

As explained above, the risk requirements issued in the Final Rule are not directly subject to the waiver provisions of Section 112(f)(4)(B); nonetheless, the statutory and related regulatory language provide relevant guidance as to the appropriate grounds for granting an extension of compliance deadlines.⁴ Section 112(f)(4)(B) and 40 CFR 63.6(i)(4)(ii) provide that an extension may be granted where (1) such additional period is necessary for the installation of controls and (2) steps will be taken during the period of the extension to assure that the health of persons will be protected from imminent endangerment. The regulations also provide that a compliance extension should include a “description of the controls to be installed to comply with the standard” and a “compliance schedule, including the date by which each step toward compliance will be reached.” 40 CFR 63.6(i)(6)(i)(B).

Indorama is currently in the process of implementing the Emission Control Projects, and based on discussions with vendors and outside consultants, as well as Indorama’s experience operating chemical manufacturing facilities, the information available shows that each of the Emission Control Projects will require significantly more time to complete than provided by the compliance date set in the Final Rule. Second, a compliance extension will not pose risk of imminent endangerment to the health of any persons because the Port Neches Facility will continue to operate in compliance with the HON requirements that were in effect prior to effective date of the Final Rule. The unacceptable risk EPA attributed to the Port Neches Facility in the Final Rule was a result of abnormal, nonroutine releases necessary for safe depressurization – *not* normal operations. Additionally, Indorama plans to implement the Emission Control Projects as soon as feasible, and thus will be taken steps to further assure there will be no imminent endangerment.

II. An extension of the compliance period is necessary to install the Emission Control Projects.

The Final Rule requires Port Neches Facility to implement the following Emission Control Projects: a new flare system; a new wastewater treatment system; and additional safeguards for pressure relief devices. EPA itself acknowledged that the ethylene oxide control risk requirements will trigger a set of complex, time-consuming steps to complete, many of which rely on third-party entities that are outside of a source’s control. See 89 Fed. Reg. at 42,954 (“In other words, sufficient time is needed to properly engineer the project, obtain capital authorization and funding, procure the equipment, obtain permits, and construct and start-up the equipment.”) But the two-year compliance date set by the Final Rule does not afford nearly enough time to safely complete these steps. Changes to the production processes at the Port Neches Facility will require properly trained and knowledgeable employees with process safety experience. Without adequate time to safely develop, assess, and implement procedures required for the Emission Control Projects, the risk of serious safety concerns such as fires and explosions drastically increases, as well as the risk of unintended environmental releases.

⁴ Because Section 112(f)(4)(B), and thus 40 CFR 63.6(i)(4)(ii), are not directly applicable to the requirements for which Indorama is requesting an extension, Table 3 to Subpart F (the HON regulations), which labels the extension provisions of 40 CFR 63.6(i)(4)(ii) as not applicable, does not affect TCEQ’s authority to grant the compliance extension requested herein. And even if this request were governed by Section 112(f)(4)(B) and 40 CFR 63.6(i)(4)(ii), Table 3 to Subpart F would not constrain TCEQ’s extension authority because this Table governs source owners and operators, not states – it does not divest TCEQ’s delegated extension authority.