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May 11, 2009

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

*Via Facsimile and U.S. Mail*

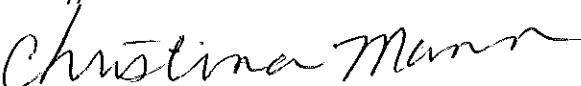
*Re: Proposed Amendment of Motiva Enterprises LLC's Flexible Permit 8404 in Port Arthur, Jefferson County, Texas*

Dear Ms. Castañuela:

Enclosed for filing in the above-referenced cause, please find Public Comments on the proposed amendment of Motiva Enterprises LLC's Flexible Permit 8404 for the refinery in Port Arthur, Texas.

Thank you for your attention to this mater. Please call me at (512) 637-9477 should you have any questions.

Sincerely,

  
Christina Mann

Enclosure

cc: Mr. Jeffrey Robison (US EPA Region 6, *via U.S. Mail*)  
Ms. Stephanie Kordzi (US EPA Region 6, *via U.S. Mail*)  
Mr. Steven Hagle (TCEQ, *via U.S. Mail*)  
Mr. Blas Coy (TCEQ, *via U.S. Mail*)

**PUBLIC COMMENTS ON THE PROPOSED AMENDMENT OF MOTIVA  
ENTERPRISES LLC's (MOTIVA) FLEXIBLE PERMIT 8404 FOR THE REFINERY IN  
PORT ARTHUR, JEFFERSON COUNTY, TEXAS**

**INTRODUCTION**

The Environmental Integrity Project and Sierra Club understand that Motiva has applied for an amendment of its Texas Flexible Permit No 8404. According to Motiva, the purpose of the amendment application is to:

update the authorization of the CEP [Crude Expansion Project] to revise the original representations, update emissions information and calculations, and reflect current refinery design. These emissions revisions, as summarized in Table 1-1, demonstrate an overall significant reduction in emissions from the June 2006 Consolidated Application with Addendums (Consolidated Application). Permits-By-Rule related to Permit 8404 will be incorporated as part of this amendment application.<sup>1</sup>

Our concerns are addressed jointly, below.

The Environmental Integrity Project (EIP) is a nonpartisan, nonprofit organization dedicated to more effective enforcement of environmental laws and to the prevention of political interference with those laws. EIP has offices and programs in Texas. EIP's research and reports shed light on how environmental laws affect public health. EIP works closely with communities seeking to enforce those laws.

The Sierra Club, founded in 1892 by John Muir, is one of the oldest and largest grassroots environmental organizations in the country, with more than 700,000 members nationwide. Sierra Club is a nonprofit corporation organized under California law, with offices, programs and members in Texas. Among the goals of the Sierra Club are preserving and enhancing the natural environment and protecting public health. The Sierra Club has the specific goal of improving outdoor air quality.

**CONCERNS**

*These initial comments address concerns related to the proposed incorporation of Permits by Rule, and the proposed authorization of increased VOC releases (particularly benzene).*

*1. Permits by Rule*

The draft renewal incorporates twelve different permits by rule (PBRs). One single PBR includes at least 15 different emission sources for fugitive VOCs. Texas currently allows major sources to authorize emissions through PBRs. In its approval of Texas' general PBR provisions into the SIP, EPA stated that it was approving the use of PBRs only for non-major facilities. 68 FR 64543, 64544 (Nov. 14, 2003)

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<sup>1</sup> See Section 1-2, Motiva's Application for an amendment to Flexible Air Quality Permit Number 8404, submitted to TCEQ March 24, 2009.

(emphasis added). EPA guidance provides that facilities with emissions even approaching the major source threshold must authorize emissions through a case-by-case review of an individual permit. *Potential to Emit Guidance for Specific Source Categories* (April 14, 1998) p. 2. (Case-by-case reviews are “essential for complex sources warranting close scrutiny . . . and sources that limit their emissions to near-major amounts.”) The Texas Health and Safety Code likewise prohibits the use of PBRs by “major” facilities. Tex. Health & Safety Code § 382.05196(a). These limits are intended to both ensure that federal major NSR requirements are met and to protect the NAAQS. Despite these limits, Texas allows major sources (such as Motiva’s Port Arthur refinery) to authorize increases in emissions through PBRs. As a result sources are potentially allowed to modify their major source NSR permit requirements without complying with federal public participation requirements.

The Clean Air Act requires SIPs to include provisions for regulating the modification and construction of stationary sources as necessary to assure compliance with the NAAQS. 42 U.S.C. §§7410(a)(2)(A)-(C). Texas permits-by-rule must, therefore, include provisions to assure such compliance, including provisions making the permits practicably enforceable.<sup>2</sup> EPA, however, has repeatedly notified Texas that its existing PBRs are inconsistent with the approved SIP and EPA policy and do not assure compliance.

PBRs cannot be used to authorize emissions from major sources (such as Motiva’s Port Arthur facility), cannot be used to amend individual permits, and must be source specific. Use of these permits jeopardize and EPA action on Texas’ and other states’ SIPs.

Does the incorporation of the PBRs effectively amend the federal permit, triggering the *federally approved* public participation requirements? If so, TCEQ must conduct a technical review of the entire application, including the PBRs, and allow for a subsequent notice and comment period. Is it TCEQ’s practice that no technical review will be conducted on this application if only comments are received after administrative review?

Although Motiva provides a robust amount of information related to the PBRs *now*, each of these permits has already been granted and the processes the public has available are therefore limited.

2. *Any proposed increase in VOCs in Jefferson County must be thoroughly scrutinized because Jefferson County residents (and particularly those in Port Arthur) currently breathe the second most VOC-laden air in the State.*

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<sup>2</sup> EPA has repeatedly found that, to be practicably enforceable, minor source permits must: (1) apply to a clearly defined category of sources that is narrow enough to allow specific limits and compliance monitoring to be identified and achieved by all sources in the category, (2) include technically accurate limits providing assurance that emissions will not exceed federal thresholds, (3) include a compliance timeframe (hourly/daily, etc.), and (4) include a specific compliance monitoring method sufficient to protect the standard involved. *Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and Section 112 Rules and General Permits* (Jan. 25, 1995); See also, 61 FR 53633, 53635 (Oct. 15, 1996) and 62 FR 2587, 2589 (Jan. 17, 1997). Similarly, the Texas Health and Safety Code requires that PBRs apply only to “types of facilities that will not significantly contribute air contaminants to the atmosphere” and only to “similar” facilities. Tex. Health & Safety Code § 382.051(b)(4).

Jefferson County is the second worst county in Texas in 2006 for VOC emissions with 11,738 tons VOCs released (compared to No. 3 contributor Galveston County's 6,012 tons VOCs released). Motiva is Port Arthur's largest industrial contributor of VOCs, contributing roughly 57% of total Port Arthur VOCs and more than 70% of West Port Arthur's VOCs from industry in 2006. It is not enough to note the comparatively small additional contributions that Motiva is proposing without taking into account Motiva's already disproportionately large VOC contribution and Jefferson County's over-burdened airshed. Motiva proposes to increase its impact by emitting an additional 16 tons of VOCs and most of that is concentrated in anticipated short term emission events.

Has TCEQ or Motiva evaluated the existing air quality conditions in Port Arthur, or more narrowly the West Port Arthur area? If not please justify why such an evaluation is not required.

- 3. Motiva touts its decrease in overall annual tons per year of pollutants, yet this upgrade will greatly increase the short term emissions of various pollutants including NOx, VOCs, carbon monoxide, and benzene.*

What is the justification for the large increases in the proposed pounds per hour and tons per year for these pollutants?

If this amendment is intended to reflect a downsize of the expansion project as permitted in November 2006, why are the short term rates increasing dramatically compared to what is previously authorized in the maintenance cap?

- 4. Benzene is a pollutant of specific concern, especially since Motiva is a source of over one ton per year just from this refinery. Benzene is a known carcinogen<sup>3</sup>, with conservative regulatory sources recommending no safe level of benzene exposure<sup>4</sup>.*

Because of concerns related to both acute (a 181 lb/hour increase in 'maintenance cap emissions') and long term exposures of relatively limited concentrations of benzene, Motiva (and all sources of benzene) should be required to emit substantially lower levels of benzene than at present and not increase its benzene levels.

If Motiva intends to increase its benzene emissions, TCEQ should require Motiva to, at minimum, conduct a plant-wide cumulative benzene modeling review. However, a cumulative model for total industrial benzene in West Port Arthur would be the most appropriate method to evaluate the impact of the industrial sources on the residents of West Port Arthur. Since Motiva has three neighboring plants (an adjacent refinery and two chemical-petrochemical plants) that also emit large volumes of benzene, a plant-wide benzene model does not represent a true cumulative picture of benzene emissions on the West side of Port Arthur.

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<sup>3</sup> EPA classifies benzene as a human carcinogen. See <http://www.epa.gov/ttn/uatw/hlthef/benzene.html>.

<sup>4</sup> [http://www.euro.who.int/document/aig/5\\_2benzene.pdf](http://www.euro.who.int/document/aig/5_2benzene.pdf)

5. *Modeling data for VOCs and benzene is known to be unreliable since Motiva and other industrial sources use an unreliable set of emissions factors to make emissions calculations.*

We understand that TCEQ and EPA are finally investigating the outdated use of emission factors to determine emissions from flares (an important source of benzene and other VOCs).

We understand that Motiva is expanding the fugitive monitoring program for expansion units from 28MID to an enhanced 28VHP. Are the emissions authorized by the PBRs also being monitored by the 28VHP? Please clarify how is an enhanced 28VHP monitoring program is superior to the 28MID monitoring program?

How is Motiva demonstrating continuous compliance with its proposed control efficiencies? Are actual benzene emissions measurements required for the company to perform every day?

How are the known deficiencies in the underlying emission factors being addressed in this pending application?

Has TCEQ evaluated whether any of the emission reductions included in the application are supported by changes in operations, additional environmental controls or monitoring data to show that past emissions were over reported. Are the reductions based on revised calculations for which there is adequate supporting information?

Does the permit propose any form of monitoring of cumulative actual emissions? The TCEQ should ensure that a valid verification program before it authorizes emissions.

## **CONCLUSION**

Motiva's permit amendment application has raised concerns that TCEQ must address during a technical review of the application, which should be available for additional public comment.

Thank you for the opportunity to comment on Motiva's proposed amendment to its Flexible Permit 8404.

Sincerely,



Christina Mann, Attorney

**ENVIRONMENTAL INTEGRITY PROJECT**