



November 12, 2020

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

Via Electronic Filing

Re: Comments and Contested Case Hearing Request Concerning Max Midstream Texas LLC's Application for Permit No. 162941, Authorizing an Expansion of the Company's Seahawk Terminal, Located in Calhoun County, Texas

Dear Ms. Bohac,

Diane Wilson, San Antonio Bay Waterkeepers, Texas Rio Grande Legal Aid, and Environmental Integrity Project ("Commenters") appreciate this opportunity to comment on and **request a contested case hearing** regarding Max Midstream Texas LLC's ("Max Midstream") application for New Source Review ("NSR") Permit No. 162941, which would authorize an expansion of the company's existing Seahawk Crude Condensate Terminal ("Terminal"), in Point Comfort, Calhoun County, Texas. The proposed expansion project would authorize construction of eight new storage tanks, seven marine loading docks and associated vapor combustion units, three firewater pumps, piping fugitives, and authorize planned maintenance, startup, and shutdown ("MSS") activities.

DISPUTED ISSUES OF FACT

The Terminal is currently classified as a minor source of air pollution and existing units at the Terminal are authorized by and subject to requirements in Permit by Rule ("PBR") Registration No. 98075. Because the Terminal is characterized as an existing minor source and proposed project increases are less than the applicable major source threshold (100 TPY of any criteria pollutant), Max Midstream contends that the expansion project as a minor modification even though project increases exceed the applicable major modification thresholds for NO_x (40 TPY) and Ozone (40 TPY NO_x or VOC). *See* 30 Tex. Admin. Code § 116.12(20) ("At a stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified for a major source.").

Commenters, however, have been unable to fully evaluate Max Midstream's representation that this project does not trigger major NSR preconstruction permitting requirements and many of

the applicant's representations because crucial application material has been improperly designated confidential by the applicant. Based upon the limited information contained in the publicly-available application file, Commenters request a contested case hearing on the following issues of disputed fact:

- Max Midstream's application failed to include information sufficient to demonstrate that emissions from the proposed new and modified facilities and activities meet all of the criteria established by Texas's federally-approved preconstruction permitting rule at 30 Texas Administrative Code § 116.111(a)(2).
- Max Midstream's application failed to include a demonstration, including modeling, that demonstrates that emissions from the requested project will be protective of the health and property of the public. *Id.* at § 116.111(a)(2)(A)(i) and (J). Additionally, while the application does contain information about potential parameters for a modeling demonstration that was not included in the application, Max Midstream failed to include any information establishing that these parameters were properly determined and reflect worse-case emissions from the Terminal under the requested authorization.
- The application fails to demonstrate that monitoring, testing, and recordkeeping requirements proposed by the applicant are sufficient to measure emissions related to the proposed project and to ensure that emission limits in the requested permit are practicably enforceable. *Id.* at § 116.111(a)(2)(B).
- Max Midstream contends that the federal Clean Air Act's Best Available Control Technology ("BACT") requirements do not apply to this project, because the Terminal is a minor source and the project is a minor modification. Accordingly, the application does not attempt to demonstrate compliance with federal BACT requirements. Max Midstream, however, failed to demonstrate that the project is a minor modification.

New and modified units that would be authorized as part of the proposed project have the physical capacity to emit criteria pollutants at levels that exceed applicable major source thresholds. For example, Max Midstream proposes to construct 18 marine vapor combustion units and has requested a permit authorizing each of these units to emit 15 pounds of NO_x and CO per hour. Application, Permit No. 162941 at Table 1-2. The applicable major source threshold for each of these pollutants is 100 tons per year. *Id.* at Table 1-1; *see also* 30 Tex. Admin. Code § 116.12(20). If all of these vapor combustion units were operated year round at the requested hourly rate, NO_x and CO emissions from these units alone would be almost 1,183 tons per year. Yet, the requested annual NO_x and CO emission cap covering all these units would only authorize Max Midstream to emit 75 tons of NO_x and CO each year. The publicly-available application materials do not indicate that Max Midstream has requested any operating limitations for these units that would ensure that they will comply with the proposed annual NO_x and CO emission caps, and the public application materials do not explain how

the monitoring method Max Midstream has proposed—continuous monitoring of VCU exhaust temperature—will be used to determine emissions from the VCUs or establish that this method is sufficient to make the annual emissions cap practicably enforceable, as required to limit the units’ potential to emit for preconstruction permitting purposes.

This same problem applies for the 15 tanks associated with this project, for which Max Midstream has proposed hourly VOC emission rates of 13.40 pounds (tanks TK-06-01, and TK-06-03 through TK-06-15) and 18.42 pounds (TK-06-02). If these tanks emitted the maximum requested hourly VOC rate year round, annual VOC emissions from the tanks would amount to 902 tons. Yet the storage tank annual VOC cap would authorize less than 50 tons per year. The public portion of the application file does not contain any operating limitations that would assure compliance with this annual cap and the application fails to demonstrate how the proposed monitoring regime, throughput monitoring and temperature monitoring, is sufficient to make the proposed cap practicably enforceable.

Without additional operating limitations and monitoring requirements sufficient to make annual emission limits proposed to avoid major New Source Review applicability practicably enforceable, the project’s physical potential to emit VOC, CO, and NO_x well above applicable major source thresholds dictates that this project should be treated as a major modification, subject to federal BACT requirements. Thus, the application is deficient because Max Midstream failed to demonstrate compliance with federal BACT requirements. 30 Tex. Admin. Code § 116.111(a)(2)(C).

Additionally, Max Midstream appears to use an inapplicable equation to determine emissions related to loading losses at the Terminal. Max Midstream’s application indicates that “[l]oading losses are comprised of the total vapors displaced and generated by crude oil and/or crude oil condensates into the marine vessels.” Application, Permit No. 162941 at 5-2. To calculate project emissions rates related to loading losses, Max Midstream relies on Equation 1 from AP-42, Section 5.2. *Id.* Max Midstream’s reliance on this equation is problematic for two reasons. First, according to AP-42, this equation builds in a probable error rate of 30%. AP-42, Section 5.2 at 5.2-4. An equation that may be expected to underestimate actual project emissions by a third does not accurately represent project emissions. Additional VOC emissions within this range of error may be sufficient to trigger major New Source review requirements. Second, AP-42 indicates that Equation 1 should only be used for “products other than gasoline and crude oil.” AP-42, Section 5.2 at 5.2-5. For marine loading of crude oil, as proposed by this project, AP-42 directs usage of Equations 2 and 3, instead of Equation 1. *Id.* at 5.2-5.

The application, moreover, fails to demonstrate compliance with BACT requirements established by the Texas Clean Air Act. As the application makes clear, “[e]ach facility is

evaluated for [BACT] on a case-by-case basis.” Application, Permit No. 162941 at 6-1. According to TCEQ policy, BACT evaluations are conducted using a tiered approach. *Id.* In the first tier, “controls accepted as BACT in a recent permit review for the same process in the same industry are approved as BACT . . . if no new technical developments have been made that would justify additional controls as economically or technically reasonable.” *Id.* The application fails to demonstrate compliance with Texas’s state BACT requirement, because it fails to include any information about the level of control mandated in recent permit reviews for the same industry and does not indicate that Max Midstream made any effort to determine whether improvements beyond the unspecified level of control required by undisclosed recently permitted facilities are achievable. Instead, Max Midstream relies entirely on recommended controls in the TCEQ’s outdated BACT guidance documents. For example, Max Midstream relies on the TCEQ’s five year old guidance document to identify applicable controls for its storage tanks. *Id.* The guidance Max Midstream relies upon for its proposed loading operation was written nearly a decade ago, in 2011. *Id.* at 6-2. The application fails to identify the basis for the proposed BACT determinations for Max Midstream’s VCU’s. The flare control requirements and emission factors for NO_x and CO are based on Texas’s two decades old 2000 guidance on air permitting for chemical flares and vapor oxidizers at chemical sources. *Id.* at 6-3. The SO₂ control requirements for the proposed flare are said to be “consistent” with unidentified “recent BACT determinations for flares.” *Id.* Again, the basis for Max Midstream’s determination that the proposed level of control for VOC flare emissions satisfied applicable Texas BACT requirements is undisclosed. *Id.* at 6-3-6-4. This same kind of treatment renders the application’s BACT demonstrations for fugitives, the proposed emergency generator and firewater pump engines and MSS activities deficient.

- A stationary source that emits or has the potential to emit ten tons or more of any hazardous air pollutant per year or more than 25 tons per year of any combination of hazardous air pollutants is a “major source,” subject to applicable major source requirements in EPA’s National Emission Standards for Hazardous Air Pollutants. According to the application, the Terminal is not a major source of hazardous air pollutants, but the public application fails to include any information supporting this claim. While Max Midstream’s electronic workbook appears to propose site-wide HAP limits consistent with this threshold, it does not identify how much hazardous air pollution the terminal has the physical capacity to emit, which HAPs will be emitted from the Terminal, what operational limits, if any, Max Midstream has requested to assure compliance with these emission limits, or monitoring, testing, and recordkeeping requirements for each kind of unit that will emit HAPs that make the 10/25 ton per year site-wide limits practicably enforceable. Accordingly, Max Midstream failed to make the demonstration required by 30 Texas Administrative Code § 116.111(a)(2)(E), (F), and (K).
- Max Midstream relies on vendor specifications and engineering knowledge to claim that its proposed emission rates will be achieved in practice across all operating scenarios that will be authorized by the requested permit. This information, however, is not included in the public

application file, which fails altogether to demonstrate that the project—if authorized—will achieve the performance specified in the application, as required by 30 Texas Administrative Code § 116.111(a)(2)(G).

- As explained above, this project is subject to major New Source Review preconstruction permitting requirements, because the project’s physical capacity to emit criteria pollutants above the applicable major source threshold is not sufficiently constrained by practicably enforceable emission limits and operating limitations. Max Midstream’s application is deficient because it does not demonstrate compliance with applicable major New Source Review requirements as mandated by 30 Texas Administrative Code § 116.111(a)(2)(I).

CONTESTED CASE HEARING REQUEST

San Antonio Bay Estuarine Waterkeeper and S. Diane Wilson request a contested case hearing concerning Max Midstream’s application for Permit No. 162941 authorizing an expansion project at the Terminal. Communications regarding this hearing request should be directed to Gabriel Clark-Leach at the physical or email address listed below.

1. San Antonio Bay Estuarine Waterkeeper

San Antonio Bay Estuarine Waterkeeper is part of a national network of Waterkeeper organizations, the Waterkeeper Alliance. San Antonio Bay Estuarine Waterkeeper (“Waterkeeper”) is a volunteer-run, non-profit membership organization whose mission is to protect Lavaca Bay, where the Terminal is located, Matagorda Bay and San Antonio Bay, and to educate the public about these ecologically important estuarine systems. Waterkeeper pursues its organizational goals by engaging media sources to publicize areas of concern, hosting public meetings, filing comments and hearing request on permit applications at environmental agencies, notifying government agencies when there are problems in the waterways and air, and filing lawsuits when other alternatives are unavailing.

Lavaca Bay supports a wide range of legally protected interests, including property interests, economic interests, and aesthetic interests, that are recognized and protected by the federal Clean Air Act, the Texas Clean Act and by regulations implementing these statutes. These interests are threatened by air pollution from industrial sources, like the Terminal, and container ships that will be loaded at with crude oil at the Terminal. Waterkeeper members reasonably anticipate that construction and operation of the Terminal expansion project will make Lavaca Bay less fishable, diminish natural resources Waterkeeper members rely upon for their livelihoods, interfere with members’ longstanding and deeply fulfilling recreational activities in the Bay and the surrounding area, interfere with members’ use and enjoyment of their own property, and increase members’ unwanted exposure to air contaminants regulated by federal and state law.

Waterkeeper members who will be affected by the proposed Terminal expansion project include, but are not limited to:

- Dale Jurasek, who lives approximately five miles east of the Terminal;
- Mauricio Blanco, who lives approximately six miles west of the Terminal; and
- S. Diane Wilson, who lives between Seadrift and Port O'Connor, near the intracontinental waterway approximately 15 miles southwest of the Terminal.

Each of these members lives, works, and recreates in areas that will be exposed to increased air pollution from the Terminal if Max Midstream's application for Permit No. 162941 is approved. Members of Waterkeeper walk the beaches of Lavaca Bay and swim and boat in its waters. Waterkeeper members reasonably worry that increased pollution from the proposed expansion project will negatively affect their own health, the health of their families, and interfere with the use and enjoyment of their property. Waterkeeper members are also concerned about the damage to the beaches, wetlands, shores, bays, and wildlife and marine life that depend on those resources that will result from construction and operation of the proposed Terminal expansion project. These injuries to the interests of Waterkeeper members are not generalized, abstract, or theoretical. Waterkeeper members include commercial fisherman, shrimpers, and oystermen whose livelihoods depend upon the health of the Lavaca Bay ecosystem. Waterkeeper members have a deep aesthetic and recreational connection to the Bay, which has developed over many years of active use of the Bay and surrounding lands and that is not widely shared by members of the general public.

2. S. Diane Wilson

S. Diane Wilson has spent her life working in the local bays surrounding Calhoun County; including Lavaca/Matagorda Bays and San Antonio Bays. For four generations, Ms. Wilson and her family have relied upon these bays for their financial, physical, and spiritual well-being. Ms. Wilson, following in the footsteps of her parents and her grandparents, worked in Lavaca Bay where the Terminal is located, Matagoda Bay, and San Antonio Bay for forty years as a commercial fisherman, shrimper, oysterman, fin fisher, and as a manager at a fish house. Though she has retired from those professions, she continues to rely on the fishing trade in Lavaca Bay as a net builder and mender in the shrimping industry. Ms. Wilson's deep connection with the waters and trades that are directly endangered by air pollution from industrial sources, like the Terminal, is highly personal, specific, and encompasses interests that are not shared by the general public. Ms. Wilson has participated formally in administrative proceedings before the EPA and TCEQ to ensure that government decisions—including air and water permitting decisions—that could compromise the ecological integrity of the Lavaca Bay system strictly comply with federal and state anti-pollution requirements and that risks of environmental harm resulting from industrial

development in the area are properly addressed and minimized. Ms. Wilson has also participated in litigation against polluters that have violated federal pollution control requirements.

Ms. Wilson has dedicated decades of her life working to protect Texas bays from pollution and degradation. The bays not only support her financially. They are also precious to her. From time to time, Ms. Wilson goes out on a skiff into Lavaca and Matagorda Bays. She swims with her children and grandchildren in Matagorda Bay at Magnolia Beach. She is a monitor that kayaks weekly on the bays and creeks and shores surrounding the project area. Ms. Wilson's enjoyment of the Bays near her home has been diminished, and in some cases thwarted entirely, by upset events at industrial facilities with the same kind of equipment—tanks, flares, and VCUs—that will be constructed as part of the proposed Terminal expansion project. Given this experience, Ms. Wilson's belief that the TCEQ's failure to ensure compliance with state and federal pollution control requirements that apply to the proposed expansion project threatens her physical, economic, and spiritual well-being is well-founded. Ms. Wilson is an affected person with standing to participate in a contested case hearing to ensure that any permit issued by the TCEQ authorizing construction of the Terminal expansion project is sufficiently protective.

CONCLUSION

Commenters appreciate the opportunity to file these comments and this hearing request and reserve the right to provide additional information on the matters discussed in this document as allowed by the Clean Air Act, the Texas Clean Air Act, and regulations implementing these statutes.

Sincerely,

/s/ Gabriel Clark-Leach

Gabriel Clark-Leach

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