

have an electric generating capacity of approximately 600 megawatts. Unit 3 has an electric generating capacity of approximately 450 megawatts. Units 1, 2, and 3 began operation in 1979, 1980, and 1988, respectively.

4. At all times pertinent to this civil action, the Fayette power plant and each of its three units are a “major emitting facility,” a “major stationary source,” and a “major source” within the meaning of the Clean Air Act.

5. Construction of Unit 1 was authorized by Permit No. 3011, which was issued prior to 1979. Construction of Unit 2 was authorized by Permit No. 4629, which was issued on October 13, 1976. Construction of Unit 3 was authorized by Permit No. 9233, which was issued on December 22, 1983. Sometime thereafter, Permit No. 9233 was consolidated with Permit No. PSD-TX-486M3 to include emission limits for Unit 3 and associated material handling activities. In February 1997, Permit Nos. 3011 and 4629 were consolidated into Permit No. 3010. In 2002, authorizations for Units 1, 2, and 3 along with associated material handling activities were consolidated into Flexible Air Permit No. 51770/PSD-TX-486M3.

B. Summary of the Claims

6. This suit alleges that LCRA operated and continues to operate the Fayette power plant in violation of the Clean Air Act. Specifically:

- a. LCRA violated and continues to violate *heat input* limits that have always been enforceable conditions of the power plant’s air pollution permits. *Heat input* is a measure of energy expressed in British thermal units (“Btu”). Coal-fired boilers have a maximum heat input limit, which is essentially a measure of the boiler’s size, or capacity to burn coal. The greater the maximum hourly heat input capacity, the more coal can be

burned. LCRA represented maximum hourly heat input limits for each of its three boiler units. These limits are enforceable conditions which have been and continue to be routinely violated. LCRA's heat input limits are enforceable through general conditions of the power plant's currently active and previous air pollution preconstruction permits¹; the Texas State Implementation Plan, 40 CFR 52.2270(c), 68 Fed. Reg. 64,549 (Nov. 14, 2003); and through Defendant's Title V Federal Operating Permit No. O21.

- b. LCRA violated and continues to violate the Clean Air Act's *New Source Review Prevention of Significant Deterioration* ("NSR/PSD") requirements by making major modifications to the power plant's main coal-fired boiler units and failing to obtain necessary permits, install *best available control technology*, reduce emissions, and comply with requirements for monitoring, record-keeping and reporting pursuant to the Clean Air Act's NSR/PSD preconstruction permitting requirements, 42 U.S.C. § 7475, 42 U.S.C. § 7401 *et seq.*
- c. LCRA violated and continues to violate annual particulate matter emission limits contained in the power plant's Flexible Permit No. 51770/PSD-TX-486M3, which is incorporated by reference in the power plant's Title V Federal Operating Permit No. O21. Particulate Matter is a mixture of

¹ For example, General Condition 4 listed on the face of Permit Nos. 3011, 4926, and 9233 states that "The facility covered by this permit shall be constructed as specified in the application for permit to construct." General Condition 1 of Flexible Permit No. 51770/PSD-TX-486M3 states that "Facilities covered by this permit shall be constructed and operated as specified in the application for the permit. All representations regarding construction plans and operation procedures contained in the permit application shall be conditions upon which the permit is issued. Variations from these representations shall be unlawful unless the permit holder first makes application to the Texas Commission on Environmental Quality...Executive Director to amend this permit in that regard and such amendment is approved."

small particles, including organic chemicals, metals, and ash, which can cause health and environmental problems. Fine particles, or “PM₁₀” (particulate matter with a diameter of ten micrometers or less), is a health concern because, once inhaled, fine particles can affect the heart and lungs and cause serious health effects. Numerous scientific studies have linked fine particle exposure to increased respiratory symptoms, such as decreased lung function, aggravated asthma, chronic bronchitis, heart attacks, and premature death in people with heart or lung disease. Additionally, PM can be carried long distances to settle over land or water, which may result in pollution of lakes and streams, and damage to farmlands.

- d. LCRA violated and continues to violate the Unit 3 hourly particulate matter emission limit of 142.1 lbs/hour contained in PSD Permit No. 9233/PSD-TX-486M3 and Title V Federal Operating Permit No. O21.
- e. LCRA violated and continues to violate the Plantwide Applicability Limit (“PAL”) requirements of Flexible Permit No. 51770//PSD-TX-486M3, by failing to submit a request to alter or amend the permit within 60 days after EPA adopted PAL rules that required emission caps more stringent than those established in the Flexible Permit, as required by the Flexible Permit. This requirement of the Flexible Permit is incorporated into Defendant’s Title V Federal Operating Permit No. O21.

- f. LCRA violated and continues to violate Title V of the Clean Air Act by underpaying emission fees to the Texas Commission on Environmental Quality, due to underreporting of actual particulate matter emissions.

II. JURISDICTION, VENUE, AND NOTICE

7. This Court has subject matter jurisdiction under the Clean Air Act, 42 U.S.C. § 7604 (citizen suit provision), and the federal jurisdiction statute, 28 U.S.C. § 1331 (federal question jurisdiction). The relief requested is authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 2201 and 2202.

8. The violations complained of occurred and continue to occur at the LCRA's Fayette Power Project, a large coal-fired electric power plant located in Fayette County, in the Southern District of Texas. Venue is therefore proper in this Court, pursuant to Clean Air Act, 42 U.S.C. § 7604(c)(1), and the federal venue statute, 28 U.S.C. §§ 1391(b) and (c).

9. In compliance with 42 U.S.C. § 7604(b)(1)(A), on July 14, 2010, Plaintiffs notified in writing the Defendant Lower Colorado River Authority, the Administrator of the U.S. Environmental Protection Agency ("EPA"), the Governor of Texas, and the Texas Commission on Environmental Quality ("TCEQ"), of the Plaintiffs' intent to sue for any violations alleged in this complaint for which notice is required. More than sixty days have passed since the notice letter was sent by U.S. mail. *See*, Exhibit A (July 14, 2010 Notice of Intent to Sue, and U.S. Postal Service confirmation of delivery). Defendant has violated and remains in violation of the Act. Neither the United States Environmental Protection Agency nor the Texas Commission on Environmental Quality has commenced and is diligently prosecuting a district court action to redress the ongoing violations.

10. Pursuant to the Clean Air Act's citizen suit provision, a copy of this complaint is being served simultaneously upon the Attorney General of the United States and the U.S. EPA Administrator.

III. PARTIES

A. Plaintiffs

11. Plaintiff Environmental Integrity Project is a non-profit organization dedicated to the enforcement of anti-pollution laws, including the Clean Air Act. The Environmental Integrity Project is not a membership organization, but has employees who reside in Austin, Texas.

12. Plaintiff Texas Campaign for the Environment is a non-profit membership organization dedicated to informing and mobilizing Texans to protect the quality of their lives, their health, their communities, and their environment.

13. Plaintiff Environment Texas is a non-profit statewide, citizen-based environmental advocacy organization that focuses exclusively on protecting Texas' air, water, and open spaces.

14. Employees and/or members of the Environmental Integrity Project, Texas Campaign for the Environment, and Environment Texas live, work, and recreate near the power plant in areas immediately impacted by excessive and unlawful emissions of air pollutants from Defendant LCRA's Fayette power plant.

15. Plaintiffs' employees and/or members have suffered, and will continue to suffer, actual and threatened injury to their health and welfare due to LCRA's violations of the Clean Air Act described herein. Plaintiffs' members and/or employees are exposed to, and threatened with exposure to, particulate matter ("PM") air emissions from the Fayette power plant. As a

result, Plaintiffs' employees and/or members suffer from or are at increased risk of a variety of adverse health effects that are attributable to PM pollution.

16. Further, Plaintiffs' employees and/or members have suffered, and will continue to suffer, actual and threatened interference with their use and enjoyment of property and recreational interests from the violations alleged in this Complaint.

17. The acts and omissions alleged herein expose Plaintiffs' members and/or employees to harmful air pollution that threatens their health and welfare, interferes with their use and enjoyment of property and surrounding areas, injures their economic interests, denies them the health protections guaranteed by the Clean Air Act, and negatively impacts aesthetic and recreational values. The relief requested herein will redress these injuries.

B. Defendant

18. Defendant Lower Colorado River Authority, a conservation and reclamation district created by the Texas Legislature in 1934, owns and operates the Fayette Power Project.

IV. STATUTORY BACKGROUND

19. 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 the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

20. Any person may commence a civil enforcement action under the Act against any party "who is alleged to have violated . . . or to be in violation of an emission standard or limitation." *Id.* § 7604(a). An "emission standard or limitation" is any term or condition of a permit issued under an approved State Implementation Plan, any standard or limitation under any approved State Implementation Plan, or any permit term of a Title V Operating Permit. *Id.* § 7604(f)(4).

21. EPA has established National Ambient Air Quality Standards (“NAAQS”) to protect human health and the environment for seven “criteria pollutants,” including particulate matter (“PM”). *Id.* § 7409; 40 C.F.R. pt. 50. An area that meets the NAAQS for a criteria pollutant is deemed to be in “attainment” for that pollutant. 42 U.S.C. § 7407(d)(1). An area that does not meet the NAAQS is a “nonattainment” area. *Id.* An area that cannot be classified due to insufficient data is “unclassifiable,” a designation that allows an area to be treated for regulatory purposes as though it were an attainment area for the particular criteria pollutant in question. *Id.*

22. Pursuant to 42 U.S.C. § 7410, each State must adopt and submit to EPA for approval a State Implementation Plan (“SIP”) that provides for the attainment and maintenance of the NAAQS. Once a State’s SIP is approved by EPA, it is published in the Code of Federal Regulations and can be enforced by the state, EPA or citizens. The Fayette power plant is located in an area that has been classified as attainment or unclassifiable.

A. Prevention of Significant Deterioration

23. Part C of the Clean Air Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the *Prevention of Significant Deterioration* (“PSD”) of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS. These requirements are designed to protect public health and welfare by maintaining continued compliance with NAAQS and ensuring that economic growth will occur in a manner consistent with the preservation of existing air resources. The PSD requirements also ensure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are referred to as the “PSD program.”

24. Under 42 U.S.C. § 7471, each State Implementation Plan must contain a PSD program. In 1992, after Texas incorporated by reference the federal PSD requirements of 40 C.F.R. § 52.21 into the Texas Administrative Code, EPA promulgated federal regulations approving Texas' PSD program. 57 Fed. Reg. 28,093 (June 24, 1992); 40 C.F.R. §§ 52.2270(c) and 52.2303.

25. Section 165(a) of the PSD provisions of the Act, 42 U.S.C. § 7475(a), prohibits the construction and operation of a major emitting facility unless the facility employs the *best available control technology* ("BACT") for each pollutant subject to regulation under the Act that is emitted from the facility. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates as "major emitting facilities" fossil-fuel fired steam electric plants of more than two hundred and fifty million BTUs per hour heat input and that emit or have the potential to emit one hundred tons per year ("tpy") or more of any pollutant.

26. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" as including "modification." "Modification" is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted."

27. A major modification is a modification that results in a significant emissions increase of a regulated pollutant, including particulate matter, and a significant net emissions increase of that pollutant from the major stationary source. 40 C.F.R. § 52.21(b)(2)(i). For particulate matter, an increase of 25 tons per year or greater is a significant increase. 40 C.F.R. § 52.21(b)(23)(i).

28. Applicable provisions in the federal PSD regulations incorporated into the Texas SIP have at all times relevant to this complaint prohibited a major stationary source from undertaking a major modification without, among other things, first obtaining the required authorizations, and reducing emissions using the “best available control technology.” 42 U.S.C. §§ 7475, 7479.

B. Title V Operating Permits

29. Title V of the Clean Air Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for “major sources” of air emissions, such as the Fayette power plant. The purpose of Title V is to ensure that all the air pollution authorizations for a given facility and all “applicable requirements” for that facility are collected into a single federally-enforceable air pollution permit.

30. Texas implements the Title V program pursuant to EPA-approved regulations in Chapter 122, Texas Administrative Code. Section 502(a) of the Clean air Act, 42 U.S.C. § 7661a(a), and the Texas Title V Operating Permit program have at all times relevant to this complaint made it unlawful for a permit holder to violate any requirement of his or her Operating Permit issued pursuant to Title V of the Clean Air Act, or to operate a major source except in compliance with a permit issued under Title V.

31. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), and implementing regulations of the Act, 40 C.F.R. § 70.2, and the Texas Title V Operating Permit Program, 30 Tex. Admin. Code Ch. 122, have at all times relevant to this complaint required that each Title V permit include, among other things, enforceable emissions limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Clean Air Act and the requirements of the applicable State Implementation Plan. The Texas Title V program, like all

approved state Title V programs, requires that deviations from Title V permit terms be reported periodically (semi-annually, in Texas) and that Title V permit holders certify annually their compliance or non-compliance during the preceding year with each term and condition of the permit. 30 Tex. Admin. Code §§ 122.145 and 122.146.

V. CAUSES OF ACTION

Cause of Action No. 1: Defendant violated and continues to violate limitations on *heat input* for each of the three main boilers. These heat input limits are enforceable through the power plant's federally-enforceable air permits, including the power plant's Title V Federal Operating Permit No. O21.

32. Paragraphs 1-31 are realleged and incorporated herein by reference.

33. Texas rules, incorporated into the Texas SIP, provide that representations in a permit application are enforceable conditions, and that it is unlawful to vary from those representations. Since at least 1975, Texas rules require that “[a]ll representations with regard to construction plans and operation procedures in an application for a permit to construct or a permit to operate become conditions upon which a subsequent permit to construct or operate are issued...” Rule 605, Regulation VI (April 27, 1975). This provision of state law was approved by U.S. EPA into the Texas SIP in 1982, and again in 2003. 47 Fed. Reg. 35,193 (Aug. 13, 1982); 68 Fed. Reg. 64,543, 64,546 (Nov. 14, 2003).²

34. Representations made by LCRA in applications for permits to construct and operate Units 1, 2, and 3 regarding the maximum heat input capacity of these boilers are conditions upon which the power plant was authorized to be built. A coal-fired power plant

² The current TCEQ rule, 30 Tex. Admin. Code § 116.116(a), states: “(a) Representations and conditions. The following are the conditions upon which a permit, or special exemption is issued: (1) representations with regard to construction plans and operation procedures in an application for a permit, special permit, or special exemption; and (2) any general and special conditions attached to the permit, special permit, or exemption itself.” This is the version of the rule that was approved into the Texas SIP in 2003. See 40 C.F.R. § 52.2770(c).

boiler's maximum heat input rate, expressed in terms of million BTU per hour ("MMBtu/hour"), is a direct constraint on the rate of coal that can be burned. A boiler's maximum hourly heat input limit is one of the most important capacity constraints on emissions of many pollutants, including, but not limited to, particulate matter, sulfur dioxide, mercury and carbon dioxide. In other words, all things being equal, the more fuel that is burned, the greater the emissions from the smokestacks.

35. LCRA's permits authorizing construction and operation of the power plant are based on LCRA's representations that the maximum heat input limit for Units 1 and 2 is 6,000 MMBtu/hour, and the maximum heat input limit for Unit 3 is 4,735 MMBtu/hour.

36. LCRA reports hourly heat input for each of its three main boilers to the U.S. EPA. This reported data is publicly available on EPA's Clean Air Markets website.³ According to LCRA's self-reported heat input data, the power plant routinely operates Units 1 and 2 in excess of 6,000 MMBtu/hour, and Unit 3 in excess of 4,735 MMBtu/hour. Plaintiffs notified LCRA of at least 11,299 separate violations of the hourly heat input limit for Unit 1; 14,165 separate violations of the hourly heat input limit for Unit 2; and 11,183 separate violations of the hourly heat input limit for Unit 3, during the period of July 2005 through the first quarter of 2010.⁴

37. Defendant has operated and continues to operate each of its three boiler units at heat input rates in excess of the 6,000 MMBtu/hour limit for Units 1 and 2, and the 4,375 MMBtu/hour limit for Unit 3. Each of these exceedences is a violation of the Texas State Implementation Plan, and the Defendant's federally-enforceable air permits, including its Title V Federal Operating Permit. LCRA's heat input limits are incorporated into its Title V Federal

³ EPA's Clean Air Markets database contains data required to be reported to EPA pursuant to Title IV, the "Acid Rain" provisions of the Clean Air Act. This data can be accessed online at <http://camdataandmaps.epa.gov/gdm/index.cfm?fuseaction=emissions.wizard>.

⁴ Each of these violations was listed on a CD-rom attached to Plaintiffs' notice of intent to sue.

Operating Permit No. O21 through the following conditions: (i) General Terms and Conditions (Title V permit, at p. 1), incorporating 30 Tex. Admin. Code §§ 122.143-146; (ii) General Condition 8 (Title V permit at p. 10), regarding New Source Review Authorizations; and (iii) General Condition 19 (Title V permit at p. 13), regarding Acid Rain Permit Requirements for Units 1, 2, and 3.

Cause of Action No. 2: Defendant has violated and continues to violate the Clean Air Act's *Prevention of Significant Deterioration* ("PSD") provisions, because the Fayette power plant has undergone major modifications without obtaining the required New Source Review/PSD authorizations, or reducing emissions to *best available control technology* ("BACT") levels, as required by the Clean Air Act, 42 U.S.C. §§ 7475 and 7401 *et. seq.*

38. Paragraphs 1-37 are realleged and incorporated herein by reference.

39. Defendant has made a "major modification" to the Fayette power plant's main coal-fired boilers, as demonstrated by an increase in the coal-fired boilers' capacity described above, and by an increase in particulate matter emissions described below. LCRA failed to obtain the required PSD permit, install required control technology, meet emission limits, and comply with Clean Air Act requirements for monitoring, record-keeping, and reporting in violation of 42 U.S.C. § 7475 and 7401 *et. seq.*

Increase in Boiler Capacity

40. As described above, Units 1 and 2 were originally authorized as 6,000 MMBtu/hour (maximum capacity) boilers.⁵ Unit 3 was authorized as a 4,735 MMBtu/hr (maximum capacity) boiler. All permitted emission limits in SIP-approved permits for Units 1, 2,

⁵ Units 1 and 2 were originally represented by LCRA as 5,736 MMBtu/hr and 5,884 MMBtu/hour boilers, respectively, and sometime thereafter these numbers were rounded up to 6,000 MMBtu/hour. Emission limits were based on 6,000 MMBtu/hour.

and 3 have been based upon LCRA's representation that the maximum capacity at which those boilers could operate is 6,000 MMBtu/hour for Units 1 and 2, and 4,735 MMBtu/hour for Unit 3. Any demonstrations of compliance with health-based Clean Air Act ambient air standards made by LCRA were based on LCRA's representation that the maximum capacity for each boiler is 6,000 MMBtu/hour for Units 1 and 2, and 4,735 MMBtu/hour for Unit 3.

41. According to LCRA's self-reported data available on EPA's Clean Air Markets database, Units 1, 2 and 3 routinely reach heat-input levels in excess of 6,000 MMBtu/hour for Units 1 and 2, and 4,735 MMBtu/hour for Unit 3.

42. Units 1, 2, and 3 are each capable of operating far in excess of original authorized maximum capacity. In other words, Units 1, 2, and 3 are significantly larger capacity coal-fired boilers today than they were when they were first built.

Increased Particulate Matter Emissions

43. In their July 3, 2002, Flexible Air Permit Application for the Fayette Power Project, LCRA describes the method for determining actual PM emission levels for each of its three units. According to LCRA, Units 1 and 2 emit 0.1 pound of particulate matter for every million Btu (or, 0.1 lb/MMBtu), and Unit 3 emits at a level of 0.03 lb/MMBtu. According to LCRA, these emission levels "provide the best estimate of ...actual [total] PM/PM₁₀ emissions from the FPP boilers."⁶

44. Based on LCRA's own "best estimate" of actual PM emissions, and LCRA's self-reported hourly heat input levels reported to EPA's Clean Air Markets database, the power plant's actual PM emissions have increased significantly since 1990.

⁶ July 2002, LCRA Flexible Permit Application at Section 5.41, page 5-6.

45. For example, the Fayette power plant emitted 3,855 tons per year of PM in 1990 and 4,913.8 tons per year of PM in 2009, an increase of over 1,000 tpy. This increase far exceeds the PSD significance level of 25 tpy for particulate matter.

46. LCRA's Fayette power plant Flexible Air Permit contains Special Condition 19, entitled "Plantwide Applicability Limit (PAL)," which establishes plantwide emission caps for eight listed pollutants, including particulate matter and particulate matter with a diameter of 10 micrometers or less ("PM₁₀").⁷ According to this provision, "[i]f future actual emission rates calculated for an air pollutant exceed the PAL thresholds listed above, the permittee shall be subject to federal new source review for that air pollutant." Special Condition 19 establishes a threshold plantwide annual limit of 5,156 tons for PM and 5,091 tons for PM₁₀ for the "initial period," and 5,171 tons for PM and 5,098 tons for PM₁₀ for the "interim" period. The interim period became effective on May 1, 2005.⁸

47. The Fayette power plant exceeded these PAL caps for PM and PM₁₀ contained in Flex Permit 51770/PSD-TX-486M3.⁹

48. New Source Review/PSD is triggered by LCRA's exceedances of its Flex Permit PAL caps for PM and PM₁₀. To date, LCRA has not submitted a federal new source review permit application as required by Special Condition 19, and has thus failed to comply with this requirement of its Flexible Air Permit, which is an applicable requirement of LCRA's Title V Federal Operating Permit No. O21.

⁷ This Special Condition was numbered as Special Condition 18 in LCRA's original Flex Permit, issued in 2002.

⁸ Flex Permit Special Condition 11. This Special Condition was numbered as Special Condition 10 in LCRA's original Flex Permit, issued in 2002.

⁹Each of these exceedances was listed in Tables 2 and 3 in Plaintiffs' notice of intent to sue

49. For the foregoing reasons, LCRA is currently in violation of the federal Clean Air Act's New Source Review/PSD provisions, Clean Air Act Section 165, 42 U.S.C. § 7470-7492, with respect to emissions of particulate matter, for failing to obtain required permits, install required *best available control technology*, reduce emissions, and comply with requirements for monitoring, record-keeping and reporting, as specified in the federal Clean Air Act.

Cause of Action No. 3: Defendant violated annual particulate matter limits contained in the Fayette power plant's Flexible Air Permit and enforceable through the LCRA's Title V Federal Operating Permit No. O21.

50. Paragraphs 1-49 are realleged and incorporated herein by reference.

51. LCRA's Flexible Air Permit establishes an annual plantwide cap of 5,155.16 tons of PM per year (on a rolling twelve month basis) and an annual PM₁₀ cap of 5,090.52 tpy (on a rolling twelve month basis). The annual PM and PM₁₀ emission caps contained in the Flexible Air Permit are federally enforceable through LCRA's Title V Federal Operating Permit.

52. As described above, according to LCRA, Units 1 and 2 emit particulate matter at a rate of 0.1 lb/MMBtu, and Unit 3 emits at a rate of 0.03 lb/MMBtu. According to LCRA, these emission rates are the best estimates of actual particulate emissions.

53. The product of LCRA's best estimate of actual emission rates and LCRA's self-reported actual heat input rates for the boilers is the amount of particulate matter actually emitted, in pounds per hour or tons per year. LCRA routinely operates its boilers in violation of annual PM and PM₁₀ limits contained in Flexible Permit No. 51770/PSD-TX-486M3. As detailed in Plaintiffs' notice of intent to sue, beginning in 2006 LCRA has violated annual PM

limits contained in Flexible Permit No. 51770/PSD-TX-486M3 and enforceable through LCRA's Title V Federal Operating Permit No. O21.¹⁰

54. Based on the foregoing, Defendant's operation of Units 1, 2 and 3 at the Fayette power plant has generated and continues to generate PM emissions that exceed the maximum allowable levels in violation of Defendant's Title V Permit. Moreover, according to LCRA's January 4, 2011, Permit Application for Planned Maintenance, Startup, and Shutdown (MSS) Activities at the Fayette power plant, PM emissions resulting from routine boiler startups make actual annual PM emissions significantly higher than anything LCRA has reported. According to LCRA, the cumulative time of extended startups for each boiler will not exceed 600 hours per year, and PM emissions during startups reach levels in excess of a *ton per hour*.

Cause of Action No. 4: Defendant violated and continues to violate its hourly particulate matter limit of 142.1 pounds per hour.

55. Paragraphs 1-54 are realleged and incorporated herein by reference.

56. For all times relevant to this complaint, Fayette power plant Unit 3 is required to meet an hourly PM limit of 142.1 pounds per hour as specified in the Maximum Allowable Emission Rates table of Permit No. 9233/PSD-TX-486M3. The hourly PM limit found in LCRA's PSD permit for Unit 3 is enforceable through Title V Federal Operating Permit No. O21.

57. Based upon LCRA's representation that 0.03 lb/MMBtu of particulate matter is the best estimate of actual emission rate for Unit 3, every hourly reported heat input level above 4,735 MMBtu results in emissions above the PSD hourly permit limit. Based upon heat input

¹⁰ Tables 4 and 5 in Plaintiffs' notice of intent to sue identify twenty 12-month periods in which LCRA exceeded annual PM and PM₁₀ limits. The Clean Air Act imposes a penalty for each *day* of violation.

levels reported by LCRA to EPA's Clean Air Markets database, LCRA violated and continues to violate its Unit 3 hourly PM limit during the period from July 2005 through March 2010.

Cause of Action No. 5: Defendant violated the PAL provision of its Flexible Air Permit 51770/PSD-TX-486M3, by failing to submit an application for a federal PAL permit as required by Flexible Permit 51770/PSD-TX-486M3, and enforceable through LCRA's Title V Federal Operating Permit No. 21.

58. Paragraphs 1-57 are realleged and incorporated herein by reference.

59. LCRA's Fayette power plant Flexible Air Permit contains Special Condition 19, entitled "Plantwide Applicability Limit (PAL)," which establishes plantwide emission caps for eight listed pollutants.¹¹ This provision of Flexible Permit 51770/PSD-TX-486M3 is incorporated by and enforceable through Title V Federal Operating Permit No. 21. According to condition 19, "The PAL requirements are subject to EPA rules specifically applicable to the PAL mechanism. Within 60 days after adoption of applicable EPA rules, the permit holder shall submit a request to alter or amend the permit to incorporate applicable PAL requirements, if the adopted version of EPA PAL rules require PAL emissions caps that are more stringent than the final PAL requirements set forth within this permit."

60. EPA adopted PAL rules that require emission caps that are more stringent than the final PAL requirements in LCRA's Flexible Air Permit. 40 C.F.R. § 52.21(aa); 67 Fed. Reg. 80,186 (Dec. 31, 2002). These federal PAL rules are more stringent than LCRA's Flexible Air Permit PAL, and application of the federal PAL would result in emission caps that are more stringent than the final PAL requirements in LCRA's Flexible Air Permit. For example, EPA's PAL rules would result in lower emission caps for various pollutants, including PM and PM₁₀,

¹¹ This Special Condition was numbered as Special Condition 18 in LCRA's original Flex Permit, issued in 2002.

and more rigorous monitoring requirements to establish compliance with those PAL limits. EPA specifically disapproved Texas' PAL rules as part of the Texas SIP, because EPA determined that Texas' PAL rules fail to satisfy the minimum requirements of the federal Clean Air Act. 75 Fed. Reg. 56,424, 56,433 (Sept. 15, 2010).

61. LCRA violated and continues to violate its Flexible Air Permit, which is enforceable through Title V Federal Operating Permit No. O21, by failing to submit a request to alter or amend the PAL provisions of its Flexible Air Permit within 60 days after EPA adopted applicable rules that require PAL caps that are more stringent than those set forth within that permit. LCRA violated and continues to violate the federal PAL requirements, 40 C.F.R. § 52.21(aa).

Cause of Action No. 6: Defendant failed to pay emissions fees required under Title V of the Clean Air Act.

62. Paragraphs 1-61 are realleged and incorporated herein by reference.

63. The Clean Air Act, 42 U.S.C. § 7661a(b)(3)(A), requires that under a state or local law or interstate compact, the owner or operator of all sources subject to the requirements to obtain a permit pay an annual fee, or the equivalent over some other period. The fee will not be less than \$25 per ton of each regulated pollutant. 42 U.S.C. § 7661a(b)(3)(B)(i). The fee will not be paid on emissions in excess of 4,000 tons per year. 42 U.S.C. § 7661(b)(9)(B)(ii).

64. Texas rules require that owners or operators pay a fee for each ton of regulated pollutant. 30 Tex. Admin. Code § 101.27. The fee is based on either actual emissions or on the permitted emission rate. However, fees will not be less than the actual emission rates. 30 Tex. Admin. Code § 101.27(f).

65. LCRA failed to pay sufficient emission fees six times between 2003 and 2008. The deficit created by these underpayments amounts to \$561,767.70.

VI. PRAYER FOR RELIEF

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

A. Declare that LCRA has violated the Clean Air Act, the relevant provisions of the Texas SIP, and its Title V Federal Operating Permit by failing to comply with the annual and hourly particulate matter limits and heat input limits therein, failing to request an alteration or amendment to its PAL authorization, failing to pay required emission fees, and by making major modifications to its coal-fired boilers without complying with the Clean Air Act;

B. Enjoin LCRA preliminarily and permanently from operating the Fayette power plant, except in accordance with a compliance schedule that will cause the plant to comply with the Clean Air Act, including, but not limited to, demonstrating compliance with Clean Air Act Section 165, 42 U.S.C. § 7475, and meeting *best available control technology* for the control of particulate matter emissions, and complying with the State Implementation Plan and its federally enforceable and SIP-approved air quality permits in a timely manner;

C. Order LCRA to take other appropriate actions, including beneficial mitigation projects authorized under the Clean Air Act, 42 U.S.C. § 7604(g)(2), to remedy, mitigate, and offset the harm to the public health and the environment caused by the violations of the Clean Air Act alleged above;

D. Assess a civil penalty against LCRA in the amount of \$37,500 per day, for each violation after January 12, 2009, and \$32,500 for each violation on or before January 12, 2009, as proven by Plaintiffs;

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

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

Respectfully submitted,

DATED: March 7, 2011

BLACKBURN CARTER, P.C.

by: s/ James B. Blackburn, Jr.

JAMES B. BLACKBURN, JR.
TBN 02388500
Southern District of Texas Bar No. 7416
Charles W. Irvine
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4709 Austin Street
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ENVIRONMENTAL INTEGRITY PROJECT
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COUNSEL FOR PLAINTIFFS

*Southern District of Texas *pro hac vice* Application to be filed.

EXHIBIT A



1303 San Antonio Street, Suite 200
Austin TX, 78701
p: 512-637-9477 f: 512-584-8019
www.environmentalintegrity.org

July 14, 2010

Thomas G. Mason, General Manager
LCRA
P.O. Box 220
Austin, TX 78767

Certified Mail 7010 0290 0000 4382 3236

Plant Manager
LCRA Sam Seymour/Fayette Power Project
6549 Power Plant Rd.
La Grange, TX 78945-3714

Certified Mail 7010 0290 0000 4382 3243

RE: Notice of Intent to Sue for Clean Air Act Violations at the Sam Seymour Fayette Power Project Located near La Grange, Fayette County, Texas.

Dear Mr. Mason and Plant Manager:

We are writing on behalf of the Environmental Integrity Project (“EIP”), Texas Campaign for the Environment (“TCE”), and Environment Texas to provide you with notice of intent to file suit for significant and ongoing violations of the federal Clean Air Act at the coal-fired Fayette Power Project (also known as the Sam Seymour plant, hereinafter “FPP”) located near La Grange, Texas.

Citizens are entitled to bring suit to enjoin violations of an emission standard or limitation under the Clean Air Act and seek redress and civil penalties for such violations. 42 U.S.C. § 7604(a). The Clean Air Act provides for civil penalties of up to \$37,500 per violation per day after January 12, 2009, and up to \$32,500 for violations on or before January 12, 2009. 42 U.S.C. § 7413(d)(1), (e), and 7604(a); 40 C.F.R. §§ 19.2 and 19.4 (2009).

In accordance with Section 7604(b)(1) of the Clean Air Act, we are writing to notify you we intend to file suit in federal district court any time sixty (60) days after the postmarked date of this letter to enjoin the violations described below, ensure future compliance, obtain civil penalties for past noncompliance, recover attorneys fees and costs of litigation, and obtain any other appropriate relief.

EIP (<http://www.environmentalintegrity.org/>) is a nonprofit organization dedicated to the enforcement of anti-pollution laws, including the Clean Air Act. EIP has offices at 1303 San Antonio Street, Suite 200, Austin, Texas, 78701. Members of EIP’s staff live, work, and recreate downwind of the Fayette Power Plant.

TCE (<http://www.texasenvironment.org/>) is a nonprofit membership organization dedicated to informing and mobilizing Texans to protect their health, their communities and the

environment. TCE has offices located at 3303 Lee Parkway #402, Dallas, TX 75219; 611 S. Congress #200-B, Austin, TX 78704; and 3100 Richmond #290, Houston, TX 77098. TCE members and staff live, work, and recreate in the vicinity and downwind of FPP.

Environment Texas (<http://www.environmenttexas.org/>) is a statewide, citizen-based environmental advocacy organization focused on protecting Texas' air, water and open spaces. Environment Texas has offices at 815 Brazos, Suite 600, Austin, TX 78701. Environment Texas combines independent research, practical ideas and tough-minded advocacy to help clean up pollution and win results for Texas' environment. Environment Texas has staff and members who live, work, and recreate in the vicinity and downwind of FPP.

Please direct all communications regarding this matter to the Environmental Integrity Project. Contact information for Ilan Levin, Senior Attorney and Eric Schaeffer, Executive Director are in the signature block below.

I. LCRA's Fayette Power Project

The Lower Colorado River Authority is owner and operator of the Fayette Power Project (FPP) facility located near La Grange, in Fayette County Texas. FPP consists of three coal-fired boilers, designated as Units 1, 2, and 3, and associated facilities and material handling. Units 1 and 2, jointly owned by LCRA and Austin Energy, each have an electric generation capacity of approximately 600-megawatts. Unit 3 is owned solely by LCRA and has an electric generation capacity of approximately 450 megawatts. Unit 1, 2, and 3 began commercial operation in 1979, 1980, and 1988, respectively.

Prior to 2002, FPP Units 1 & 2 were authorized under Texas Natural Resources Conservation Commission (the predecessor agency to the Texas Commission on Environmental Quality) Air Quality Permit No. 3010, and Unit 3 was authorized under Permit No. 9223 and PSD-TX-486M3. In July 2002, LCRA submitted an application to the TCEQ for a Flexible Air Permit. In October 2002, TCEQ issued LCRA Flexible Permit No. 51770/PSD-TX-486M3 ("Flex Permit"). Today, FPP Units 1, 2, and 3 are authorized under the Flex Permit and under Federal Operating Permit No. O21. In addition, the terms and conditions in the Flex Permit are incorporated by reference into Title V Federal Operating Permit No. O21.¹

II. Statutory Background

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 the productive capacity of its population. Section 101(b) of the Act, 42 U.S.C. § 7401(b)(1). The U.S. Environmental Protection Agency has established National Ambient Air Quality Standards ("NAAQS") to protect human health and the environment for seven "criteria pollutants," including particulate matter ("PM").² An area that meets the NAAQS for a particular criteria pollutant is deemed to be in "attainment" for that

¹ TCEQ Federal Operating Permit No. O21, issued to LCRA Sam Seymour Fayette Power Project (See, "New Source Review Authorization References").

² 42 U.S.C. § 7409(a); 40 C.F.R. part 50.

pollutant. An area that does not meet the NAAQS is a “nonattainment” area. An area that cannot be classified due to insufficient data is “unclassifiable,” a designation that allows an area to be treated for regulatory purposes as though it were an attainment area for the particular criteria pollutant in question.³

Pursuant to 42 U.S.C. § 7410, each State must adopt and submit to EPA for approval a State Implementation Plan (“SIP”) that provides for the attainment and maintenance of the NAAQS. Once a State’s SIP is approved by EPA, it is published in the Code of Federal Regulations and can be enforced by the state, EPA or citizens. At all times relevant to this notice of intent to sue, the Fayette Power Project has been located in an area that has been classified as attainment or unclassified.

A. New Source Review and Prevention of Significant Deterioration

Congress established the Clean Air Act’s New Source Review (NSR) requirements as part of the 1977 Clean Air Act Amendments. According to U.S. EPA (*see*, <http://www.epa.gov/NSR/>), NSR serves two purposes. First, stationary sources of air pollution must obtain a permit prior to construction and operation in order to ensure that air quality is not significantly degraded from the addition of new and modified pollution sources like power plants. In areas with air quality that is deemed unhealthy – that is, areas designated as “nonattainment” for certain air pollutants – these new or modified sources must obtain “Nonattainment New Source Review” air permits. In areas designated as “attainment” or “unclassifiable,” new or modified sources must obtain “prevention of significant deterioration” (“PSD”) air permits.

Part C of the Clean Air Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration (“PSD”) of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting health-based national ambient air quality standards (“NAAQS”). These requirements are designed to protect public health and welfare by maintaining continued compliance with NAAQS and ensuring that economic growth will occur in a manner consistent with the preservation of existing acceptable air resources. The PSD requirements also ensure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are referred to as the “PSD program.”

Under 42 U.S.C. § 7471, each state’s SIP must contain a PSD program. In 1992, after Texas incorporated by reference the federal PSD requirements of 40 C.F.R. § 52.21 into the Texas Administrative Code, EPA promulgated federal regulations approving Texas’s PSD program.⁴

Pursuant to its EPA-approved PSD program, Texas issues air pollution permits governing the operation of regulated facilities. In addition, section 165(a) of the PSD provisions of the Act,

³ 42 U.S.C. § 7407(d).

⁴ 57 Fed. Reg. 28093 (June 24, 1992, effective July 24, 1992), 40 C.F.R. §§ 52.2270(c) and 52.2303.

42 U.S.C. § 7475(a), prohibits the construction and operation of a “major emitting facility” in an area designated as attainment or unclassifiable, unless a permit has been issued that comports with the requirements of Section 165 and the facility employs the best available control technology (“BACT”)⁵ for each pollutant subject to regulation under the Act that is emitted from the facility. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates as “major emitting facilities” fossil-fuel fired steam electric plants of more than two hundred and fifty million BTUs per hour heat input and that emit or have the potential to emit one hundred tons per year or more of any pollutant.

Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines “construction” as including “modification.” “Modification” is defined in Section 111(a), 42 U.S.C. § 7411(a), of the Act to be “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.”

Applicable provisions in the federal PSD regulations incorporated into the Texas SIP have at all times relevant to this notice of intent to sue prohibited a major stationary source from undertaking a major modification without, among other things, first obtaining a new or an amended PSD permit, undergoing a new BACT determination, and applying BACT pursuant to that determination for each relevant pollutant.

B. Title V Federal Operating Permit

Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including “major sources.” The purpose of Title V is to ensure that all “applicable requirements” for compliance with the Act, including PSD requirements, are collected in one federally-enforceable permit.

Texas implements the Title V program pursuant to EPA-approved regulations in Ch. 122, Texas Administrative Code. Section 502(a) of the Act, 42 U.S.C. § 7661c(a), and the Texas Title V operating permit program (30 TAC Ch.122) have at all times relevant to this notice of intent to sue made it unlawful for any person to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V.

Section 504(a) of the Act, 42 U.S.C. § 7661(c), and implementing regulations of the Act, 40 C.F.R. § 70.2, and the Texas Title V operating permit program, 30 TAC Ch. 122, have at all relevant times required that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Clean Air Act and the requirements of the applicable SIP, including any applicable PSD requirements.

⁵ BACT is not actually a requirement that any particular technology be employed. Rather, it is a specification that a particular level of emission control be obtained. Typically, BACT for a pollutant is stated in terms of pounds per hour and tons per year that may be emitted.

III. Clean Air Act Violations

A. New Source Review

i. FPP's Flex Permit Constitutes a Continuous and Ongoing Violation of CAA §§ 110 and 165.

Prior to October 2002, FPP Units 1 and 2 were authorized under Permit No. 3010, and FPP Unit 3 was authorized under Permit No. 9233/PSD-TX-486M3. In October 2002, LCRA received from the TCEQ a Flexible Permit No. 51770/PSD-TX-486M3 ("Flex Permit"). The Flex Permit purports to replace the individual emission limits for Units 1, 2, and 3 with plantwide caps and remove existing operational limitations.

The TCEQ's Flex Permit program has never been approved by the U.S. EPA as part of the Texas State Implementation Plan. Thus, the Flex Permit may not be used to circumvent federal requirements in the Texas SIP, nor may a Flex Permit be a substitute for a federally-required NSR/PSD permit.

Texas flexible permits have never been incorporated into the federally approved State Implementation Plan. On September 25, 2007, EPA sent all Texas Flex Permit holders a fair notice letter informing you that Flexible Permits are pertinent only to Texas State air permit requirements and that facilities remain "obligated to comply with the Federal requirements applicable to (their) plant, in addition to any particular requirements of (their) flexible permit." See, Attachment A.

On June 30, 2010, EPA formally disapproved the Texas Flexible Permitting Program because it fails to satisfy the New Source Review state implementation plan requirements of the federal Clean Air Act.

If LCRA contends that Flex Permit No. 51770/PSD-TX-486M3 replaces FPP's SIP-approved air permits, replaces individual Unit 1, 2, and 3 emission limits, and/or removes operational limitations in SIP-approved permits, then FPP is currently operating in violation of the federal Clean Air Act. You are hereby notified that EIP, TCE, and Environment Texas intend to sue you for continuous and ongoing violations of the federal Clean Air Act's PSD provisions, 42 USC § 7475, and state implementation plan (SIP) requirements, 42 USC §7410, because FPP is required to have – but lacks – a valid SIP-approved federal air pollution permit.

Put simply, the federal Clean Air Act and the Texas SIP require FPP to be authorized under a valid PSD air permit, and your Flex Permit is not it.

ii. FPP has Undergone Major Modification Without Complying with the Clean Air Act's New Source Review.

Based on LCRA's 2002 Flex Permit Application and self-reported emissions data reported to the U.S. EPA's publicly accessible "Clean Air Markets" database (<http://camddataandmaps.epa.gov/gdm/index.cfm?fuseaction=emissions.wizard>), and for the reasons described below, FPP has undergone major modification without complying with the Clean Air Act's New Source Review provisions designed to protect air quality and bring new and modified pollution sources up to best available technology standards.

You are hereby notified that EIP, TCE, and Environment Texas intend to sue you for continuous and ongoing violations of the federal Clean Air Act's new source review (specifically, the prevention of significant deterioration, or "PSD") provisions, Section 165, 42 U.S.C. § 7475, 42 U.S.C. § 7401 et seq., with respect to emissions of particulate matter, by failing to obtain required permits, install required control technology, meet emission limits, and comply with requirements for monitoring, record-keeping and reporting, as specified in the Act.

a. Evidence of Increased Heat Input Capacity.

Heat input is a measure of energy expressed in millions of British thermal units (mmBtu). Coal-fired boilers such as FPP's Units 1, 2, and 3, always have a maximum heat input rate, which is expressed in mmBtu per hour, and is essentially a measure of the boiler's size, or capacity to burn coal. Thus, the greater the maximum heat input rating, the more coal can be burned in the boiler.

According to LCRA, Units 1, 2, and 3 are each capable of operating far in excess of original authorized capacity, indicating that major modification has occurred.

FPP Units 1 and 2 were constructed in the late 1970s and are nearly identical, approximately 600 megawatt coal-fired boilers. The original state-issued preconstruction permits for both units are based on LCRA's representations corresponding to a maximum design value of 5,736 mmBtu/hr and 5,884 mmBtu/hr for units 1 and 2, respectively. Subsequently, in permitting matters before the TCEQ and its predecessors, LCRA represented a slightly higher maximum heat input, 6,000 mmBtu/hr for both units.

FPP Unit 3 was permitted in 1983 as a 4,735 mmBtu/hr (415 megawatt net, 450 gross) lignite-fired unit. LCRA was only authorized to construct a 4,735 mmBtu/hr lignite-fired steam generator.

In 2002, LCRA obtained a Flex Permit based on maximum heat inputs far in excess of FPP's original heat input capacity limits. Moreover, according to LCRA's self-reported data, available on EPA's Clean Air Markets database, Units 1, 2, and 3 routinely reach levels far in excess of FPP's original heat input capacity limits.

Thus, by LCRA's own admission, each of FPP's coal-fired boilers have a greater capacity today than what was originally authorized.

LCRA's self-reported hourly heat input values for Units 1, 2, and 3, in excess of 6,000 mmBtu/hr (for Units 1 and 2) and 4,735 mmBtu/hr (for Unit 3) are provided in Attachment B, which is a compact disk attached to this notice letter containing an Excel spreadsheet ("FPP U1 U2 U3 Heat Input.xls") detailing the date, time, and reported heat input value.

b. Evidence of Increased Particulate Matter Emissions.

Particulate matter ("PM") is a mixture of small particles, including organic chemicals, metals, and ash, which can cause health and environmental problems. Once inhaled, PM can affect the heart and lungs and cause serious health effects. Numerous scientific studies have linked particulate matter exposure to increased respiratory symptoms, such as decreased lung function, aggravated asthma, chronic bronchitis, heart attacks, and premature death in people

with heart or lung disease. Additionally, PM can be carried long distances to settle over land or water, which may result in pollution of lakes and streams, and damage to farmlands.

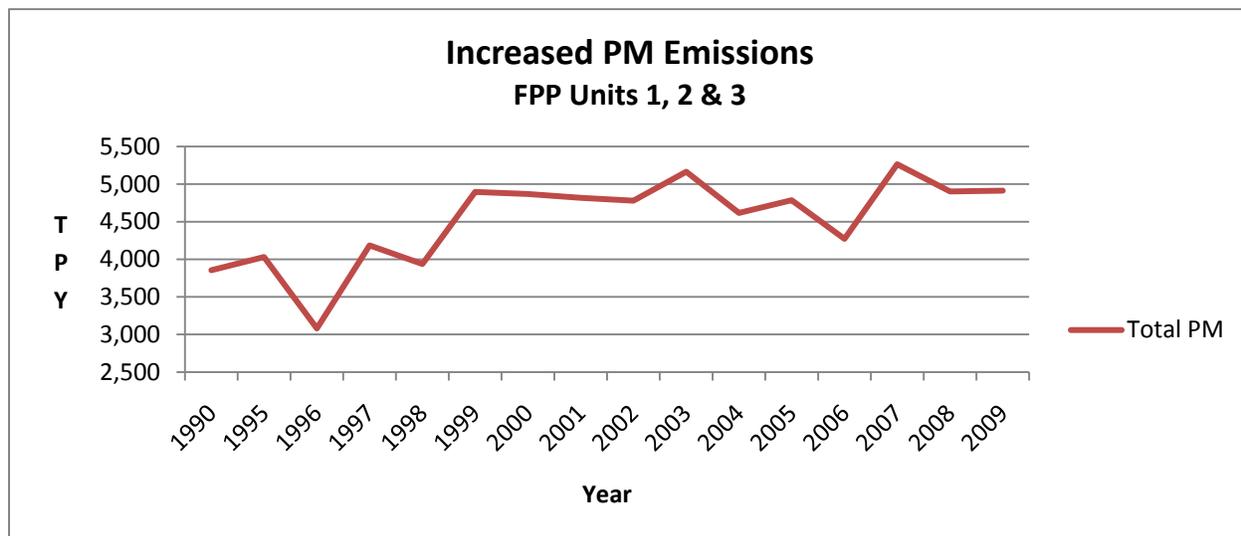
We are relying on the exact assumptions and the same formula for determining PM emission levels that LCRA used in obtaining the FPP Flex Permit. The method for determining PM emission levels is described in LCRA’s July 3, 2002, Flex Permit Application, Section 5.4 (“PM/PM₁₀ Caps”). LCRA stated in the Flex Permit Application that Units 1 and 2 emit PM at a rate of 0.1 lb/mmBtu, and that Unit 3 emits PM at a rate of 0.03 lb/mmBtu. According to your Flex Permit Application, these emission levels “provide the best estimate of current actual [total] PM/PM₁₀ emissions from the FPP boilers.”⁶ These emission rates are applied to reported heat input levels, and the product of these two values is a ton per year, or pound per hour, particulate matter emission level.

Relying on your representation of actual PM emission rates (that is, 0.1 lb/mmBtu for Units 1 and 2, and 0.03 lb/mmBtu for Unit 3), multiplied by your actual self-reported heat input levels reported to EPA’s Clean Air Markets database, it is evident that actual PM emissions have crept upward, as shown in *Table 1, Increased PM Emissions*, below.

Year	Unit 1 mmBtu/yr	Unit 2 mmBtu/yr	Unit 3 mmBtu/yr	Unit 1 PM Tons	Unit 2 PM Tons	Unit 3 PM Tons	Units 1, 2, 3 PM Tons
1990	30,262,778	37,627,350	30,699,804	1,513.1	1,881.4	460.5	3,855.0
1995	34,110,808	37,432,976	30,189,187	1,705.5	1,871.6	452.8	4,030.0
1996	25,741,229	29,715,188	20,481,192	1,287.1	1,485.8	307.2	3,080.0
1997	40,657,512	32,822,434	34,046,765	2,032.9	1,641.1	510.7	4,184.7
1998	33,021,607	36,746,118	29,969,012	1,651.1	1,837.3	449.5	3,937.9
1999	44,949,137	41,762,454	37,299,977	2,247.5	2,088.1	559.5	4,895.1
2000	41,915,654	44,888,903	35,167,413	2,095.8	2,244.4	527.5	4,867.7
2001	42,467,876	44,180,965	32,296,242	2,123.4	2,209.0	484.4	4,816.9
2002	38,201,367	46,197,880	37,294,553	1,910.1	2,309.9	559.4	4,779.4
2003	46,687,839	45,889,735	35,652,883	2,334.4	2,294.5	534.8	5,163.7
2004	40,793,114	40,429,267	37,021,015	2,039.7	2,021.5	555.3	4,616.4
2005	42,464,872	44,217,429	30,180,043	2,123.2	2,210.9	452.7	4,786.8
2006	37,917,768	37,311,415	33,965,366	1,895.9	1,865.6	509.5	4,270.9
2007	46,476,660	48,316,231	34,895,288	2,323.8	2,415.8	523.4	5,263.1
2008	43,738,332	43,378,894	36,376,291	2,186.9	2,168.9	545.6	4,901.5
2009	44,477,738	43,674,339	33,744,477	2,223.9	2,183.7	506.2	4,913.8

⁶ July 2002, LCRA Flex Permit Application at Section 5.4.1, page 5-6.

The values in Table 1 are graphically depicted below.



c. Flex Permit Special Condition 19: Plantwide Applicability Limit (PAL).

FPP's Flex Permit contains Special Condition 19, entitled "Plantwide Applicability Limit (PAL)," which contains plantwide caps for eight listed pollutants, including particulate matter ("PM") and particulate matter with a diameter of 10 micrometers or less ("PM₁₀"). (This Special Condition was numbered as Special Condition 18 in LCRA's original, 2002, Flex Permit issuance.)

This Flex Permit condition states that "[i]f future actual emission rates calculated for an air pollutant exceed the PAL thresholds listed above, the permittee shall be subject to federal new source review for that air pollutant." Special Condition 19 establishes a threshold plantwide annual limit of 5,156 tons for PM and 5,091 tons for PM₁₀ for the "initial" period, and 5,171 tons for PM and 5,098 tons for PM₁₀ for the "interim" period. The interim period became effective on May 1, 2005.⁷

Compliance with all annual limits contained in your Flex Permit is based on a 12-month rolling average.⁸

Relying on your Flex Permit Application representation of actual PM emission rates (that is, 0.1 lb/mmBtu for Units 1 and 2, and 0.03 lb/mmBtu for Unit 3), multiplied by your actual self-reported heat input levels reported to EPA's Clean Air Markets database, FPP has exceeded

⁷ Flex Permit Special Condition 11.

⁸ Flexible Air Permit 51770/ PSDTX486M3 Special Condition 21, incorporated by reference into Title V Federal Operating Permit No. O21 (See, New Source Review Authorization References table).

the PAL cap for PM contained in your Flex Permit, as shown in *Table 2, Violations of Flex Permit “PAL” Interim Emission Cap for PM.*

Table 2. Violations of Flex Permit “PAL” Interim Emission Cap for PM					
12-Month Period	PM Cap (TPY)	Unit 1 (tons)	Unit 2 (tons)	Unit 3 (tons)	Units 1, 2 & 3 (tons)
12/1/2006 - 11/30/2007	5,171	2,283.65	2,377.50	517.58	5,178.72
1/1/2007 - 12/31/2007	5,171	2,323.83	2,415.81	523.43	5,263.07
2/1/2007 - 1/31/2008	5,171	2,359.37	2,455.68	535.81	5,350.86
3/1/2007 - 2/29/2008	5,171	2,387.54	2,475.84	546.79	5,410.17
4/1/2007 - 3/31/2008	5,171	2,400.31	2,253.36	545.05	5,198.71
6/1/2007 - 5/31/2008	5,171	2,404.60	2,157.70	610.05	5,172.36
7/1/2007 - 6/30/2008	5,171	2,417.88	2,168.79	611.70	5,198.37
8/1/2007 - 7/31/2008	5,171	2,413.80	2,164.04	607.89	5,185.72

Similarly, relying on your Flex Permit Application representation of actual PM₁₀ emission rates (that is, 0.1 lb/mmBtu for Units 1 and 2, and 0.03 lb/mmBtu for Unit 3), multiplied by your actual self-reported heat input levels reported to EPA’s Clean Air Markets database, FPP has exceeded the PAL cap for PM₁₀ contained in your Flex Permit, as shown in *Table 3, Violations of Flex Permit “PAL” Interim Emission Cap for PM₁₀.*

Table 3. Violations of Flex Permit “PAL” Interim Emission Cap for PM₁₀					
12-Month Period	PM₁₀ Cap (TPY)	Unit 1 (tons)	Unit 2 (tons)	Unit 3 (tons)	Units 1, 2 & 3 (tons)
12/1/2006 - 11/30/2007	5,098	2,283.65	2,377.50	517.58	5,178.72
1/1/2007 - 12/31/2007	5,098	2,323.83	2,415.81	523.43	5,263.07
2/1/2007 - 1/31/2008	5,098	2,359.37	2,455.68	535.81	5,350.86
3/1/2007 - 2/29/2008	5,098	2,387.54	2,475.84	546.79	5,410.17
4/1/2007 - 3/31/2008	5,098	2,400.31	2,253.36	545.05	5,198.71
6/1/2007 - 5/31/2008	5,098	2,404.60	2,157.70	610.05	5,172.36
7/1/2007 - 6/30/2008	5,098	2,417.88	2,168.79	611.70	5,198.37
8/1/2007 - 7/31/2008	5,098	2,413.80	2,164.04	607.89	5,185.72
9/1/2007 - 8/31/2008	5,098	2,406.73	2,158.70	602.32	5,167.75
5/1/2007 - 4/30/2008	5,098	2,406.39	2,129.22	589.67	5,125.27
10/1/2007 - 9/30/2008	5,098	2,391.55	2,136.53	584.12	5,112.20

As a result of these exceedances of LCRA’s Flex Permit PAL caps for PM and PM₁₀, new source review permitting should have been triggered. LCRA failed to comply with this requirement of the Flex Permit, incorporated by reference into Federal Operating Permit No. O21.

For the foregoing reasons, LCRA’s Fayette Power Project is currently in violation of the federal Clean Air Act’s new source review (specifically, the prevention of significant deterioration, or “PSD”) provisions, Section 165, 42 U.S.C. § 7475, 42 U.S.C. § 7401 et seq., with respect to emissions of particulate matter, for failing to obtain required permits, install required control technology, meet emission limits, and comply with requirements for monitoring, record-keeping and reporting, as specified in the federal Clean Air Act.

B. Particulate Matter Limits Contained in FPP’s Title V Federal Operating Permit No. O21

FPP’s Flex Permit is incorporated into Federal Operating Permit No. O21, issued to LCRA by the TCEQ pursuant to Title V of the federal Clean Air Act.⁹ The Flex Permit includes a maximum allowable emission rate table (“MAERT”). According to the MAERT, FPP is limited to 5,155.16 tons of PM per year (on a rolling 12-month basis), and 5,090.52 tons of PM₁₀ per year (on a rolling 12-month basis).

Again, we are relying on the exact method for determining PM emission levels that LCRA relied upon in your July 3, 2002, Flex Permit Application, Section 5.4 (“PM/PM₁₀ Caps”). According to your Flex Permit Application, Units 1 and 2 emit PM and PM₁₀ at a rate of 0.1 lb/mmBtu, and Unit 3 emits PM and PM₁₀ at a rate of 0.03 lb/mmBtu, and these emission levels “provide the best estimate of current actual [total] PM/PM₁₀ emissions from the FPP boilers.”¹⁰ These emission rates are applied to the heat input levels that LCRA reports to EPA’s publicly accessible Clean Air Markets database, and the product of these two values is a ton per year, or pound per hour, particulate matter emission level.

Tables 4 and 5, below, provide notice of violations of the annual PM emission cap and violations of the annual PM₁₀ emission cap contained in the Flex Permit’s MAERT, which are federally enforceable through FPP’s Federal Operating Permit No. O21. Exceedances of these limits are violations of your Federal Operating Permit No. O21.

Table 4. Violations of PM Emission Cap in Flex Permit MAERT					
12-Month Period	Permit Limit-Annual Cap (TPY)	Unit 1 (tons)	Unit 2 (tons)	Unit 3 (tons)	Units 1, 2 & 3 (tons)
12/1/2006 - 11/30/2007	5,155.16	2,283.65	2,377.50	517.58	5,178.72
1/1/2007 - 12/31/2007	5,155.16	2,323.83	2,415.81	523.43	5,263.07
2/1/2007 - 1/31/2008	5,155.16	2,359.37	2,455.68	535.81	5,350.86
3/1/2007 - 2/29/2008	5,155.16	2,387.54	2,475.84	546.79	5,410.17
4/1/2007 - 3/31/2008	5,155.16	2,400.31	2,253.36	545.05	5,198.71
6/1/2007 - 5/31/2008	5,155.16	2,404.60	2,157.70	610.05	5,172.36

⁹ Title V Federal Operating Permit No. O21, at New Source Review Authorization References table.

¹⁰ July 2002, LCRA Flex Permit Application at Section 5.4.1, page 5-6.

12-Month Period	Permit Limit-Annual Cap (TPY)	Unit 1 (tons)	Unit 2 (tons)	Unit 3 (tons)	Units 1, 2 & 3 (tons)
7/1/2007 - 6/30/2008	5,155.16	2,417.88	2,168.79	611.70	5,198.37
8/1/2007 - 7/31/2008	5,155.16	2,413.80	2,164.04	607.89	5,185.72
9/1/2007 - 8/31/2008	5,155.16	2,406.73	2,158.70	602.32	5,167.75

12-Month Period	Permit Limit-Annual Cap (TPY)	Unit 1 (tons)	Unit 2 (tons)	Unit 3 (tons)	Units 1, 2,&3 (tons)
12/1/2006 - 11/30/2007	5,090.52	2,283.65	2,377.50	517.58	5,178.72
1/1/2007 - 12/31/2007	5,090.52	2,323.83	2,415.81	523.43	5,263.07
2/1/2007 - 1/31/2008	5,090.52	2,359.37	2,455.68	535.81	5,350.86
3/1/2007 - 2/29/2008	5,090.52	2,387.54	2,475.84	546.79	5,410.17
4/1/2007 - 3/31/2008	5,090.52	2,400.31	2,253.36	545.05	5,198.71
6/1/2007 - 5/31/2008	5,090.52	2,404.60	2,157.70	610.05	5,172.36
7/1/2007 - 6/30/2008	5,090.52	2,417.88	2,168.79	611.70	5,198.37
8/1/2007 - 7/31/2008	5,090.52	2,413.80	2,164.04	607.89	5,185.72
9/1/2007 - 8/31/2008	5,090.52	2,406.73	2,158.70	602.32	5,167.75
5/1/2007 - 4/30/2008	5,090.52	2,406.39	2,129.22	589.67	5,125.27
10/1/2007 - 9/30/2008	5,090.52	2,391.55	2,136.53	584.12	5,112.20

The Clean Air Act imposes a penalty for each *day* of violation, therefore the twenty 12-month periods listed in Tables 4 and 5, above, constitute 7,302 days of violation.

C. Violations of Heat Input Limits for FPP Units 1, 2, and 3

FPP Unit 1 was originally authorized as a 5,736 mmBtu/hour boiler.¹¹ FPP Unit 2 was originally authorized as a 5,884 mmBtu/hour boiler.¹² The original permitted limits for both Units 1 and 2 were based on a maximum firing rate of 6,000 mmBtu/hour. For example, the hourly maximum emission limits for particulate matter for each Unit were set at 600 pounds per hour, based on the product of 6,000 mmBtu/hour and 0.1 pounds of PM/mmBtu (the federal New Source Performance Standard for boilers of Unit's 1 and 2 vintage). In subsequent permit

¹¹ Based on Unit 1 original application, Table 6, Boilers and Heaters, representing design maximum fuel flow 620,930 lbs/hr and gross heating value of 9238 Btu/lb.

¹² Permit 4629, issued Oct. 13, 1976, Table 6, representing design maximum 516,100 lb/hr and gross heating value of 11,400 Btu/lb.

decisions by the TCEQ and its predecessor agencies, LCRA represented that the maximum capacity for both Units 1 and 2 is 6,000 mmBtu/hour, each.¹³

FPP Unit 3 was originally authorized as a 4,735 mmBtu/hour boiler.¹⁴ As with emission limits for Units 1 and 2, all hourly and annual emission limits for Unit 3 were derived using the simple formula: maximum heat input * new source performance standard = hourly and annual emission limit. So, for example, Unit 3 was initially permitted to emit 4,735 pounds of sulfur dioxide per hour, based on a then-existing federal NSPS limit of a pound of SO₂ for every mmBtu of fuel fed into the boiler.

Texas rules, incorporated into the federally-enforceable Texas SIP, provides that all permit application representations are conditions upon which the permit is issued, and that it is unlawful to vary from those representations. Since at least 1975, the regulations have required “All representations with regard to construction plans and operation procedures in an application for a permit to construct or a permit to operate become conditions upon which a subsequent permit to construct or operate are issued. . .” Rule 605, Regulation VI (April 27, 1975). This provision of state law was approved by EPA into the Texas SIP in 1982. 47 Fed. Reg. 35,193 (Aug. 13, 1982). After 1975, but prior to September 13, 1993, see 31 TAC § 116.5; thereafter and now, see, 30 TAC 116.116(a). The current TCEQ rule, 30 TAC §116.116(a), says:

(a) Representations and conditions. The following are the conditions upon which a permit, special permit, or special exemption is issued: (1) representations with regard to construction plans and operation procedures in an application for a permit, special permit, or special exemption; and (2) any general and special conditions attached to the permit, special permit, or special exemption itself.

For all time periods relevant to this notice of intent to sue, FPP is required to comply with a 6,000 mmBtu/hour limit on Unit 1 and Unit 2, and 4,735 mmBtu/hour for Unit 3. These limits are federally-enforceable pursuant to 30 TAC 116.116(a) (incorporated into the federally-enforceable Texas SIP). These limits are also incorporated into FPP’s federal Title V Federal Operating Permit No. O21 (“Title V” permit) through the following conditions:

- General Terms and Conditions (Title V permit, at p. 1), incorporating 30 TAC 122.143 – 146;
- General Condition 8 (Title V permit at p. 10), regarding New Source Review Authorizations; and
- General Condition 19 (Title V permit at p.13), regarding Acid Rain Permit Requirements for units FPP-1, FPP-2, and FPP-3.

¹³ See, for example, July 25, 2000, letter from Joe D. Bricker, FPP Plant Manager, to Jesse Alonso, TNRCC, re Permit Alteration Request for FPP Units 1 and 2 (Permit No. 3010), Attachment 2 (stating that “Maximum Boiler Heat Input = 6,000 mmBtu/hr.”)

¹⁴ PSD permit No. 9233 (Dated 12-22-83) authorizes construction of Unit 3, “4735 MMBtu/hr/Lignite Fired Steam Generator”. The permit’s condition No. 4 also states: “the facility covered by this permit shall be constructed as specified in the application for permit to construct.”

According to LCRA's self-reported emissions data, publicly available on EPA's Clean Air Markets website, FPP Units 1, 2, and 3 have each violated, and continue to violate, the mmBtu/hour heat input limit applicable to each unit.

You are hereby notified of 11,299 separate violations of the hourly heat input limit for Unit 1; 14,165 separate violations of the hourly heat input limit for Unit 2; and 11,183 separate violations of the hourly heat input limit for Unit 3, during the period July 2005 through the first quarter of 2010. The date, time, and LCRA's reported hourly heat input for each of these noticed violations is included in Attachment B – the compact disk attached to this notice letter – containing an Excel spreadsheet (“FPP U1 U2 U3 Heat Input.xls”).

D. Violations of Hourly Particulate Matter Limit Contained in PSD-TX-486M3

For all times relevant to this notice of intent, LCRA's FPP Unit 3 is required to meet an hourly PM/PM₁₀ limit of 142.1 pound per hour.¹⁵ This emission limit was originally derived by LCRA and the predecessor agency to TCEQ when Unit 3 was first granted its PSD authorization, and the PSD authorization has never been voided and remains in effect today. The rate is based on 0.03 lb/mmBtu multiplied by the maximum heat input capacity for Unit 3, (4,735 mmBtu/hr), the product of which is 142.1 pounds per hour.

Based on LCRA's 2002 Flex Permit Application representation that 0.03 lb/mmBtu of particulate matter represents the actual emission rate for Unit 3, then every hourly heat input level above 4,735 mmBtu results in emissions above the PSD hourly permit limit.

You are hereby notified of 11,132 separate violations of the hourly PM/PM₁₀ limit for Unit 3, during the period July 2005 through March 2010.¹⁶ The date, time, and LCRA's reported hourly heat input for each of these noticed violations is included in an Excel spreadsheet (“FPP U3 Hourly PM Violations.xls”) in the CD attached to this notice letter. *See*, Attachment B.

E. Failure to Pay Emissions Fees

Section 502 of the Clean Air Act, 42 U.S.C § 7661a(b)(3)(A), requires that under a State or local law or interstate compact that the owner or operator of all sources subject to the requirements to obtain a permit pay an annual fee, or the equivalent over some other period. The fee will not be less than \$25 per ton of each regulated pollutant.¹⁷ Section 502(b)(9)(B)(ii) states that the fee will not be paid on emissions in excess of 4,000 tons per year. Texas rules (30 TAC

¹⁵ Permit Nos. 9233 and PSD-TX-486M3 (See, “Emission Sources – Maximum Allowable Emission Rates” for Emission Point No. 3-1B, “No. 3 Boiler.”)

¹⁶ The number of violations of this emission limit is slightly less than the number of violations of the heat input limit described in Section C of this notice letter, above, due to rounding. The product of the calculation (4,735 * 0.03 = 142.05) is the basis for the 142.1 lb/hour Unit 3 emission limit.

¹⁷ 42 U.S.C. § 7661a(b)(3)(B)(i).

101.27) require that owners or operators pay a fee for each ton of regulated pollutant. The fee is based on either actual emissions or on the permitted emission rate. However, fees will not be less than the actual emission rates. 30 TAC 101.27(f)

LCRA failed to pay sufficient emission fees six times between 2003-2008, as detailed in *Table 6, Failure to Pay Fees on PM Emissions*, below.

Table 6. Failure to Pay Fees on PM Emissions						
Year	Emission Fee ¹⁸ (\$/ton)	LCRA Reported Emissions ¹⁹ (TPY)	Estimated Amount Paid to TCEQ ²⁰	Actual emissions (TPY) ²¹	What should have been paid	Estimated Unpaid Fees
2003	28.63	1,517.79	\$ 43,454.47	5,163.7	\$ 114,520.00	\$ 71,065.53
2004	29.18	1,349.01	\$ 39,364.05	4,616.4	\$ 116,720.00	\$ 77,355.95
2005	29.77	1,433.13	\$ 42,664.31	4,786.8	\$ 119,080.00	\$ 76,415.69
2006	30.90	1,213.50	\$ 37,497.15	4,270.9	\$ 123,600.00	\$ 86,102.85
2007	32.39	1,478.11	\$ 47,876.05	5,263.1	\$ 129,560.00	\$ 81,683.95
2008	32.73	1,452.53	\$ 47,541.44	4,901.5	\$130,920.00	\$ 83,378.56
2009		1458.06	\$49,194.84	4,913.8	\$134,960.00	\$ 85, 765.16
TOTAL:						\$ 561,767.70

IV. Conclusion

As stated above the Environmental Integrity Project, Texas Campaign for the Environment, and Environment Texas intend to file suit to enjoin the Clean Air Act violations described in this notice letter and to ensure future compliance, obtain civil penalties for past noncompliance, recover attorney fees and costs of litigation, and obtain other appropriate relief. Additionally, we intend to seek additional civil penalties to be used for beneficial mitigation projects consistent with 42 U.S.C. § 7604(g)(2).

We would be happy to discuss any aspect of the allegations in this notice letter and look forward to your reply if you believe any of the foregoing information is incorrect, wish to discuss the further exchange of information, or are interested in discussing settlement prior to the initiation of litigation. If you wish to discuss this matter, please contact the Environmental Integrity Project at the address, phone numbers, or E-mail addresses listed in the signature block below.

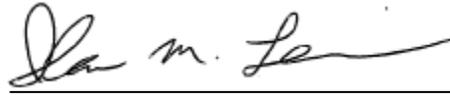
¹⁸ http://www.tceq.state.tx.us/assets/public/implementation/air/ie/pseiforms/ae_f_rates.pdf

¹⁹ Data obtained from TCEQ's Emissions Inventory database (<http://www.tceq.state.tx.us/implementation/air/induste/psei/psei.html>). As described in this notice of intent, LCRA's actual PM emissions are significantly higher than what LCRA reported to the TCEQ Emissions Inventory.

²⁰ Based on TCEQ emission fee per ton and LCRA reported emissions.

²¹ Based on LCRA's Flex Permit Application representation of actual emissions.

Sincerely,



ENVIRONMENTAL INTEGRITY PROJECT

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ATTACHMENT A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

September 25, 2007

Re: Flexible Permit Number

Dear :

The Environmental Protection Agency, Region 6 (EPA) and the Texas Commission on Environmental Quality (TCEQ) have been working together to address the complex issues related to air quality in the State of Texas. One of the areas that we have been focusing on is the development of a federally-approvable flexible permit rule. Although TCEQ has state-approved flexible permit rules in Title 30 of the Texas Administrative Code, Chapter 116, Subchapter G (30 TAC 116.710 et seq.), EPA has not approved these rules into the implementation plan for the State of Texas (Texas SIP). Consequently, permits issued under these flexible permit rules reflect Texas state requirements and not necessarily the federally-applicable requirements.

The purpose of this letter is to clarify that you, as owner or operator of sources included in a TCEQ flexible permit, are obligated to comply with the federal requirements applicable to your plant, in addition to any particular requirements of your flexible permit.

_____ was issued Flexible Permit Number 39142, under 30 TAC 116.710 et seq. We recognize that the flexible permit is the State permitting vehicle for certain operational requirements at your plant. However, unless and until such time as the Texas flexible permitting rules become part of the Texas SIP, you must continue to comply with applicable federal requirements, including those in the Texas SIP. This includes all terms and conditions of permits approved under the Texas SIP. An example of what is meant by the reference to "federal requirements" is the emission control limitations (e.g., lbs/MMBtu) and destruction efficiencies together with the associated monitoring and recordkeeping provisions contained in state or federal permits issued under SIP-approved rules.

Enclosed is a list of Frequently Asked Questions regarding this letter and the federal and state permitting programs. Should you have further questions or inquiries, please contact Raymond Magyar of my staff at (214) 665-7288, or Rick Bartley in the Office of Regional Counsel at (214) 665-8046.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "John Blevins", is positioned above the typed name.

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: Steve Hagle, Assistant Director, Air Permits Division
Texas Commission on Environmental Quality

We promote compliance with Federal environmental regulations in partnership with our States and Tribes
Internet Address (URL) • <http://www.epa.gov/region6/enforcement>

Frequently Asked Questions
EPA's Fair Notice Letter regarding TCEQ's Flexible Permits

Q1: Purpose of Letter: What is the purpose of the letter?

Response: The purpose of the letter is to remind owners and operators of sources of their obligation to comply with all federal and state air permitting requirements. Both EPA and TCEQ expect sources to operate in compliance with all federal and state air permitting requirements. EPA may enforce the provisions of any permit issued to a source under a SIP-approved process, and it is not bound by changes made to those permits by non-SIP approved mechanisms, such as the current Texas flexible permit provisions. EPA also understands that some emission units covered by flexible permits may no longer be operating in the same manner as they had under previous SIP permits or that new emission units may be covered by a flexible permit that have not previously been permitted under any SIP-approved permitting program. Owners and operators must continue to meet their obligations under the federal Clean Air Act, including the requirement to comply with all federal programs such as the NSPS, NESHAP, PSD, non-attainment NSR, and SIP-approved permits. In particular, the letter reminds the recipient that EPA has not approved the Texas flexible permit rules and, consequently, Texas issued flexible permits are not federally-approved and are not federally-enforceable. More precisely, changes to SIP-approved permits may only be accomplished through SIP-approved procedures, and the flexible permit mechanism is not yet a SIP-approved process to effect changes to a SIP permit.

Q2: Timing of Letter - Why the Sudden Interest? I've had my flexible permit for over 10 years now, why is EPA suddenly concerned about my flexible permit?

Response: TCEQ and EPA both agree that it is now time to focus resources on ensuring that all major sources with the State of Texas have federally-enforceable, SIP-approved permits. The two agencies are working together to develop a flexible permit rule that can be approved as part of the Texas SIP. Both TCEQ and EPA have been aware of issues related to the flexible permit rule and have worked over the last several years to address various permitting issues as part of EPA program revisions, including permit streamlining within the context of Title V, the federal PAL program and NSR reform. Because TCEQ is committed to ensuring the continuing success of its efforts to maintain and improve the air quality of Texas, EPA is providing its assistance to ensure that sources are also meeting their federal obligations under the Clean Air Act. One way for EPA to assist Texas in its efforts is to ensure that there are no adverse air quality impacts associated with the implementation of the flexible permitting rules prior to EPA action on the program.

Q3: Compliance with “legacy permits”: EPA’s letter states that it expects our facility to comply with the SIP-approved permit conditions and terms that existed prior to issuance of our flexible permit. What does that mean for my facility?

Response: EPA maintains that SIP permits issued to a source remain effective until amended, modified, or revoked in accordance with the SIP-approved methods for effecting such permit changes. This means that all SIP permit conditions and terms, including any representations upon which the SIP permit was issued, are not, and have not been, superceded, voided, or replaced by the terms, conditions, or permit application representations associated with a flexible permit. Owners and operators of sources included in a TCEQ flexible permit should review their previously issued SIP permits (“legacy permits”) to ensure that they are complying with those terms, conditions, and representations. To the extent that such conditions, terms and representations were rolled over into the flexible permit, then there should be no issue associated with compliance obligations and the source should simply continue to comply with those requirements. However, EPA understands that there may be some instances where specific terms, conditions, or representations made in the legacy permits have been “modified” or “changed” by the flexible permit. Therefore, in accordance with EPA’s policy entitled “Revised Guidance on Enforcement During Pending SIP Revisions,” (<http://www.epa.gov/compliance/resources/policies/civil/caa/stationary/enf-siprev-rpt.pdf>) dated March 1, 1991, EPA will assess its enforcement options on a case-by-case basis.

Q4: New Units Not Covered by a SIP Permit: I was issued a flexible permit for a new source (site) or a new or amended flexible permit for a change to a source (site) that involves construction of a new unit. Is the source operating in violation of federal requirements since it obtained authorization for those emissions in a non SIP-approved permit?

Response: To the extent that the modification followed the federally-approved review requirements *but for* the inclusion of those requirements in a SIP-approved permit, EPA will look to the 1991 guidance referenced above in determining whether or not to bring an enforcement action for failure to effect changes to the source in accordance with approved SIP procedures. As previously mentioned in response to Q2, EPA’s focus will be to ensure that the source is not creating any adverse air quality impacts as a result of its operations under the flexible permit. In addition, if there is a need for changes to the monitoring, record-keeping, or reporting requirements to ensure no adverse air quality impacts, then an EPA enforcement action to effect those changes may be appropriate under the circumstances.



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Corpus Christi, TX 78403-2608

Permit 8803A (NE0122D, RN100235266)
Ms. Janice A. Golden
Environmental Manager
Flint Hills Resources LP
P.O. Box 2608
Corpus Christi, TX 78403-2608

Permit 6606 (SD0047K, RN100222744)
Mr. Eric R. Kaysen, P.E.
Environmental Manager
Flint Hills Resources LP
P.O. Box 2608
Corpus Christi, TX 78403-2608

Permit 19079 (TH0310Q, RN101059673)
Mr. H. Scott Peters
Environmental Engineer
Flint Hills Resources LP
P.O. Box 2608
Corpus Christi, TX 78403-2608

Permit 74599 (, RN104277793)
Mr. Allan Young
North America Manufacturing Manager
Forbo Adhesives LLC
P.O. Box 110447
Triangle Park, NC 27709-0447

Permit 18495 (WA0041A, RN100242973)
Mr. Charlie Kuhn
Plant Manager
Gardner Glass Products Inc.
7553 Hwy. 75 S
Huntsville, TX 77340-2485

Permit 6081 (DB0386T, RN100683010)
Mr. Jay Poppleton
President of JT Walker Industries Inc.
General Aluminum Company of Texas LP
P.O. Box 4490
Clearwater, FL 33758-4490

Permit 8996 (ED0099J, RN100219286)
Mr. Michel Moser
Plant Manager
Holcim (Texas) Limited Partnership
1800 Dove Lane
Midlothian, TX 76065-4435

Permit 2167 (HG0048L, RN100218130)
Mr. Philip J. Oberbroeckling
Manager Environmental and DOT Affairs
Houston Refining LP
12000 Lawndale, P.O. Box 2451
Houston, TX 77252-2451

Permit 18105 (HH0171A, RN101618759)
Mr. Dennis P. Leahey
EHS Manager
Huntsman LLC
118 Huntsman Way
Longview, TX 75602

Permit 16989 (JE0135Q, RN100217389)
Mr. Glenn Senters
Plant Manager
Huntsman Petrochemical Corporation
P.O. Box 847
Port Neches, TX 77651-0847

Permit 82132 (, RN104620083)
Mr. Ron Deakins
Chief Operating Officer
INEOS Americas LLC
7770 Rangeline Rd.
Theodore, AL 36582-5212

Permit 49823 (HG0665E, RN100229905)
Mr. Guy Hagen
Manager SHE Department
INEOS Polyethylene North America
1230 Battleground Rd.
La Porte, TX 77571

Permit 28351 (HX2897U, RN102537289)
Mr. Guy Hagen
Manager SHE Department
INEOS Polymers Inc.
1230 Battleground Rd.
La Porte, TX 77571

Permit 95 (BL0002S, RN100238708)
Mr. Randall W. Browning
Manager SHE Department
INEOS USA LLC
P.O. Box 1488
Alvin, TX 77512-1488

Permit 74630 (SG0004S, RN101302362)
Mr. Scott Muston
Pipeline Operations Manager
Kinder Morgan Wink Pipeline LP
500 N. Lorraine St., Suite 900
Midland, TX 79701

Permit 2193 (HG0262H, RN100237452)
Mr. James Wilson
Manager EHS
KM Liquids Terminals LP
906 Clinton Dr.
Galena Park, TX 77547-3461



Permit 19082 (BG0488M, RN101058733)
Mr. Michael R. Hallgarth
Environmental Compliance Manager
Koch Petroleum Group Inc.
8606 I-37
Corpus Christi, TX 78409

Permit 39863 (WF0046E, RN100542562)
Don Cobb
Vice President of Manufacturing
Leedo Manufacturing Co LP
P.O. Box 520
East Bernard, TX 77435

Permit 77410 (WF0046E, RN100542562)
Mr. Jim Hirt
Vice President
Leedo Manufacturing Co LP
100 Foundation Loop
East Bernard, TX 77435

Permit 16862 (TA0156K, RN100212356)
Mr. Bob Kramer
Senior Environmental Engineering Specialist
Lockheed Martin Corporation dba Lockheed
Martin Aeronautics Company
P.O. Box 748 MZ6875
Fort Worth, TX 76101-7450

Permit 38082 (EB0839J, RN102416799)
Mr. Carter Montgomery
President & CEO
Longhorn Partners Pipeline
1801 North Lamar Street 100
Dallas, TX 75202

Permit 51770 (FC0018G, RN100226844)
Mr. Kenneth W. Taylor
Plant Manager
Lower Colorado River Authority
6549 Power Plant Road
La Grange, TX 78945-3714

Permit 56340 (RI0016G, RN100220011)
Mr. Rick Olson
Vice President of Pipeline Operations
Magellan Pipeline Company LP
P.O. Box 22186, One Williams Ctr., MD 28-2
Tulsa, OK 74121

Permit 73439 (EE0077I, RN100813492)
Mr. Greg McMillan
Environmental Specialist
Magellan Pipeline Terminals LP
One Williams Center MD 27-3
Tulsa, OK 74172

Permit 1296A (PC0011B, RN102183449)
Mr. James Oneal
Environmental Supervisor
Magellan Pipeline Terminals LP
P.O. Box 22186 MD27-3
Tulsa, OK 74121-2186

Permit 4850 (HG0017W, RN102180486)
Mr. Brian Topping
Air Quality Specialist
Magellan Terminals Holdings LP
1 Williams Ctr. MD 27
Tulsa, OK 74172-0140

Permit 70042 (HG0735I, RN102186129)
Mr. Jay Wiese
Vice President of Terminal Services &
Development
Magellan Terminals Holdings LP
P.O. Box 22186, One Williams Ctr., MD 28-2
Tulsa, OK 74121

Permit 22433 (GB0055R, RN100210608)
Mr. Steve Willis
Environmental and Safety Manager
Marathon Petroleum Company LLC
502 10th St. S
Texas City, TX 77590

Permit 76962 (, RN104761606)
Mr. S. M. Brooks
President
Midway Industrial Park LLC
P.O. Box 550
Nash, TX 75569

Permit 22104 (HG4873N, RN100219161)
Mr. Don La Ferriere
Environmental Analyst
Mitsubishi Caterpillar Forklift America Inc.
2011 W. Sam Houston Pkwy. N.
Houston, TX 77043

Permit 48662 (JE0870C, RN102530268)
Ms. Lynn Courvelle
Terminal Manager
Motiva Enterprises LLC
P.O. Box 1918
Pasadena, TX 77501

Permit 8404 (JE0095D, RN100209451)
Ms. Nikole S. Jenkins
Environmental Manager - Refinery Expansion
Motiva Enterprises LLC
P.O. Box 712
Port Arthur, TX 77641-0712

Permit 19035 (BG0218U, RN100519214)
Mr. Roger P. Leitch
Regional Manager
Motiva Enterprises LLC
P.O. Box 2099
Houston, TX 77252-2099

Permit 1285 (DB0795V, RN100519651)
Mr. Dan Porras
Regional Manager
Motiva Enterprises LLC
P.O. Box 2463
Houston, TX 77252

Permit 26638 (HG0715O, RN100226125)
Mr. Dan Porras
Regional Manager
Motiva Enterprises LLC
P.O. Box 2463
Houston, TX 77252-2463

Permit 31978 (MB0112K, RN100519636)
Mr. Daniel Porras
Regional Manager
Motiva Enterprises LLC
P.O. Box 2463
Houston, TX 77252-2463

Permit 40972 (HG0658B, RN100211259)
Mr. Daniel Porras
Regional Manager
Motiva Enterprises LLC
P.O. Box 2463
Houston, TX 77252-2463

Permit 37200 (TA0345F, RN100216548)
Mr. Don Porras
Regional Manager
Motiva Enterprises LLC
P.O. Box 2463
Houston, TX 77252-2463

Permit 77679 (, RN103219127)
Mr. Frank W. Getman, Jr.
President
Nacogdoches Power LLC
1 New Hampshire Ave., Suite 125
Portsmouth, NH 03801

Permit 17210 (HG1413D, RN100213545)
Mr. Gary Penn
Environmental Manager
NCI Building Systems, L.P.
7301 Fairview
Houston, TX 77041

Permit 24679 (ME0019O, RN102771078)
Ms. Anastasia Tullos
Regional Environmental Coordinator
Norbord Texas Jefferson Inc.
1194 Highway 145
Guntown, MS 38849

Permit 9958 (NA0017W, RN100543040)
Mr. Jim Ward
General Manager
Norbord Texas Nacogdoches Inc.
P.O. Box 632750
Nacogdoches, TX 75963-2750

Permit 79255 (FG0020V, RN100888312)
Mr. Ben C. Carmine, P.E.
Director Environmental Operations
NRG Texas LP
1301 McKinney, Suite 2300
Houston, TX 77210-0148

Permit 81594 (NE0026A, RN100552181)
Mr. Dale Lebsack
Vice President Operations & EHS
Nueces Bay WLE LP
2705 Bee Caves Rd., Suite 340
Austin, TX 78746

Permit 80024 (, RN105082994)
Ms. Cheryl Longuet
Office Manager
Nueces Syngas LLC
14701 St. Mary's Lane, Suite 625
Houston, TX 77079

Permit 21356 (JE0010O, RN101042885)
Mr. Shaun Revere
General Manager
Oiltanking Beaumont Partners LP
P.O. Box 96290
Houston, TX 77213-6290



Permit 5631 (HG0531D, RN100224740)
Mr. Guillermo Triana
Environmental and Projects Manager
Oiltanking Houston LP
15631 Jacintoport Blvd.
Houston, TX 77015

Permit 73357 (UB0152N, RN101973782)
Mr. Wayne E. Roberts
Director Southern & Southwestern Divisions
Plains Pipeline LP
P.O. Box 3371
Midland, TX 79702-3371

Permit 80987 (PH0021M, RN100812502)
Mr. Max Holtby
Senior Geologist
Rio Grande Mining Company
1180-999 W. Hastings St.
Vancouver Canada, BC V6C-2W2

Permit 3284 (GB0077H, RN100217231)
Mr. Michael Nieberlein
Health Safety Security Environmental Manager
Oiltanking Texas City LP
P.O. Box 29
Texas City, TX 77592-0029

Permit 73368 (, RN104156526)
Mr. Wayne E. Roberts
Director Southern & Southwestern Divisions
Plains Pipeline LP
P.O. Box 3371
Midland, TX 79702-3371

Permit 70861 (, RN104136700)
Mr. Michael P. Witzing
Senior Vice President
Sandy Creek Energy Associates LP
Two Tower Center, 20th Floor
East Brunswick, NJ 08816

Permit 72763 (, RN101625192)
Mr. Wayne E. Roberts
Environmental Director
Plains Marketing LP
P.O. Box 3371
Midland, TX 79702-3371

Permit 73383 (WM0041L, RN101988541)
Mr. Wayne E. Roberts
Director Southern & Southwestern Divisions
Plains Pipeline LP
P.O. Box 3371
Midland, TX 79702-3371

Permit 56496 (HG0659W, RN100211879)
Mr. Richard W. Bourns
Environmental Manager
Shell Chemical LP
P.O. Box 100
Deer Park, TX 77536-0100

Permit 72760 (SG0032N, RN101296507)
Mr. Wayne E. Roberts
Environmental Director
Plains Pipeline LP
P.O. Box 3371
Midland, TX 79702-3371

Permit 73458 (YA0272O, RN101950616)
Mr. Wayne E. Roberts
Director-Environmental & Regulatory
Compliance
Plains Pipeline LP
P.O. Box 3371
Midland, TX 79702-3371

Permit 21262 (HG0659W, RN100211879)
Mr. Richard W. Bourns
Environmental Manager
Shell Oil Company
P.O. Box 100
Deer Park, TX 77536-0100

Permit 72761 (WH0051M, RN102305943)
Mr. Wayne E. Roberts
Director S and SW Division Env. & Reg.
Compliance
Plains Pipeline LP
P.O. Box 4648
Houston, TX 77210-4648

Permit 72712 (ML0244C, RN100214824)
Mr. Michael J. Tarrillion
Staff Air Compliance Engineer
Plains Pipeline LP
P.O. Box 4648
Houston, TX 77210-4648

Permit 56253 (JE0228I, RN100219716)
Mr. Richard W. Lewis
Shell Pipeline Company LP
P.O. Box 2648
Houston, TX 77252

Permit 72762 (ML0029I, RN102662848)
Mr. Wayne E. Roberts
Environmental Director
Plains Pipeline LP
P.O. Box 3371
Midland, TX 79702-3371

Permit 74485 (, RN104517826)
Mr. Marvin L. Ivey
Project Manager
Port Arthur LNG LP
101 Ash St.
San Diego, CA 92101-3017

Permit 56342 (JE0100M, RN102027174)
Ms. Michelle R. McCracken
Environmental Representative
Shell Pipeline Company LP
P.O. Box 2648
Houston, TX 77252

Permit 72983 (WM0039V, RN100214253)
Mr. Wayne E. Roberts
Environmental Director Southern &
Southwestern Divisions
Plains Pipeline LP
P.O. Box 3371
Midland, TX 79702-3371

Permit 1862A (HG0131A, RN102540754)
Mr. Jeffrey M. Grimes
Environmental Engineer
PPG Industries Inc.
P.O. Box 995
La Porte, TX 77571

Permit 81029 (, RN105179881)
Mr. Stephen P. Rosenberg
President and CEO
SPR Packaging LLC
5720 LBJ Fwy., Suite 630
Dallas, TX 75240-6366

Permit 72984 (CY0016N, RN102575073)
Mr. Wayne E. Roberts
Environmental Director Southern &
Southwestern Divisions
Plains Pipeline LP
P.O. Box 3371
Midland, TX 79702-3371

Permit 19297 (, RN104095435)
Mr. David Bush
Plant Manager
Praxair Inc.
P.O. Box 1758
Texas City, TX 77592-1758

Permit 31977 (HH0041O, RN103080966)
Mr. J. Scott Haggerton
Field Environmental Specialist
Star Enterprise
4500 Fuller Drive, Suite 400
Irving, TX 75038

Permit 72985 (, RN102459765)
Mr. Wayne E. Roberts
Environmental Director Southern &
Southwestern Divisions
Plains Pipeline LP
P.O. Box 3371
Midland, TX 79702-3371

Permit 21318 (BL0383A, RN101388163)
Mr. Ed Brauer
General Manager
Rangen Inc.
1500 E. Cedar St.
Angleton, TX 77515-4141

Permit 53418 (HX1378K, RN102874419)
Mr. Gary Elkin
EH&S
Stewart & Stevenson Services Inc.
2707 N. Loop West
Houston, TX 77008

Permit 73198 (CZ0015E, RN102573177)
Mr. Wayne E. Roberts
Environmental Director
Plains Pipeline LP
P.O. Box 3371
Midland, TX 79702-3371

Permit 77738 (HG0618N, RN100673136)
Mr. Mike Fields
Plant Manager
Reichhold Inc.
1503 Haden Road
Houston, TX 77015

Permit 73416 (MP0007U, RN100212349)
Mr. Greg P. Yant
Associate Environmental Specialist
Sunoco Pipeline LP
907 S. Detroit Ave.
Tulsa, OK 74120



Permit 21548 (AH0065E, RN102411352)
Mr. Richard Botkin
Vice President Human Resources
Tactical Vehicle Systems
P.O. Box 330
Sealy, TX 77474-0330

Permit 49230 (HG1357L, RN101466159)
Mr. Charles Nettles, Jr.
President
Tex-Trude LP
2001 Sheldon Road
Channelview, TX 77530

Permit 20432 (BL0082R, RN100225945)
Ms. Linda Bartholome
Responsible Care Leader
The Dow Chemical Company
2301 N. Brazosport Blvd., Bldg. APB
Freeport, TX 77541-3257

Permit 6618 (HG0289K, RN100870898)
Mr. Michael Lockwood
Site Manager
The Goodyear Tire & Rubber Company
P.O. Box 5397
Houston, TX 77262

Permit 40933 (SK0021C, RN102456597)
Mr. Brent McCauley
Facilities Manager
The Kelly-Springfield Tire Company
P.O. Box 4670
Tyler, TX 75712-4670

Permit 6825A (JE0042B, RN102584026)
Mr. Jim Gillingham
Regional Operations Vice President
The Premcor Refining Group Inc.
P.O. Box 909
Port Arthur, TX 77641-0909

Permit 74886 (DB0728N, RN100218197)
Mr. Mark Bright
Facility Manager
The Sherwin-Williams Company
2802 W. Miller Rd.
Garland, TX 75041-1211

Permit 20513 (TA2184O, RN100767714)
Mr. Marshall Seavers
Plant Manager
The WW Henry Company LP
1101 Avenue G E
Arlington, TX 76011-7715

Permit 81030 (, RN105156707)
Mr. Fusao Ito
President
Toyo Ink International Corporation
610 5th Ave.
New York, NY 10020-2403

Permit 48056 (BG0229P, RN100209337)
Mr. Michael A. Charlton, PhD
Director Environmental Health and Safety
University of Texas Health Science Center
7703 Floyd Curl Dr., MC 7928
San Antonio, TX 78229-3900

Permit 79097 (EE0024G, RN100210095)
Mr. Jesus Moncada
Air Program Manager
US Department of The Army
Bldg. 622, S. Taylor Rd., IMSW-BLS-DOE
Fort Bliss, TX 79916-6816

Permit 54985 (, RN104248141)
Mr. David Arnosky
Manager of Environmental Affairs
Valero Logistics Operations LP
P.O. Box 3429
Texas City, TX 77592-3429

Permit 54984 (, RN104276696)
Ms. Sheary Culp
Environmental Manager
Valero Logistics Operations LP
P.O. Box 696000
San Antonio, TX 78269-6000

Permit 80493 (HG0130C, RN100219310)
Mr. Robert L. Gross
Director Safety And Environmental Affairs
Valero Refining-Texas LP
P.O. Box 5038
Houston, TX 77262-5038

Permit 2937 (NE0043A, RN100211663)
Mr. Dennis Payne
Regional Vice President and General Manager
Valero Refining-Texas LP
P.O. Box 9370
Corpus Christi, TX 78469-9370

Permit 38754 (NE0112G, RN100214386)
Mr. Dennis Payne
Vice President and General Manager
Valero Refining-Texas LP
P.O. Box 9370
Corpus Christi, TX 78469-9370

Permit 39142 (GB0073P, RN100238385)
Mr. Leslie G. Rucker
Director Health Safety and Environmental
Affairs
Valero Refining-Texas LP
P.O. Box 3429
Texas City, TX 77592-3429

Permit 74272 (, RN104488440)
Mr. Ray Mentzer
Authorized Representative
Vista Del Sol LNG Terminal LP
12450 Greenspoint Dr., MS DEV-GP6-1220
Houston, TX 77060

Permit 72302 (, RN104314273)
Mr. Al Tallman
President
Water World Fiberglass Pools (USA) Inc.
700 Reading Ave.
Hammonton, NJ 08037

Permit 72661 (SG0033L, RN100215128)
Mr. David Minielly
Manager - Health, Environmental Services
West Texas Gulf Pipe Line Company
P.O. Box 2039
Tulsa, OK 74102-2039

Permit 18897 (EE0015H, RN100213016)
Ms. Leslie Ann Allen
Vice President of Environmental and Regulatory
Affairs
Western Refining Company LP
6500 Trowbridge Dr.
El Paso, TX 79905-3402

Permit 43104 (BG1199P, RN100542828)
Mr. Donnie Zapara
Vice President
Zee Manufacturing Ltd.
4600 W. US Highway 90
San Antonio, TX 78237-4002

ATTACHMENT B

(on Compact Disc)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Administrator Lisa P. Jackson
 U.S. EPA, Ariel Rios Building
 1200 Pennsylvania Avenue, N.W.
 Mail Code: 1101A
 Washington, DC 20460

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent Addresssee
- B. Received by (Printed Name) Agent Addresssee
- C. Date of Delivery Agent Addresssee
- D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

2. Article Number

(Transfer from service label)

7010 0290 0000 4382 3250

PS Form 3811, February 2004

Domestic Return Receipt

102895-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Thomas G. Mason, General Manager
 LCRA
 P.O. Box 220
 Austin, TX 78767

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent Addresssee
- B. Received by (Printed Name) Agent Addresssee
- C. Date of Delivery Agent Addresssee
- D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

2. Article Number

(Transfer from service label)

7010 0290 0000 4382 3236

PS Form 3811, February 2004

Domestic Return Receipt

102895-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent Addresssee
- B. Received by (Printed Name) Agent Addresssee
- C. Date of Delivery Agent Addresssee
- D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Administrator Alfredo Armendariz
 U.S. EPA Region 6
 1445 Ross Avenue, Suite 1200
 Mail Code: 6RA
 Dallas, TX 75202

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent Addressee
- B. Received by (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

FEB 16 2004

- 3. Service Type
 - Certified Mail
 - Registered
 - Insured Mail
 - Return Receipt for Merchandise
 - C.O.D.
- 4. Restricted Delivery? (Extra Fee) Yes

2. Article Number **7010 0290 0000 4382 3267**
 (Transfer from service label)
 PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hon. Rick Perry, Governor
 Office of the Governor
 P.O. Box 12428
 Austin, TX 78711-7568

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent Addressee
- B. Received by (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

TPASSICPA
 JUL 15 2004

- 3. Service Type
 - Certified Mail
 - Registered
 - Insured Mail
 - Express Mail
 - Return Receipt for Merchandise
 - C.O.D.
- 4. Restricted Delivery? (Extra Fee) Yes

2. Article Number **7010 0290 0000 4382 3298**
 (Transfer from service label)
 PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent Addressee
- B. Received by (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Bryan M. Shaw, Chair
 TCEO
 MC 100
 P.O. Box 13087
 Austin, TX 78711-3087

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

Handwritten signature: BRYAN M. SHAW

3. Service Type Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) **7010 0290 0000 4382 3274**

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-N-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Bryan M. Shaw, Chair
 TCEO
 MC 100
 P.O. Box 13087
 Austin, TX 78711-3087

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

TPASS/CPA
 2004 FEB 23 2004

3. Service Type Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
 4. Restricted Delivery? (Extra Fee) Yes

2. Article Number **7010 0290 0000 4382 3274**
(Transfer from service label)

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540