December 9, 2021

Laurie Gharis
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

Re: Comments on Intercontinental Terminals Company LLC's Proposed Renewal of Federal Operating Permit O3785

Dear Ms. Gharis,

Air Alliance Houston, Achieving Community Tasks Successfully, Bayou City Waterkeeper, The Coalition for Environment, Equity, and Resilience, Environmental Integrity Project, Environment Texas, Public Citizen, and Sierra Club ("Commenters") jointly submit the following comments concerning draft renewal Title V Permit No. O3785 ("Draft Permit"), which would authorize operation of International Terminals Company (ITC)'s Pasadena Terminal, located at 1030 Ethyl Road in Pasadena, Harris County, Texas 77503.

ITC provides terminal services to the petrochemical industry. The facility stores various petrochemical liquids and gasses, as well as fuel oil, bunker oil, and distillates. ITC owns and operates two terminals on the U.S. Gulf Coast in Houston: ITC Deer Park and ITC Pasadena. In 2019, the Deer Park facility experienced a series of fires that caused an environmental disaster with damage ranging from hazardous air pollution to disruptions to schools, ship, and road traffic and enjoyment of property. The investigation for this incident is still ongoing. ITC and TCEQ must be transparent about the status of the investigation as well as ensure that measures are in place to prevent an incident similar to the Deer Park explosion from occurring at the Pasadena site or any other ITC-owned-and-operated facility. There must be enhanced protections for community members and a thorough investigation of disproportionate and cumulative impacts.

Additionally, the Draft Permit fails to assure compliance with applicable requirements, as required by 42 U.S.C. § 7661c(a), (c). Specifically, the Draft Permit is deficient because:

- It fails to include conditions requiring ITC to comply with applicable nonattainment New Source Review ("NSR") preconstruction permitting requirements triggered by ITC's construction and operation of a major stationary source of volatile organic compounds ("VOC") in an ozone nonattainment area;

- It fails to establish a schedule for ITC to address its false representation in its application for Certified Permit by Rule ("PBR") Registration No. 166799 that Permit No. 95754 does not include a prohibition on the use of Permits by Rule ("PBRs") violation of Permit No. 95754, Special Condition No. 45; and

- It fails to include conditions necessary to assure compliance with synthetic minor volatile organic compounds ("VOC") emission caps established by minor NSR Permit No. 95754 incorporated by reference into the Draft Permit.

The TCEQ may not renew ITC's Title V permit until ITC addresses community concerns regarding safety and public health and the TCEQ corrects Draft Permit deficiencies identified by these public comments.

I. Commenters

Air Alliance Houston (AAH) is a Texas 501(c)(3) non-profit advocacy organization working to reduce the public health impacts from air pollution and advance environmental justice through applied research, education, and advocacy. AAH takes a strong stance against disproportionate exposure to air pollution by emphasizing an agenda centered on equity and environmental justice.

Achieving Community Tasks Successfully (ACTS) is an organization committed to the betterment of underserved communities in Houston, Texas. We serve our communities by engaging, listening, training, and providing resources.

Bayou City Waterkeeper works with communities affected by water pollution and flooding across the Lower Galveston Bay watershed encompassing greater Houston. We aim to hold industries to the standards set by the Clean Water Act, with the goal of protecting the waters that flow through our bayous, creeks, and neighborhoods into our coastal bays and the health and well-being of local communities.

The Coalition for Environment, Equity, and Resilience (CEER) is a collaborative of 28 non-profit member organizations building a movement for environmental justice protection that centers community and leverages the power of technical experts as well as the lived experiences of the most impacted people. The coalition's mission is to raise awareness of the connection between pollution, place, and the public's health. CEER's 8-point plan is a call to elected leaders, industry, and other decision-makers to focus on equity, transparency, and environmental hazards that impact our health. CEER envisions a region that is equitable, environmentally sustainable, and economically strong where residents have the opportunity to live, work, learn, play and pray free from environmental hazards. To make that vision a reality, we advocate for public and private investments to clean up hazards that contaminate air, water, and land, while at the same time preventing or reducing flooding.

Environmental Integrity Project (EIP) is a nonpartisan, nonprofit watchdog organization with offices and programs in Texas that advocate for effective enforcement of environmental laws. Comprised of former EPA enforcement attorneys, public interest lawyers, analysts, investigators, and community organizers, EIP has three goals: (1) To illustrate through objective facts and figures how the failure to enforce or implement environmental laws increases pollution and harms public health; (2) To hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws; and (3) To help local communities obtain the protections of environmental laws.

Environment Texas is a nonprofit advocate for clean air, clean water, parks and wildlife, and a livable climate.

Public Citizen is a nonprofit consumer advocacy organization that champions the public interest in the halls of power. We defend democracy, resist corporate power, and work to ensure that government works for the people – not for big corporations. Founded in 1971, we now have 500,000 members and supporters throughout the country. Our Texas office works to protect the health and prosperity of our communities and families. We support a just energy transition that creates green jobs, living wages, and a strong economy.

The Sierra Club is a non-profit public interest organization organized under the laws of the State of California, with its principal offices in San Francisco, California. The Lone Star Chapter is dedicated to protecting Texas' natural resources, the health of its people, and preserving the state's many beautiful and unique natural landscapes. In this matter, the Sierra Club seeks to protect the air quality in and around Deer Park and Houston to protect its members' health and their ability to safely pursue and enjoy outdoor activities in the Houston area.

II. Background

ITC provides terminal services to the petrochemical industry. The Pasadena Terminal stores various petrochemical liquids and gases, as well as fuel oil, bunker oil, and distillates. ITC owns and operates two terminals on the U.S. Gulf Coast in Houston: the ITC Deer Park and ITC Pasadena Terminal. The ITC Deer Park terminal currently has 13.1 million barrels of capacity in 242 tanks. The terminal has five ship docks and 10 barge docks, rail and truck access, as well as multiple pipeline connections. The ITC Pasadena terminal opened with 1 million barrels capacity in May 2015 and currently has over 3 million barrels of storage available, with another 3.5 million barrels in construction. This facility has two ship docks, at least four barge docks, as well as rail and truck loading equipment. The terminal is connected to the Explorer and Colonial pipeline systems, as well as to multiple refineries and plants in the area.[1]

A. Incident Summary

[1] https://www.iterm.com

On Sunday, March 17, 2019, ITC Deer Park experienced a fire at their 2nd 80's Tank Farm that held naphtha. The next morning, ITC reported that the fire had spread to five additional adjacent tanks, for a total of eight tanks containing gasoline blends, toluene, naphtha, xylenes, pyrolysis gasoline, and blended oils involved in the fire. By Tuesday, March 19, 2019, ITC reported that two additional tanks, both containing pyrolysis gasoline, were confirmed to be on fire bringing the total to 10 tanks burning. ITC was unable to isolate or stop the release of naphtha products from the tank, and the fire continued to burn, intensify, and progressively involved additional tanks in the tank farm. On Wednesday, March 20, 2019, ITC issued a press statement indicating all tank fires were extinguished, however, the same day, a flash fire occurred in one of the tanks and toxins continued to be released into the air.[2]

On Thursday, March 21, 2019, elevated levels of benzene >1 part per million (ppm) in the community were detected and prompted a shelter-in-place order. The next day, the containment wall surrounding the tank farm breached and released tens of thousands of barrels of firefighting water and petro-chemicals into Tucker Bayou and the Houston Ship Channel (HSC). Booms were deployed, and the U.S. Coast Guard closed a portion of the HSC between Tucker Bayou and the San Jacinto Monument to Crystal Bay. Later in the day, the tank farm fire re-ignited causing a secondary fire to ignite in the Tidal Road drainage ditch, extending down to the ditch to the confluence with Tucker Bayou, and threatening other petrochemical storage tanks in the area.[3]

B. Community Impact

The communities impacted by this incident unsurprisingly are environmental justice communities, where people of color are disproportionately overburdened with toxic pollution. As explained above, this incident lasted for five days wreaking havoc on the communities. During this time, communities in the impacted areas were forced to stay in their homes and children had to miss consecutive days of school. Natural resources and the economy were also impacted as tens of thousands of barrels of contaminated water were released into the Tucker Bayou and HSC.

i. School closures

The five-day incident caused large-scale school closures for four consecutive days from March 18 - March 22, 2019. The impacted school districts include Deer Park Independent School

[2] U.S. Chemical Safety and Hazard Investigation Board. Storage Tank Fire at Intercontinental Terminals Company, LLC (ITC) Terminal Deer Park, Texas | *Incident Date: March 17, 2019* | No. 2019-01-I-TX
[3] Id.

District (ISD), La Porte ISD[4], Channelview ISD, Galena Park ISD, Pasadena ISD, and Sheldon ISD.[5]

ii. Shelter in place

At the start of the incident, a shelter-in-place order was issued by the City of Deer Park for the north end of the city. As the fire continued to spread, the city later expanded the shelter-in-place to include the entire city.[6] Days later, the City of Deer Park issued a second shelter-in-place due to reports of benzene and other volatile organic compounds (VOCs) within the city limits. The shelter-in-place order was lifted at 11:40 am the following morning.[7]

iii. Roadway Closures

As the fire continued to spread and the threat of injury became apparent, multiple roadways were shut down. The Lynchburg Ferry and parts of State Highway (SH) 225 near the facility were closed in both directions in the vicinity of the facility. Highway 225 closed in both directions between Beltway 8 and Independence Parkway. Additionally, the U.S. Coast Guard (USCG) closed a seven-mile stretch of the Houston Ship Channel adjacent to the ITC Deer Park terminal following a breach in the containment wall surrounding the tank farm that allowed contaminants to enter the waterway.[8]

iv. Additional closures

In addition to roadway and school closures, Harris County Precinct Two closed eight waterfront parks. The City of La Porte closed all waterfront parks within its limits. On Saturday, March 23, 2019, Independence Parkway, the San Jacinto Monument, Battleship Texas State Park, and Lynchburg Ferry crossing closed due to the detection of intermittent levels of VOCs.

TCEQ is fully aware of the environmental disaster that happened at ITC's facility in Deer Park in March 2019, which required the impacted community to shelter-in-place, multi-school district closures, freeway closures, recreational activity closures, and water contaminations. The facility released damaging amounts of VOCs, including benzene into these communities. This same company now seeks to renew its permit in Pasadena without any transparency or enhanced protections for impacted communities. In addition to community impact concerns, ITC's permit is

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[4] KPRC Click2Houston," 21 March 2019. [Online]. Available: https://www.click2houston.com/news/deer-park-la-porte-school-districts-to-be-closed-friday-due-to-deer-park-fire.

[5] KPRC Click2Houston," 18 March 2019. [Online]. Available: https://www.click2houston.com/news/la-porte-isd-cancels-classes-wednesday-due-to-deer-park-fire.

[6] City of Deer Park, "City of Deer Park - ITC Fire Updates," [Online]. Available: http://www.deerparktx.gov/1778/ITC-Fire.

[7] City of Deer Park - Shelter in Place," [Online]. Available: http://www.deerparklepc.org/1722/Shelter-In-Place.

[8] Houston Chronicle," 22 March 2019. [Online]. Available: https://www.houstonchronicle.com/business/bizfeed/article/Spill-at-ITC-in-Deer-Park-closes-7-mile-stretch-13709407.php.

deficient in various ways. First, Permit No. 95754 fails to require ITC to comply with applicable nonattainment new source review preconstruction permitting requirements and fails to include monitoring, testing, and recordkeeping requirements that assure compliance with major new source review requirements. TCEQ must ensure ITC strictly adheres to environmental laws intended to protect the public, rather than catering to industry and approving ITC's permit application without due diligence. TCEQ must actively work to ensure another incident like the March 2019 incident does not happen again.

III. Deficiencies

1. ITC does not have adequate safety measures in place to prevent harm to communities.

According to the Chemical Safety Board's factual update, ITC did not equip the Tank 80-8 piping manifold with emergency or remotely operated isolation valves.[9] These valves are instrumental to stopping an uncontrolled release if, for example, the pump or piping manifold were damaged. Instead, ITC operators must manually close both the Tank 80-8 supply valve to the pump and the return valve from the pump back to the tank. With a major fire such as the one that occurred at ITC's Deer Park Terminal, neither ITC operators nor emergency responders could access the area to close these manually operated valves. ITC must remedy this situation and install emergency or remotely operated valves on its facilities to prevent another catastrophe in its Pasadena facility before the Draft Permit may be granted.

2. TCEQ and ITC have failed to provide information about the shortcomings and remedial measures of the 2019 incident.

Although the investigation into the 2019 disaster is ongoing, TCEQ should make information readily available and accessible to the public about both its shortcomings and remedial measures surrounding the incident. During the fire, TCEQ failed to monitor emissions for VOCs because of scheduled maintenance.[10] Failures like that cannot happen during times of environmental disasters. Community members must have a full understanding of what pollutants are in the atmosphere and the effects they can have on them. Additionally, TCEQ should require ITC to share its shortcomings and subsequent remedial measures with the public in accessible formats. It is imperative that the communities who are on the fenceline of the ITC Pasadena facility feel safe.

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[9] U.S. Chemical Safety and Hazard Investigation Board. Storage Tank Fire at Intercontinental Terminals Company, LLC (ITC) Terminal Deer Park, Texas | *Incident Date: March 17, 2019* | No. 2019-01-I-TX.

[10] https://www.tceq.texas.gov/assets/public/response/smoke/correspondence/response-from-Niermann-to-Adrian-Garcia.pdf

3. **TCEQ has failed to Analyze the permit for disproportionate impacts to low-income communities and communities of color, in accordance with federal civil rights law.**

On multiple occasions, TCEQ has stated that air permits evaluated by the agency are reviewed without reference to the socioeconomic or racial status of the surrounding community. Under Title VI of the Civil Rights Act, the TCEQ must determine whether the adverse effect of the policy or practice disproportionately affects members of a group identified by race, color, or national origin.[11] Here, there is an abundance of data showing that communities of color disproportionately bear the burden of pollution. In Pasadena, the residents are largely Hispanic and Black. TCEQ has a legal obligation to prevent disparate impacts whether they are intentional or not.

4. **Study the full impact of this facility holistically, taking into account cumulative impacts such as the number of existing facilities in the community and other sources of pollution.**

TCEQ must approach this permit renewal with an equity-centered lens. The Pasadena community and those north of the Pasadena facility such as Cloverleaf, Galena Park, and Jacinto City are burdened by multiple sources of pollution from facilities that diminish the quality of life and health of Texas communities. TCEQ must consider the disproportionate pollution burdens already occurring in these communities from multiple industrial sources and incorporate enhanced mitigative actions in the permitting process which address the cumulative impacts to these communities and provide greater protective measures for public health and safety.

5. **The Draft Permit is deficient because it fails to require ITC to comply with applicable Nonattainment NSR pre-construction permitting requirements.**

The Clean Air Act's major NSR pre-construction permitting requirements establish stringent pollution control requirements and impacts analysis requirements necessary to ensure that emissions from our nation's largest and most dangerous sources of air pollution do not harm public health or cause serious environmental harm. The most stringent of the Clean Air Act's preconstruction permitting programs, nonattainment NSR, applies to major sources constructed in areas where air quality is already at unhealthy levels. According to the Clean Air Act's nonattainment NSR program requirements, major sources of pollution constructed in nonattainment areas must comply with strict Lowest Available Emission Rate ("LAER") requirements and offset new pollution with decreases in pollution from existing sources in the nonattainment area at a ratio of greater than 1:1. 30 Tex. Admin. Code § 116.150(d)(1) and (3). Additionally, construction of a new major source of pollution or a major modification to an existing major source of pollution in a nonattainment area may not be authorized unless the applicant demonstrates that all of the major sources it owns or operates in Texas are in compliance with or

[11] U.S. Dep't of Justice, Title VI Legal Manual

on a schedule for compliance with all applicable state and federal pollution control requirements and that the benefits of the proposed project significantly outweigh its social and environmental costs. *Id*. at (d)(2), (4).

EPA has long been concerned that major sources of pollution would attempt to circumvent the Clean Air Act's requirements for major sources because they are so stringent. This concern is particularly appropriate given that the process established by the Clean Air Act for determining whether a project should be subject to major NSR pre-construction permitting requirements is complicated, technical, and subject to manipulation by applicants. Thus, EPA's most important NSR guidance document alerts state permitting authority to these risks:

> A sham permit is a federally enforceable permit with operating restrictions limiting a source's potential to emit such that potential emissions do not exceed the major or de minimis levels for the purpose of allowing construction to commence prior to applying for a major source permit. Permit with conditions that do not reflect a source's planned mode of operation may be considered void and cannot shield the source from the requirement to undergo major source preconstruction review. In other words, if a source accepts operational limits to obtain a minor source construction permit but intends to operate the source in excess of those limitations once the unit is built, the permit is considered a sham. …. Additionally, a permit may be considered a sham permit if it is issued for a number of pollution-emitting modules that keep the source minor, but within a short period of time, an application is submitted for additional modules which will make the total source major.[12]

This definition of a sham permit aptly describes Permit No. 95754, which is incorporated by reference into the Draft Permit. Permit No. 95754 was issued in 2012 as a synthetic minor permit authorizing the construction of a modest number of tanks and loading facilities. Though ITC's initial permit for this source only authorized 24.9 tpy of VOC, slightly below the applicable major source threshold of 25 tpy,[13] the TCEQ's permit engineer understood that ITC did not intend to limit its utilization of the Pasadena Terminal to the terms of the initial authorization, writing

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[12] EPA, *New Source Review Workshop Manual* draft dated October 1990 at c.6.

[13] Harris County was designated as a severe ozone nonattainment area at the time this project was permitted, making the applicable major source threshold for VOC 25 tpy. 30 Tex. Admin. Code § 116.12, Table I. A subsequent project to authorize additional equipment subject to the synthetic minor VOC emission cap in Permit No. 95754, Special Condition No. 2 (Group B) was also authorized while Harris County was designated as a severe nonattainment area. The synthetic minor VOC emission cap for Group C established by Permit No. 95754, Special Condition was approved while Harris County was designated as a moderate nonattainment area. The major source threshold for sources in moderate nonattainment areas is 100 tpy. 30 Tex. Admin. Code § 116.12, Table I. Harris County is currently designated as a serious nonattainment area and the currently-applicable major source threshold for VOC is 50 tpy. *Id*.

that "*[a]lthough the site will ultimately be major*, this initial construction will be limited to VOC emissions less than 25 tpy so the site is minor."[14]

While ITC's intent to operate the Pasadena Terminal as a major source of air pollution was clear to the TCEQ, the agency decided to include language in the permit intended to make circumvention of nonattainment NSR pre-construction permitting requirements more difficult rather than denying the permit application outright as a sham. Specifically, Special Condition No. 26 of Permit No. 95754 (2012) provided that:

> If additional facilities (beyond those authorized by this permit) are to be authorized at this site or any facilities authorized by this permit are modified within 18 months of the issuance of this permit, the following requirements apply.
>
> A. If the proposed construction/modification will increase the site VOC potential to emit to greater than 25.0 tpy, they must be authorized through an amendment to this permit. That construction/modification shall be subject to nonattainment NSR for VOC. The facilities currently authorized by this permit shall also be subject to a retrospective nonattainment review with that amendment application. This requirement does not preclude any potential compliance action related to the circumvention of federal NSR.
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> B. If not subject to part A of this condition, the construction/modification shall be authorized through an amendment to this permit or a permit by rule (PBR) (30 TAC Chapter 106). If authorized through PBR, the PBR must be registered and this permit altered to reflect the construction/modification. The permit alteration must be approved prior to the start of construction.
>
> Any PBRs used to authorize construction of new or modification of existing facilities at this site after 18 months but within 60 months of the issuance of this permit must be registered with the TCEQ. All permit applications and PBR registrations submitted shall identify the facilities and emissions authorized in this permit and explain why the proposed project should not be aggregated with the facilities authorized in this permit when determining whether the VOC emissions from these facilities are subject to nonattainment review.

Unfortunately, the 18-month window established by this special condition was not sufficient to prevent ITC from circumventing nonattainment NSR pre-construction permitting requirements. This is because construction of the first group of facilities authorized by Permit No. 95754 was still under construction when the 18-month mandatory aggregation period ended. Since

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[14] Technical Review Document, Permit No. 95754, Project No. 164990 (emphasis added). Available electronically at: https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_EXTERNAL_SEARCH_GET_FILE&dID=5412420&Rendition=Web

the construction of ITC's Pasadena Terminal was first authorized in 2012, ITC has been perpetually constructing and authorizing new tanks, new loading equipment, and increased utilization of this equipment in artificially partitioned increments that seem to be calculated to circumvent nonattainment NSR pre-construction permitting requirements. ITC has also attempted several times to remove constraints on expedited permitting procedures included in Permit No. 95754 to prevent circumvention of nonattainment NSR requirements. In at least one case, ITC attempted to justify its request that two of its applications seeking to authorize VOC emissions from the Terminal based on information the permit reviewer deemed "false."[15] In another case, ITC falsely represented to the TCEQ that Permit No. 95754 did not establish a prohibition on the use of PBRs to authorize emissions increases at that Pasadena Terminal to authorize emissions increases from equipment authorized by Permit No. 95754.[16]

This constant stream of construction involving functionally interchangeable pieces of equipment, the TCEQ's observation in 2012 that ITC intended to operate the Pasadena Terminal as a major source, and ITC's dishonest actions to undermine permit terms and preconstruction permitting requirements established to prevent circumvent nonattainment NSR establish that ITC has engaged in sham permitting. It was clear from the outset that ITC's initial terminal design was not economically feasible and that ITC intended to construct additional tanks and loading facilities and to operate the Pasadena Terminal a major source of pollution. Though ITC's current permits—Permit No. 95754 and Certified PBR Registration No. 166799—still identify the Pasadena Terminal as a minor source of pollution, it is now authorized to emit at least 147.51 tpy of VOC, nearly three-times the currently-applicable major source threshold.[17] The Pasadena Terminal is a major source of pollution.

ITC's operation of the Pasadena Terminal, a major source of air pollution, without demonstrating compliance with nonattainment NSR pre-construction permitting requirements is a violation of the Clean Air Act, 42 U.S.C. § 7503, the Texas State Implementation Plan ("SIP"), 30 Tex. Admin. Code §§ 116.110(a)(1), 116.111(a)(2)(H), 116.150 and deprives those who are exposed to pollution from the Terminal of public health protections promised by federal and state law. ITC's Draft Permit is deficient because it fails to establish a schedule for ITC to apply for and obtain a permit that complies with applicable nonattainment NSR pre-construction permitting requirements. 42 U.S.C. § 7661c(a).

A. The permit history for Permit No. 95754 establishes that the Pasadena Terminal is a major source of VOC.

[15] *See* Figure 1 below.

[16] *See* Figure 2 below.

[17] This is the amount of pollution authorized by the three synthetic minor VOC emission caps established by Permit No. 95754, Special Condition No. 2. Certified PBR Registration No. 166799 authorizes 4.35 additional VOC emissions from equipment subject to these synthetic minor VOC emission caps and additional equipment that is not authorized by the caps.

The permitting history for the Pasadena Terminal establishes ITC's intent, from the beginning, to operate the Pasadena Terminal as a major source of pollution. Shortly after the TCEQ issued Permit No. 95754, *but before construction of authorized equipment even commenced*, ITC filed for an *"as-built"* amendment to jam five additional 100 MBbl storage tanks into the existing synthetic minor VOC emissions cap of 24.9 tpy.[18]

The 18-month mandatory aggregation period established by ITC's original permit failed to effectively limit ITC's construction activities or prevent circumvention of nonattainment NSR requirements because construction of the equipment authorized by that permit was still ongoing when the mandatory aggregation period expired. On May 30, 2014, just three months after the 18-month period had run and while construction activities for equipment authorized by Permit No. 95754 were still ongoing, ITC submitted an application to authorize additional storage tanks, loading activities, and associated equipment. ITC asked that emissions from this equipment not be aggregated with the project authorized by the existing version of Permit No. 95754 and that a second synthetic minor VOC emission cap of 24.9 tpy be added to the permit. This would allow the Pasadena Terminal to emit nearly double the applicable major source threshold for VOC without complying with stringent pollution control requirements that apply to major sources of pollution.

On July 3, 2014, while the TCEQ was still reviewing ITC's application to authorize construction of facilities and activities subject to the second synthetic minor VOC emissions cap in Permit No. 95754, ITC submitted an application to remove that permit's restriction on the use of PBRs to authorize additional construction and emissions at the Pasadena Terminal.[19] Four days later, on July 7, 2014, ITC filed an application for a certified PBR registration that would have authorized the construction of 19 new storage tanks, fugitive components, as well as increased throughput at existing loading docks, loading racks, and vapor control devises.[20] If approved, the certified PBR registration would have authorized VOC emissions from new, modified, and affected units totaling 23.47 tpy. However, ITC withdrew its application after the TCEQ rejected justification for non-aggregation of this project with other equipment authorized by Permit No. 95754 as "false." ITC also withdrew its application to remove restrictions on the use of PBRs from Permit No. 95754.

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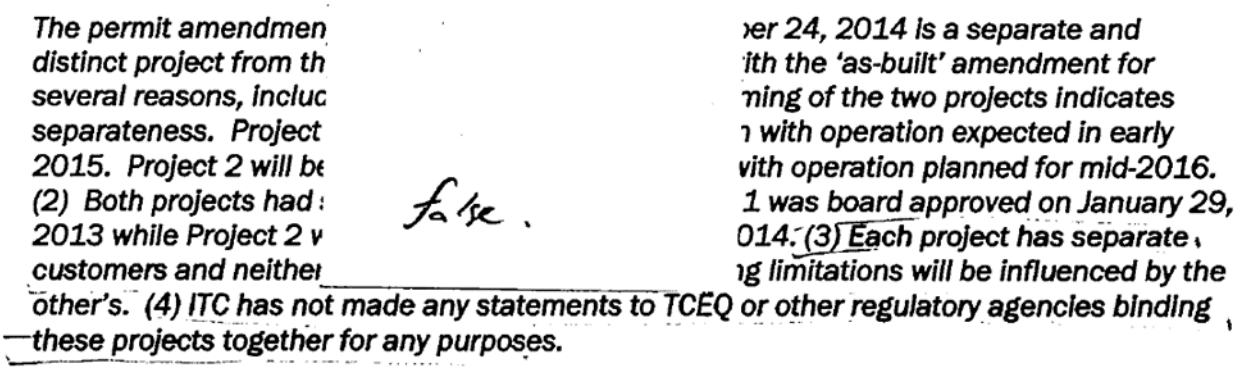
[18] Technical Review Document, Permit No. 95754, Project No. 184920 (ITC "requested an as-built amendment to Permit No. 95754 to authorize changes to the construction plan … for which construction has yet to begin."). Available electronically at: https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_EXTERNAL_SEARCH_GET_FILE&dID=5391995&Rendition=Web

[19] Technical Review Document for Permit No. 95754, Project No. 213724. Available electronically at: https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_EXTERNAL_SEARCH_GET_FILE&dID=5348152&Rendition=Web

[20] TPC's application for Certified PBR Registration No. 121761 is available electronically at: https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_EXTERNAL_SEARCH_GET_FILE&dID=1302226&Rendition=Web

Figure 1: TCEQ Permit Engineer's Note Concerning ITC's Non-Aggregation Case for Certification PBR Registration No. 121761[21]


The permit amendmen ...er 24, 2014 is a separate and distinct project from th ...ith the 'as-built' amendment for several reasons, incluc ...ming of the two projects indicates separateness. Project ...1 with operation expected in early 2015. Project 2 will be ...with operation planned for mid-2016. (2) Both projects had ... False. ...1 was board approved on January 29, 2013 while Project 2 v ...014. (3) Each project has separate customers and neither ...g limitations will be influenced by the other's. (4) ITC has not made any statements to TCEQ or other regulatory agencies binding these projects together for any purposes.

On August 18, 2015, after the TCEQ amended Permit No. 95754 to authorize construction of equipment authorized by the second synthetic minor VOC emission cap of 25 tpy, Texas submitted to EPA a redesignation substitute report for the Houston-Galveston-Brazoria Area 1997 eight-hour ozone National Ambient Air Quality Standard.[22] This report asked EPA to lift Harris County's designation as a severe ozone nonattainment area. After Texas requested the change to Harris County's designation as a severe ozone nonattainment area, ITC filed an application for a nonattainment NSR preconstruction permit, which would authorize construction of new equipment and activities that could emit up to 79.15 tpy of VOC.[23] In response to Texas's report, while ITC's application was still under review, EPA published notice of a redesignation substitute for the 1997-8-hour ozone standard with an effective date of December 8, 2016. Following the effective date, Harris County was considered to be a moderate ozone nonattainment area under the 2008 8-hour ozone NAAQS and the applicable major source threshold in Harris County became 100 tpy of VOC. Eventually, ITC would submit an application for an as-built amendment to this permit, which would authorize 97.71 tpy of pollution, just under the major source threshold of 100 tpy for moderate ozone nonattainment areas. Because this project was still under review when Harris County's nonattainment designation changed, ITC did not need to demonstrate compliance with nonattainment NSR pre-construction permitting requirements, its application for a major source nonattainment NSR permit was canceled, and the VOC emissions increase was authorized as a minor modification to an existing minor source.[24]

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[21] Excerpt from project file for Permit No. 95754, Project No. 219916, available electronically at: https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_EXTERNAL_SEARCH_GET_FILE&dID=572534&Rendition=Web

[22] Available electronically at: https://downloads.regulations.gov/EPA-R06-OAR-2015-0609-0003/content.pdf

[23] Technical Review Document for Permit No. 95754, Project No. 243313, available electronically at: https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_EXTERNAL_SEARCH_GET_FILE&dID=5275063&Rendition=Web

[24] *Id.*

The timing of ITC's request for approval of a project resulting in VOC emissions increase well above the 25 tpy threshold *shortly after* Texas asked EPA to revise Harris County's nonattainment status and *shortly after* ITC had authorized two projects in quick succession right below the 25 tpy major sources threshold suggests that ITC has improperly broken a single construction project into separate phases based on the applicable or projected applicable major source threshold in Harris County.

The Pasadena Terminal is a bulk for-hire terminal. It is a collection of storage tanks, docks, and loading equipment for moving various chemicals onto and off of trucks, railcars, and boats. All three of the "projects" authorized by Permit No. 95754 utilize the same docks and racks for marine, railcar, and truck loading and unloading. All three projects utilize the same wastewater treatment equipment. All three projects utilize the same vapor combustors. And all three projects utilize many of the same pipes and transport systems. Any one of the projects authorized by Permit No. 95754 considered in isolation makes little economic or technical sense. For example, the loading capacity of the multiple railcar and truck racks and docks far exceeds that of the dozen main tanks in project one, or the 16 tanks in project 2. Considered together, however, that loading capacity is justified for the 64 total tanks authorized by the three separate projects authorized by Permit No. 95754.

The permit engineer for the initial issuance of Permit No. 95754 understood this and stated that ITC had plans to build a "large" terminal that would eventually become a major source of VOC.[25] ITC's piecemeal permitting of its ongoing expansion of the Pasadena Terminal was calculated to circumvent nonattainment NSR pre-construction permitting requirements. Because the project records for ITC's various applications to change requirements in Permit No. 95754 establish that the TCEQ was aware from the very beginning that ITC intended to operate the Pasadena Terminal as a major source, because the Pasadena Terminal is authorized to emit VOC at levels that exceed the applicable major source threshold, and because the Draft Permit fails to require ITC to submit an application for authorization to operate the Pasadena Terminal as a major source, the Draft Permit is deficient. 42 U.S.C. § 7661c(a).

B. The Draft Permit is deficient because it fails to require ITC to correct misrepresentations made to obtain Certified PBR Registration No. 166799 and does not establish a schedule for ITC to comply with Nonattainment NSR preconstruction permitting requirements triggered by construction associated with this PBR.

The Draft Permit is deficient because it fails to establish a schedule for ITC to rectify outstanding non-compliance with Permit No. 95754, Special Condition No. 45 and Texas law forbidding false representations in permit applications. This special condition prohibits the use of PBRs to authorize emissions for certain kinds of facilities and activities at the Pasadena Terminal, including the construction of additional ship or barge loading facilities or increasing additional

[25] Technical Review Document for Permit No. 95754, Project No. 164990.

throughput from any tanks, without the written approval of the TCEQ's Executive Director. This special condition was established to prevent circumvention of nonattainment NSR preconstruction requirements. ITC violated this special condition by applying for a PBR to authorize just these kinds of facilities and activities and by falsely representing that ITC was not subject to permit terms prohibiting the use of PBRs to authorize emissions at the Pasadena Terminal.[26]

Figure 2, Excerpt from ITC's Application for Certified PBR Registration No. 166799

5.	30 TAC § 106.4(a)(7): PBR Prohibition Check	
•	Are there any air permits at the site containing conditions which prohibit or restrict the use of PBRs?	☐ YES ☒ NO

This false representation appears to be intentional. ITC had filed several applications asking the TCEQ to remove terms limiting the use of PBRs at the Pasadena Terminal from Permit No. 95754, including Special Condition No. 45. Most recently, ITC's 2018 application to amend Permit No. 95754 asked the TCEQ to revise that specific special condition.[27] ITC explained to the permit engineer for this project that "ITC maintains that the requirements of 30 TAC 106.4(a)(2) sufficiently address Federal NSR applicability and adding SCs which are duplicative in nature are not warranted."[28] The permit engineer, however, disagreed and explained that "these restrictions on the use of PBRs/Standard Permits were added to prevent increases in VOC which could cause the site to become subject to nonattainment review" and the "restrictions are imposed consistent with the [provisions] of 30 TAC § 116.115(c)(2)," and could not be removed.[29]

Nonetheless, ITC's application for Certified PBR Registration No. 166799 filed the following year ignores the TCEQ's decision to retain the PBR prohibition in Permit No. 95754 and falsely indicates that no such prohibition exists. This is so, even though the same consulting firm prepared all of ITC's applications to have the PBR prohibition removed from Permit No. 95754 as well as the application for Certified PBR Registration No. 166799.

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[26] ITC's PBR application is available electronically at: https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_EXTERNAL_SEARCH_GET_FILE&dID=6400319&Rendition=Web

[27] Application for Amendment to Permit No. 95754, filed December 18, 2018 at 1-4. This application refers to Special Condition No. 47, which has been renumbered as Special Condition No. 45 in the most recently-issued version of Permit No. 95754. This application and other material related to the project is available electronically at: https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_EXTERNAL_SEARCH_GET_FILE&dID=6188231&Rendition=Web

[28] Email from Neal Nygaard to Kevin Tang, dated February 20, 2020, Re: Permit No. 95754 ITC Conference Call Follow Up. This email and additional correspondence related to Permit No. 95754, Project No. 294773 is available electronically at: https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_EXTERNAL_SEARCH_GET_FILE&dID=6165263&Rendition=Web

[29] Email from Kevin Tang to Neal Nygaard, dated February 18, 2020, Re: Permit No. 95754 ITC Conference Call Follow Up. This email is accessible using the link provided in the previous footnote.

Based on ITC's misrepresentation, the TCEQ approved ITC's application for Certified PBR Registration No. 166799 on November 29, 2021. The Draft Permit must include a schedule for ITC to correct this misrepresentation and to re-apply for a permit authorizing emissions improperly authorized by Certified PBR Registration No. 166799. Additionally, the facilities, activities, and emissions authorized by the certified PBR registration should be aggregated with the projects authorized by Permit No. 95754 and ITC should be required to obtain a nonattainment NSR permit authorizing equipment and activities at the Pasadena Terminal. This much is made clear by Permit No. 95754, Special Condition No. 3, which provides that:

> At such time Special Condition No. 2, Group ID A or Group ID B defined projects becomes a major stationary source or major modification … solely by virtue of a relaxation of any enforceable limitation established by this permit, on the capacity of the source or modification otherwise to emit VOC, such as a restriction on hours of operating, then Nonattainment New Source Review requirements shall apply to the source or modification as though construction had not yet commenced on the source or modification.

The 4.35 tpy VOC emissions increase authorized by this PBR more than accounts for the margin between the applicable major source threshold and the three synthetic minor VOC emissions caps established by Permit No. 95754. Moreover, the PBR authorization affects sources covered by each of those caps. For example, the PBR authorizes 2 tpy VOC from existing tanks, 2 more tpy VOC from existing docks, and construction of a new barge dock that will presumably be used to load chemicals stored in ITC's existing tanks.[30] The authorization of these additional emissions from units covered by Group ID A and B through a permitting mechanism specifically prohibited by Permit No. 95754 is "a relaxation of any enforceable limitation established by this permit" sufficient to cause the Terminal to become a major stationary source.

The Draft Permit's failure to establish a schedule for ITC to comply with applicable nonattainment NSR pre-construction permitting requirements triggered by ITC's improper use of a PBR to authorize additional VOC emissions from units subject to synthetic minor VOC emissions caps established by Permit No. 95754, Special Condition No. 2, *see* 30 Tex. Admin. Code § 116.150, renders it deficient. 42 U.S.C. § 7661c(a).

6. The Draft Permit fails to include monitoring, testing, and recordkeeping requirements that assure compliance with Nonattainment NSR requirements.

[30] Technical Review Document for Certified PBR Registration No. 166799, Project No. 334414. Available electronically at: https://records.tceq.texas.gov/cs/idcplg?IdcService=TCEQ_EXTERNAL_SEARCH_GET_FILE&dID=6399967&Rendition=Web

Permit No. 95754, Special Condition No. 2 establishes three multi-unit synthetic minor VOC emission caps to artificially limit the potential to emit of the capped emission units just below applicable major source applicability thresholds for VOC.

Group ID	**VOC tpy Limit**	**Applicable Major Source Threshold**
A	24.9	25
B	24.9	25
C	97.71	100

The facilities listed in each group have the physical capacity to emit VOC at rates far higher than the applicable synthetic minor VOC emission caps. According to ITC's most recent application to amend Permit No. 95754, Group A units have the capacity to emit VOC at a rate of 43.73 tpy, Group B units have the capacity to emit VOC at a rate of 58.25 tpy, and Group C units have the capacity to emit VOC at a rate of 170.14 tpy.[31]

The artificial or "synthetic minor" emission caps established by Permit No. 95754, Special Condition No.2 do not limit the potential to emit of the covered units for purposes of determining nonattainment NSR applicability unless they are practically enforceable.[32] To be practically enforceable, synthetic minor emission limits must be technically accurate, *i.e.* limits based on the most representative data available and specify reliable methods accurately determining compliance with those limits.[33] This makes good sense because synthetic minor emission limits a source cannot continuously meet, and monitoring methods that cannot reliably detect exceedances of synthetic minor limits do not ensure that source authorized by a synthetic minor permit will maintain its emissions below the major source threshold. Therefore, such a source still has the potential to emit criteria pollutants at a rate that exceeds the major source threshold, and is, by definition a major stationary source. 30 Tex. Admin. Code § 116.12(19) (defining "Major stationary source" to mean "[a]ny stationary source that emits, *or has the potential to emit*, a threshold quantity of emissions or more of any air contaminant (including volatile organic compounds (VOCs) for which a national ambient air quality standard has been issued, or greenhouse gases."); *see id*. at § 116.12(20) (providing that an increase and net increase equal to

[31] Application for Amendment to Permit No. 95754, filed December 18, 2018 at Table 1(a).

[32] *See e.g.,* EPA, *New Source Review Workshop Manual* at A.5 (Draft October 1990) ("For any limit or condition to be a legitimate restriction on potential to emit, that limit or condition must be federally-enforceable, which in turn requires practical enforceability.").

[33] *Id*.

or exceeding the applicable major stationary source threshold at an existing minor source is a "major modification.").

Monitoring, testing, recordkeeping, and reporting requirements incorporated by the Draft Permit to assure compliance with the synthetic minor VOC emission caps established by Special Condition No. 2 of Permit No. 95754 are not sufficient to assure compliance with the emission caps. Accordingly, Permit No. 95754 does not effectively limit the Pasadena Terminal's potential to emit VOC and the terminal is a major source for purposes of nonattainment NSR. The Draft Permit is deficient because it fails to require ITC to comply with nonattainment NSR pre-construction permitting requirements triggered by the construction of the equipment covered by Special Condition No. 2. 30 Tex. Admin. Code §§ 116.12(19), (20), 116.111(a)(2)(H) (providing that operators must demonstrate compliance with applicable nonattainment NSR pre-construction permitting requirements before constructing a major modification), 116.150 (establishing preconstruction permitting requirements for major modifications for VOC and/or NOx in Texas ozone nonattainment areas), and the permit fails to establish monitoring requirements sufficient to make these emissions caps practically enforceable. The Draft Permit is also deficient because it fails to include monitoring, testing, and recordkeeping conditions sufficient to assure compliance with the synthetic minor emission caps established by Permit No. 95754, which are applicable requirements for purposes of Title V. 42 U.S.C. § 7661c(a), (c).

The monitoring requirements established by Permit No. 95754 to assure compliance with the synthetic minor VOC emission caps established by Special Condition No. 2 are deficient in the following respects:

i. The loading loss equation Permit No. 95754 directs ITC to use to determine compliance with synthetic minor emission caps has a built-in 30% margin of error.

Each of the synthetic minor VOC emission caps established by Special Condition No. 2 includes uncontrolled emissions from marine loading losses (EPNs: DOCK-1, DOCK-2, DOCK-3, and DOCK-4) and controlled emissions from marine loading losses (EPNs: VCU-001, VCU-002, VC-003, and FL-001).[34] Emissions from the uncontrolled marine loading EPNs, along with uncontrolled loading losses from truck and railcar loading at EPNs Rack-1, Rack-3, Rack-5 are combined to calculate a total annual VOC emission rate from uncontrolled loading losses of 23.81 tpy.[35] Controlled loading losses from marine loading and truck and railcar loading are combined in the application with controlled emissions for hose venting, wastewater system, and routine storage tank landing to calculate a total annual VOC emission rate from the devices used to control these emissions of 10.45 tpy.[36]

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[34] Application for Amendment to Permit No. 95754, filed December 18, 2018 at 5-4.

[35] *Id.* at Table 1(a).

[36] *Id*.

According to Permit No. 95754, Special Condition No. 46.A.2, ITC is to calculate emissions from loading activities at the Pasadena Terminal using "the uncontrolled loading loss factor, L_L … defined by AP-42, Sec. 5.2, Eqn. 1 (July 2008)." The same process is used to calculate VOC emissions from hose disconnects at the Pasadena Terminal.[37] Loading losses calculated using this factor are then multiplied by appliable capture efficiencies listed at Special Condition No. 46.A.5 to determine how much VOC is emitted directly to the atmosphere and how much is routed to pollution controls at the Pasadena Terminal. Controlled VOC emissions from captured loading losses are then determined by multiplying the amount of captured VOC routed to controls by the control efficiencies listed by Special Condition No. 46.A.5. In this way, controlled and uncontrolled emissions are calculated using the L_L factor defined by AP-42, Sec. 5.2, Eqn. 1.

This method of calculating VOC emissions from controlled and uncaptured marine loading losses at the Pasadena Terminal fails to assure compliance with synthetic minor emission caps established by Permit No. 95754, because the equation for determining L_L used to demonstrate compliance with the emission caps has a built-in rate of "probable error of ±30 percent." AP-42, Sec. 5.2 at 5.2-4 (July 2008).[38] Increases within this large margin of error would be sufficient to cause undetected violations of the synthetic emissions caps, which are set at 99.6% of the applicable major source threshold for Groups A and B and 97.71% of the applicable major source threshold for Group C. Accordingly, the Executive Director must revise the Draft Permit to establish a more reliable method for determining loading losses at the Pasadena Terminal to make the synthetic minor VOC emission caps established by Permit No. 95754, Special Condition No. 2 practically enforceable.

ii. Permit No. 95754 fails to explain how ITC should calculate controlled loading loss emissions and MSS emissions if ITC fails to comply with criteria specified by the permit.

In order to be practically enforceable, a permit must establish monitoring, testing, and recordkeeping conditions that assure compliance with applicable requirements at all times. 42 U.S.C. § 7661c(a) and (c); *In the Matter of Yuhuang Chemical Inc. Methanol Plant*, Order on Petition No. VI-2015-03 at 14 (Aug. 31, 2016). Permit No. 95754, Special Condition No. 46.A.5 provides that use of capture and control efficiencies listed by that condition to calculate emissions from loading activities "is contingent upon satisfactory compliance demonstration and monitoring requirements at Special Conditions Nos. 1, 16-20, 29-31, [and] 44 of this permit." Similarly, Special Condition No. 46.C provides that "MSS emissions shall be calculated and summed as required by Special Condition No. 34" and that "control of MSS emissions by the use of an

[37] Response to Comments, Permit No. 95754 at Response 21 (explaining that that the L_L equation 1 from AP-42, Sec. 5.2 is used to determine uncontrolled emissions from hose disconnects). Available electronically at: https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.download&doc_id=779609642021098&doc_name=RTC%5F95754%2Epdf&requesttimeout=5000

[38] Available electronically at: https://www3.epa.gov/ttn/chief/ap42/ch05/final/c05s02.pdf

authorized control device is contingent upon satisfactory compliance with the compliance demonstration and monitoring requirements at Special Condition No. 40.A-C."

Special Condition No. 1 provides that the permit only authorizes emissions from points listed by the permit and that emissions from these points are only authorized at emission rates listed by the permit and that are subject to operating requirements specified in the permit's special conditions. Thus, according to the plain meaning of the permit, the operation of any unit covered by Permit No. 95754 in a way that is inconsistent with the permit's requirements renders the capture and control efficiencies listed by Special Condition No. 46.A.5 inapplicable. Special Condition Nos. 16-20 establish various requirements related to the marine loading process, Special Condition Nos. 29-31 establish requirements for the operation of control equipment, Special Condition No. 40 establishes various requirements for portable control devices associated with routine and planned MSS activities, and Special Condition No. 44 establishes testing requirements for ITC's VCUs. Any violations of the applicable requirements established by these special conditions render the capture and control efficiencies listed by Special Condition No.46.A.5 and presumed control efficiency of portable control devices used to demonstrate compliance with the synthetic minor VOC emission caps established by Special Condition No. 2 inapplicable.[39]

The Draft Permit is deficient because it fails to establish conditions for calculating loading loss VOC emissions for purposes of demonstrating compliance with the synthetic minor VOC emission caps established by Permit No. 95754, Special Condition No. 2 in situations where ITC's failure to comply with permit requirements renders compliance methods established by the permit inapplicable. The Draft Permit also fails to provide that ITC's failure to operate the Pasadena Terminal consistent with the preconditions for relying on the collection and control efficiency requirements establishes a violation of the permit's synthetic minor emission caps. The Executive Director must revise the Draft Permit to include monitoring, testing, and recordkeeping requirements that assure compliance with the synthetic minor VOC emission caps in Permit No. 95754, Special Condition No. 2. 42 U.S.C. § 7661c(a), (c).

iii. Permit No. 95754, Special Condition No. 3 improperly limits circumstances under which exceedances of its synthetic minor emissions caps trigger Nonattainment NSR permitting requirements.

According to Permit No. 95754, Special Condition No. 3:

> At such time Special Condition No. 2, Group ID A or Group ID B defined projects becomes a major stationary source or modification (30 TAC §§ 116.12(19)-(20))

[39] ITC has violated these conditions at least once. On August 28, 2019, the TCEQ issued a Notice of Violation to ITC for failing to calibrate the temperature monitor for VCU-001 and VCU-002 annually, as required by Special Condition No. 29 of Permit No. 95754. This information is available electronically at: https://www15.tceq.texas.gov/crpub/index.cfm?fuseaction=iwr.novdetail&addn_id=227542822016068&re_id=529385512011105

> solely by virtue of relaxation in any enforceable emission limitation established in this permit, on the capacity of the source or modification otherwise to emit VOC, such as a restriction on hours of operation, then Nonattainment New Source Review requirements shall apply to the source or modification as though construction had not yet commenced on the source of modification.

This is the only condition in Permit No. 95754 explaining how projects authorized by that permit and subject to synthetic minor limits established by Special Condition No. 2 may become subject to nonattainment NSR requirements. But it is not enough to tie nonattainment NSR applicability to ITC's decision to request changes to its current permit conditions. Instead, the Draft Permit must clarify whether and when ITC's failure to comply with emissions limits, restrictions on hours of operations, and other requirements established to artificially limit the Pasadena Terminal's potential to emit below applicable major source thresholds triggers ITC's obligation to obtain a permit that assures compliance with applicable nonattainment NSR pre-construction permitting requirements. So long as violations of requirements established by Permit No. 95754, including enforceable representations in ITC's various applications related to the permit, *see* 30 Tex. Admin. Code § 116.116(a)(1), taken to artificially limit its potential to emit below major source thresholds do not trigger ITC's obligation to obtain a nonattainment NSR permit; those requirements fail to effectively limit the Pasadena Terminal's potential to emit. This is so because the permit is ambiguous as to whether and which violations of its special conditions trigger nonattainment NSR pre-construction permitting requirements.

IV. Conclusion

Air Alliance Houston, Bayou City Water Keeper, CEER, Environmental Integrity Project, Public Citizen, and Sierra Club, and request that the TCEQ:

1. explain the actions TCEQ and ITC have taken since the fire at ITC's Deer Park Terminal to prevent future disasters at ITC's terminal and to provide adequate protection for communities that exposed to pollution from the Deer Park and Pasadena facilities;

2. analyze the Draft Permit for disproportionate impacts to low-income communities and communities of color, under federal civil rights law by studying the full impact of this facility holistically, taking into account cumulative impacts from other nearby sources of pollution and other factors that diminish the quality of life and health in those communities;

3. actively work with ITC and communities to ensure another disaster like the March 2019 fire does not happen again; and

4. correct Draft Permit deficiencies identified by these public comments.

If there are any questions concerning these comments please contact Air Alliance Houston or Environmental Integrity Project through its representative.

Respectfully submitted,

/s/

Stephany Mgbadigha
Air Alliance Houston
2520 Caroline St.
Houston, TX 77004
(832) 735-7306

Sincerely,

/s/

Gabriel Clark-Leach
Environmental Integrity Project
1206 San Antonio St.
Austin, Texas 78701
(425) 381-0673

Co-signed,

Bridgette Murray
Executive Director
Achieving Community Tasks Successfully
713 553-1907

Kristen Schlemmer
Legal Director and Waterkeeper
Bayou City Waterkeeper

Iris Gonzalez
Coalition Director
Coalition for Environment, Equity & Resilience (CEER)

Adrian Shelley
Texas Office Director

Public Citizen

Luke Metzger
Executive Director
Environment Texas