet. No. VI-2011-05, at 6-7 (EPA Jan. 15, 2013); Administrator’s Order, Pet. No. VI-2007-02, at 4-6 (EPA May 28, 2009). Accordingly, the petitioners have a heavy burden to prove that Exxon’s Baytown permit relies on PBR-IBR in a new or unprecedented way.

My understanding of the concern is that the Exxon Baytown Title V permit relies on source-specific PBR certifications that are not incorporated by reference (or not clearly incorporated) in a way that makes them easy or possible to find. But I found them with relative ease.

Start with the easiest possible piece of information that every concerned person would know—the Title V permit number. For Exxon Baytown, that is O1229. I went to TCEQ’s Central Registry, available [here](#) (or by Googling “TCEQ Central Registry”). Under “Regulated Entity Search,” I entered the relevant “Program”—here, of course, it is “Air Operating Permits.” Then in the “Program ID” box, I entered the Title V permit number “1229”. That pulled up all of the records associated with Exxon Baytown’s Title V permit—including all of the source-specific registrations. They are all listed there in black-and-white, easily incorporated by reference for all of the world to see.

Now, suppose I (like the petitioner, *see* Pet. at 21) was concerned with one of those registrations and wanted to know what it means, what emission levels are certified in it, and which portions of the facility it applies to. Put another way, say I was scrolling through the entries for Exxon Baytown’s Title V permit, saw the first registration flagged by the petitioner (Registration No. 137342), and wanted to know more about it.

TCEQ provides several options to easily obtain this information. The way I did it was by going to the TCEQ’s remote document server (Novell Groupwise WebPublisher), link available [here](#) (or by Googling “TCEQ remote document server”). In the search box, I entered the registration number “137342.” That brought up two relevant records. The first (TRV-137342) provides all of the technical data associated with the registration—including the affected NSR (18287/PSDTX730M4/PAL7) and Title V (1229) permits and the affected emissions. That document also reveals that in this particular registration, the company is certifying emissions for analyzer vents in the Refinery B and C boilers—so I now know which portion of the facility is affected. The document also provides all of the relevant emission data, broken down by pollutant, along with total emissions and a maximum operating schedule. The second document produced by the search (XPR1-137342) is the letter that TCEQ sent to Exxon to approve the certification. Again, it has the certified

emissions caps in it for all of the world to see. And finding it is as simple as entering the registration number into TCEQ's website.

I recognize that the interested person has to look up each registration. But based on what I have read, that is equally true of any permit condition that is incorporated by reference. And I was able to find all four of the registrations referenced in the Exxon Baytown petition in under 5 minutes.

Second, monitoring. As I understand it, petitioner's concern is that it's hard to figure out whether the Title V permit contains sufficient information regarding how the Baytown emissions will be calculated and monitored. The petitioner (at page 24) specifically points to Conditions 20-22 associated with NSR Permit No. 18287/PSDTX730M4/PAL7 and suggests those conditions are so vague as to be meaningless.

But they don't look meaningless to me. The Conditions are easy to find, again using TCEQ's remote document server (Novell Groupwise WebPublisher), available [here](#). I simply entered "PAL7," and it returned a list of associated documents. Petitioner is looking for Permit No. 18287, so I scrolled to the entry that says "CND 18287"—that is, the "Conditions" for Permit No. 18287. The document contains all sorts of detailed—and to my eyes, at least, far from meaningless—information on how to monitor and assure compliance. For example, Conditions 21 and 22 provide:

#### Emission Standards

21. Emissions of NO<sub>x</sub>, carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>), PM, and VOC from combustion sources associated with this permit shall be determined in accordance with the following emission factors. The CEMS data shall be used if available. The most recent validated test emissions factors shall be used if CEMS data are not available. If CEMS and test data are not available, applicable AP-42 or vendor guarantee data will be used.

#### NO<sub>x</sub> Emissions

The NO<sub>x</sub> emissions from the Fluid Catalytic Cracking Units (FCCU2 and FCCU3) shall be based on available continuous emission monitoring system (CEM) data. The NO<sub>x</sub> emissions from heaters and boilers so equipped shall be based on available data from the CEM or predictive emission monitoring (PEM). Available stack test data, vendor guarantees, or AP-42 emission factors used in the permit application shall be used to calculate NO<sub>x</sub> emissions from those combustion sources not equipped with CEM or PEM. The NO<sub>x</sub> emissions from transportable engines shall be calculated based on diesel fuel usage and the emission factors provided on the TCEQ Table 29s submitted October 6, 2000, as part of the permit amendment application. (10/00)

#### CO Emissions

The CO emissions from heaters and boilers so equipped shall be based on available data from the CEM or PEM. Available stack test data, vendor guarantees, or AP-42 emission factors used in the permit application shall be used to calculate CO emissions from those combustion sources not equipped with CEM or PEM. The CO emissions from transportable engines shall be calculated based on diesel fuel usage and the emission factors provided on the TCEQ Table 29s submitted October 6, 2000, as part of the permit amendment application. (10/00)

#### SO<sub>2</sub> Emissions

The SO<sub>2</sub> emissions from combustion sources shall be calculated based on annual fuel gas usage and the measured H<sub>2</sub>S concentration in the fuel gas or shall be based on available CEM data. The SO<sub>2</sub> emissions from transportable engines shall be calculated based on sulfur content of the diesel fuel provided on the TCEQ Table 29s submitted October 6, 2000, as part of the permit amendment application. (10/00)

#### PM Emissions

The PM emissions from combustion sources with the exception of the FCCU2 and FCCU3 shall be based on the annual fired duty in MMBtu per year (MMBtu/yr) and the AP 42 emission factors used in the permit application, or stack test data. For the FCCU2 and FCCU3, emissions shall be based on the maximum coke burn rates used in the permit application or available stack testing data. The PM emissions from transportable engines shall be calculated based on diesel fuel usage and the AP-42 emission factor of 0.31 pounds/MMBtu. For miscellaneous particulate sources emissions shall be based on appropriate emission factors used in the permit application. (10/00)

#### VOC Emissions

For all combustion sources with the exception of the FCCU2 and FCCU3, the VOC emissions shall be based on the annual fired duty in MMBtu/yr and AP-42 emission factors used in the permit application or available stack testing data. The VOC emissions from the FCCU2 and FCCU3 shall be based on regenerator rates and appropriate emission factors as used in the permit application. The VOC emissions from transportable engines shall be calculated based on diesel fuel usage and the emission factors provided on the TCEQ Table 29s submitted October 6, 2000, as part of the permit amendment application. (10/00)

22. Routine flare emissions shall be calculated using TCEQ-approved flare emission factors for NOx and CO. The SO2 emissions shall be based on the amount of sulfur in the material being burned consistent with the assumptions in the permit application. The VOC destruction efficiency of 98 percent shall be used to calculate VOC emissions for C-4s and greater. A VOC destruction efficiency of 99 percent shall be used to calculate VOC emissions for C-3s and lighter. (10/06)

It is therefore wrong to say—as the petitioner does (at page 24)—that the above-pasted text “is unclear about how ExxonMobil is to calculate emissions from units at the Baytown Refinery to determine compliance with applicable limits and caps.”

Finally, confidentiality. The folks at TCEQ have reviewed the referenced section of the permit application, and it does indeed include confidential information. But TCEQ staff have advised me that it does not include *any* confidential emission rates. The text quoted in the petition (at page 7) is admittedly sloppy. But the bottom line is that, according to TCEQ staff, they have not treated as confidential any emissions rates for anyone including Exxon Baytown. We are working on a way to share the information with you to prove that the confidential section of the permit application does not do what the petitioner suspects it does.

Thank you for the opportunity to learn more about this issue. If I missed anything or if I can be of further assistance in any way, please do not hesitate to let me know.

Sincerely,

Andy