Harrison Reback

Attached please find comments by Baker Botts LLP on TCEQ Rule Project Number 2023-116-115-AI.

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VIA ELECTRONIC SUBMISSION
(https://tceq.commentinput.com/comment/search)

Ms. Gwen Ricco
Texas Commission on Environmental Quality
Office of Legal Services MC 205
P.O. Box 13087
Austin, TX 78711-3087

Re: Comments on TCEQ Rule Project Number 2023-116-115-AI

Dear Ms. Ricco:

Baker Botts LLP ("Baker Botts") appreciates the opportunity to submit comments on the Texas Commission on Environmental Quality ("TCEQ") proposal to amend certain sections of 30 Texas Administrative Code ("TAC") Chapter 115, issued in June 2021 (the "Proposal"). Baker Botts represents clients in the Dallas Fort Worth ("DFW") ozone nonattainment area subject to the requirements in the Proposal. As outlined below, Baker Botts requests that TCEQ consider two changes to the Proposal.

I. Pneumatic Controllers

TCEQ's November 13, 2023 executive summary for the Proposal notes that "staff recommends necessary technical corrections to Chapter 115, Subchapter B, Division 7 to address inadvertent errors in those rules that were discovered after their adoption in a June 2021 rulemaking (Rule Project No. 2020-038-115-AI). That rulemaking was conducted to implement [Reasonably Available Control Technology ("RACT")] associated with EPA's 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry."[1] While the Proposal corrects several inadvertent errors, it does not resolve an error in the definition of pneumatic controllers under the existing rule. An additional revision is necessary to ensure consistency with EPA's 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry ("CTG").

[1] TCEQ Interoffice Memorandum, November 13, 2023, pg. 3, available at https://www.tceq.texas.gov/downloads/rules/current/23116115_pex.pdf.

A. Proposed change to language

Baker Botts suggests a change to the definition of "pneumatic controller" in 30 TAC 115.171. We propose the following underlined addition to 30 TAC 115.171(9)(B):

> Intermittent bleed or snap-acting pneumatic controllers release natural gas only when they open or close a valve or as they open or close to throttle the gas flow at the valve. For purposes of this section, intermittent bleed or snap-acting pneumatic controllers are not subject to bleed rate limits measured in scfh.

This edit is necessary to clarify that bleed rate limits in Division 7 apply only to continuous bleed pneumatic controllers – not intermittent bleed pneumatic controllers.

30 TAC 115.171(9) divides pneumatic controllers into three types – continuous bleed, intermittent bleed/snap actuating, and zero bleed. The definition at 30 TAC 115.171(9)(A) states that "[c]ontinuous bleed controllers are further subdivided into two types **based on their bleed rate, which for the purposes of this section means the rate at which natural gas is continuously vented from a pneumatic controller and measured in standard cubic feet per hour (scfh)**: (i) low bleed controllers have a bleed rate of less than or equal to 6.0 scfh; and (ii) high bleed controllers have a bleed rate of greater than 6.0 scfh." (emphasis added).

While 30 TAC 115.171(9)(A) expressly defines continuous pneumatic controllers by bleed rate, the definition of intermittent bleed controllers at 30 TAC 115.171(9)(B) does not reference bleed rate. This discrepancy creates potential confusion in other provisions of Division 7, including 30 TAC 115.174(b)(2). Specifically, 30 TAC 115.174(b)(2) requires that "each pneumatic controller must have a natural gas bleed rate of less than or equal to 6.0 scfh." Absent clarification, this reference to "each pneumatic controller" could be misread to address both continuous and intermittent bleed pneumatic controllers.

However, as established in 30 TAC 115.171(9)(A), bleed rate is only relevant to continuous bleed controllers. Unlike continuous bleed controllers, intermittent bleed controllers are not designed with a set scfh bleed rate. The rate of emissions from intermittent controllers varies depending on the amount of gas vented per actuation, the frequency of actuation, and the process or equipment the controller services. Our proposed addition to the definition in 30 TAC 115.171(9)(B) would confirm that bleed rate limits do not apply to intermittent bleed or snap actuating pneumatic controllers.

B. This change is necessary for consistency with EPA's CTG

Clarifying in 30 TAC 115.171(9)(B) that bleed rate limits do not apply to intermittent bleed pneumatic controllers would also align the Division 7 rules (and 30 TAC 115.174 in particular) with the EPA CTG recommendations. The CTG is clear that its evaluation

of bleed rates only concerned continuous bleed controllers. In fact, the CTG notes that "[i]ntermittent controllers are devices that only emit gas during actuation and do not have a continuous bleed rate. . . Since actuation emissions serve the controller's functional purpose and can be highly variable, **the emissions characterized for high-bleed and low-bleed devices in this analysis (as described in section 6.2.2) account for only the continuous flow of emissions (i.e., the bleed rate) and do not include emissions directly resulting from actuation. Intermittent controllers are assumed to have zero bleed emissions."**[2] As used here, "bleed rate" is a concept only relevant to continuous bleed controllers.

Further, EPA's CTG consistently framed RACT in the context of continuous bleed pneumatic controllers.[3] EPA distilled its recommendation as follows:

> In summary, we recommend **the following RACT for each single continuous bleed natural gas-driven pneumatic controller** located from the wellhead to the natural gas processing plant or point of custody transfer to an oil pipeline: RACT for Each Single Continuous Bleed Natural Gas-Driven Pneumatic Controller Located from the Wellhead to the Natural Gas Processing Plant or Point of Custody Transfer to an Oil Pipeline: **Each pneumatic controller, which is a single continuous bleed natural gas-driven pneumatic controller must have a natural gas bleed rate less than or equal to 6 scfh** unless there are functional needs including, but not limited to response time, safety and positive actuation, requiring a bleed rate greater than 6 scfh).[4]

Notably, the CTG's model rule states that "[e]ach pneumatic controller subject to VOC emissions control requirements at a location between the wellhead and a natural gas

[2] EPA 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry, page 6-3, available at https://www.epa.gov/sites/default/files/2016-10/documents/2016-ctg-oil-and-gas.pdf.

[3] For example, EPA's CTG includes the following statements: "Sections 6.4.1 and 6.4.2 present the recommended RACT level of control for **continuous bleed natural gas-driven pneumatic controllers** located at natural gas processing plants and continuous bleed natural gas-driven pneumatic controllers located from the wellhead to the natural gas processing plant or point of custody transfer to an oil pipeline" (*Id.* at 6-21)(emphasis added); "Based on our evaluation of available data obtained in the development of the 2012 NSPS and 2016 NSPS, peer review comments received on the 'Oil and Natural Gas Sector Pneumatic Devices' white paper, and existing regulations that control VOC emissions from pneumatic controllers, we are recommending a natural gas bleed rate less than or equal to 6 scfh with limited exceptions described below as the RACT for **controlling VOC emissions from continuous bleed natural gas-driven pneumatic controllers** located from the wellhead to the natural gas processing plant or point of custody transfer to an oil pipeline" (*Id.* at 6-23)(emphasis added); "We are recommending a RACT emission limit of 6 scfh (unless there are functional needs including, but not limited to, response time, safety and positive actuation, requiring a bleed rate greater than 6 scfh) apply to **each continuous bleed pneumatic controller.**" (*Id.* at 6-24)(emphasis added).

[4] *Id.* at 6-25 (emphasis added).

processing plant or the point of custody transfer to an oil pipeline must have a bleed rate less than or equal to 6 standard cubic feet per hour."[5] It appears that TCEQ used this language when developing 30 TAC 115.174(b)(2). However, though the model rule uses the general phrase "each pneumatic controller," the model rule's applicability section clarifies that these provisions apply to "each pneumatic controller, **which is a single continuous bleed** natural gas-driven pneumatic controller. . ."[6] The current TCEQ definitions do not include this important provision, thereby increasing the risk of regulatory uncertainty and inconsistency with EPA's recommendations. Our proposed edit would resolve this uncertainty and align with the CTG by confirming that bleed rate limits only apply to continuous bleed pneumatic controllers.

II. Alternative Monitoring Methods

The current rule at 30 TAC 115.177(b) allows fugitive emissions monitoring using either EPA's Method 21 or optical gas imaging pursuant to 30 TAC 115.358. Although these are well-established practices, there have been significant advances in fugitive emission monitoring technology in recent years. Several of these monitoring technologies provide equivalent or superior detection capabilities to Method 21 or optical gas imaging. TCEQ should allow operators to take advantage of these advances where such technologies would help further reduce emissions.

The Proposal already includes revisions to 30 TAC 115.177 "as an incentive for industry to expedite the location and repair fugitive component leaks . . ."[7] In the spirit of this initiative, Baker Botts recommends that TCEQ also consider incorporating the underlined addition to 30 TAC 115.177(b):

> The owner or operator shall monitor each affected fugitive emission component and calibrate the hydrocarbon gas analyzer instrumentation in accordance with procedures specified by the United States Environmental Protection Agency (EPA) Method 21 in 40 Code of Federal Regulations (CFR) Part 60, Appendix A-7. The owner or operator may elect to use the alternative work practice in §115.358 of this title (relating to Alternative Work Practice) for any fugitive emission component, as specified in paragraph (11) of this subsection. <u>In lieu of these procedures, the owner or operator may elect to comply with EPA-approved alternative monitoring technologies and frequencies pursuant to 40 CFR 60.5398b, or other equally effective methodologies approved by the executive director</u>.

[5] *Id.* at Appendix B-1.
[6] *Id.* (emphasis added).
[7] *See* Proposal page 10.

This accommodation for new technologies is particularly appropriate considering EPA's recent development of alternative monitoring provisions in New Source Performance Standard ("NSPS") OOOOb. EPA's new standards allow operators to demonstrate compliance with fugitive emissions monitoring requirements by implementing periodic or continuous monitoring technology approved by the EPA Administrator. As EPA acknowledged in the pre-publication preamble to the NSPS OOOOb final rule, industry has voluntarily applied many new technologies, including on-site sensor networks and aerial flyovers, to effectively mitigate emissions. EPA also noted that these technologies "have the ability to detect fugitive emissions quickly and cost-effectively in a manner that may be less susceptible to operator error or judgment than traditional leak detection technologies."[8]

Many operators in Texas have already pilot tested alternative technologies that are more efficient and effective than the Method 21 procedures required by 30 TAC 115.177(b) or the handheld optical gas imaging offered as an alternative in 30 TAC 115.358. However, TCEQ's current requirements at 30 TAC 115.177(b) restrict operators from using these new technologies to demonstrate compliance. While operators can use these technologies on a voluntary basis, this restriction limits the value to operators and disincentivizes additional investments for broader use of new technologies. If TCEQ were to amend 30 TAC 115.177(b) in line with our suggested addition, this would further incentivize the development and implementation of effective leak detection technologies in pursuit of VOC emissions reductions and attainment for the DFW nonattainment area.

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We appreciate your consideration of the foregoing comments. If you have any questions, please contact me at harrison.reback@bakerbotts.com or 713.229.1567.

Respectfully,

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[8] Prepublication version of Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, November 30, 2023, available at https://www.epa.gov/system/files/documents/2023-12/eo12866_oil-and-gas-nsps-eg-climate-review-2060-av16-final-rule-20231130.pdf.