

US EPA ARCHIVE DOCUMENT

**PROGRAMMATIC AGREEMENT
REGARDING COMPLIANCE WITH SECTION 106
OF THE NATIONAL HISTORIC PRESERVATION ACT FOR THE
NEW C3 PETROCHEMICALS LLC PROPANE DEHYDROGENATION PLANT
AT THE ASCEND PERFORMANCE MATERIALS TEXAS INC. CHOCOLATE
BAYOU COMPLEX, BRAZORIA COUNTY, TEXAS
AMONG
THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 6,
THE TEXAS STATE HISTORIC PRESERVATION OFFICER, AND
C3 PETROCHEMICALS LLC**

WHEREAS, C3 Petrochemicals LLC (“C3P” or “Applicant”) submitted to the U.S. Environmental Protection Agency, Region 6, Multimedia Permitting Division (“EPA”) a Prevention of Significant Deterioration (“PSD”) permit application for Greenhouse Gas (“GHG”) emissions for a proposed construction project to install a new propane dehydrogenation unit for the production of propylene at the Ascend Chocolate Bayou Complex in Brazoria County, Texas, an existing major stationary source of criteria pollutants (hereinafter “Project”); and

WHEREAS, C3P in conjunction with Ascend Performance Materials Texas Inc. and other affiliates, partners, joint venturers or contracted entities (“project participants”) is acquiring all lands, easements, rights-of-way, relocations, removals, and upland placement areas necessary for project construction and operation; and

WHEREAS, the EPA has determined that issuance of a GHG PSD permit allowing the construction of the Project pursuant to its authority in the Subchapter I, Part C of the Clean Air Act (“CAA”), and implementing regulations at 40 CFR § 52.21, constitutes an Undertaking for purposes of Section 106 of the National Historic Preservation Act (“NHPA”) (16.U.S.C. § 470) and its implementing regulations, at 36 § CFR Part 800 (“Protection of Historic Properties”) (hereinafter “Undertaking”); and

WHEREAS, the EPA has determined the Area of Potential Effect (“APE”) for the Undertaking includes the location of the proposed construction site of a new propane dehydrogenation unit within the existing industrial Chocolate Bayou Complex, a construction laydown area, a new parking area, and a 36-mile propane pipeline identified as Propane #1 (“Pipeline”); and

WHEREAS, C3P has agreed to assist EPA with Section 106 compliance by providing all relevant cultural resource survey work and report preparation for EPA’s use and adoption; and

WHEREAS, although C3P has been able to conduct cultural resource surveys on a majority of the project site and pipeline area, there remain four (4) sections of pipeline right-of-way (approximately 10 miles total in length and identified more clearly in Attachment A) to which C3P has been unable to secure access for purposes of conducting survey work that will require cultural resource surveys prior to start of construction of the Pipeline; and

WHEREAS, EPA has determined that, with the exception of these four sections of pipeline right-of-way, the Undertaking will not have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (“NRHP”) (hereinafter “historic properties”); and

WHEREAS, failure to obtain access to these four sections of pipeline right-of-way makes it necessary to defer final identification and evaluation of historic properties until easements or other authorizations are obtained by Applicant; and

WHEREAS, the EPA, the Texas State Historic Preservation Officer (“SHPO”) and the Applicant agree that it is advisable to accomplish compliance with Section 106 through the development and execution of this Programmatic Agreement (“PA”) in accordance with 36 CFR § 800.14(b) to address the four remaining sections of pipeline right-of-way for which surveys are not yet possible;

WHEREAS, EPA has reached out to Native American Indian tribes that may potentially have an interest in Brazoria County and has received no responses; and

WHEREAS, the EPA has consulted with the Advisory Council on Historic Preservation (Council) to determine whether the Council wished to enter into the Section 106 process, to which it declined by letter dated May 12; and

NOW, THEREFORE, the EPA and the SHPO agree that the proposed Undertaking may only proceed in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties and to satisfy the EPA's Section 106 responsibilities for all individual aspects of the Undertaking.

STIPULATIONS

EPA shall ensure that:

STIPULATION 1. INVENTORY, EVALUATION, EFFECT DETERMINATION AND RESOLUTION FOR UNSURVEYED TRACTS ALONG THE PIPELINE ROUTE

A. *Scope*: Stipulation 1 shall be applicable only to all new construction activities related to Section 106 Review for the four sections of pipeline right-of-way identified in Attachment A along the associated Pipeline route. The EPA has established the width of the APE for the Pipeline as a 200-foot corridor along and including the 50-foot pipeline right-of-way and all other areas to be directly affected by new Pipeline. This 200-foot wide APE includes construction staging and access areas.

B. *Qualifications and Standards*. All cultural surveys and report preparation will be conducted by qualified persons that meet the professional standards established by the Secretary of the Interior as required by NHPA section 112(a)(1)(A). C3P shall ensure that all work conducted in conjunction with this PA is performed in a manner consistent with the Secretary of Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 Federal Register 44716-44740; September 23, 1983), as amended, or the Secretary of the Interior's Standards for the

Treatment of Historic Properties (36 CFR Part 68), as appropriate. C3P may satisfy any of its material obligations under this PA either directly or through a qualified project participant, such as a pipeline operations company, without relieving C3P of its responsibility to ensure compliance with this PA.

C. *Definitions.* The definitions set forth in 36 CFR § 800.16 are incorporated herein by reference and apply throughout this PA.

D. *Identification of Historic Properties:* Prior to the initiation of construction or pre-construction staging activities related to the four unsurveyed sections of pipeline right-of-way described in Attachment A, C3P shall make a reasonable and good faith effort to identify historic properties located in the APE. These steps may include, but are not limited to, background research, consultation, oral history interviews, sample field investigation, and field survey. The level of effort for these activities shall be determined in consultation with the SHPO and any Native American Indian tribe that attaches religious and cultural significance to identified properties. At a minimum, C3P or its qualified consultant, consistent with the Texas Historical Commission's *Archeological Survey Standards for Texas*, will conduct sixteen shovel tests every mile or approximately 160 total shovel tests along the 10 miles of survey area. Additional shovel tests need to be excavated in the area surrounding positive shovel tests in order to identify site boundaries. Substantial test excavations may be needed to evaluate any archeological sites found in order to assess National Register Eligibility.

E. *Evaluation of National Register Eligibility.* If historic properties are identified within the APE, C3P, on behalf of EPA, shall determine their eligibility for the NRHP in accordance with the process described in 36 CFR § 800.4(c) and criteria established in 36 CFR Part 60. The determination of cultural significance shall be conducted in consultation with the SHPO and Native American Indian tribes that attach religious and cultural significance to identified properties. Should C3P and SHPO, and any tribe as applicable, agree that a property is or is not eligible, such consensus shall be deemed conclusive for the purposes of the PA. Should C3P, SHPO, or any tribe not agree regarding the eligibility of a property, the EPA shall obtain a determination of eligibility from the Keeper of the National Register pursuant to 36 CFR Part 63.

F. *Assessment of Effect.*

1. *No Historic Properties Affected.* C3P, on behalf of EPA, shall make a reasonable and good faith effort to evaluate the effect of the Undertaking on historic properties in the APE. C3P may conclude that no historic properties are affected by the Undertaking if no historic properties are present in the APE, or the Undertaking will have no effect as defined in 36 CFR § 800.16(i). This finding shall be documented in compliance with 36 CFR § 800.11(d) and submitted to the EPA and to the SHPO for concurrence within one week of completion of the field surveys. The EPA shall provide information on the finding to the public upon request, consistent with the confidentiality requirements of 36 CFR § 800.11(c).

2. *Finding of No Adverse Effect.* C3P, in consultation with the EPA, the SHPO and any tribe as applicable, shall apply the criteria of adverse effect to historic properties within the APE in accordance with 36 CFR § 800.5. C3P may propose a finding of no adverse effect if the

Undertaking's effects do not meet the criteria of 36 CFR § 800.5(a)(1). C3P shall provide to the SHPO and EPA documentation of this finding in a letter report meeting the requirements of 36 CFR § 800.11(e) within 10 calendar days of the completion of the field surveys. The SHPO shall have 30 calendar days in which to review the findings and provide a written response to C3P. The SHPO shall provide a copy of the concurrence to EPA. C3P may proceed upon receipt of written concurrence from the SHPO. Failure of the SHPO to respond within 30 days of receipt of the finding shall be considered agreement with the finding. The EPA shall maintain a record of the finding and provide information on the finding to the public upon request, consistent with the confidentiality requirements of 36 CFR § 800.11(c).

3. *Resolution of Adverse Effect.* If C3P, on behalf of EPA, determines that the Undertaking will have an adverse effect on historic properties as measured by criteria in 36 CFR § 800.5(a)(1), EPA shall consult with the C3P, SHPO, and Native American Indian tribes that attach religious and cultural significance to identified historic properties to resolve adverse effects in the following manner:

a. For historic properties that EPA, C3P, and the SHPO agree will be adversely affected, EPA shall:

(1) Consult with the SHPO to identify other individuals or organizations to be invited to become consulting parties. If additional consulting parties are identified, EPA shall provide them copies of documentation specified in 36 CFR § 800.11(e) subject to confidentiality provisions of 36 CFR § 800.11(c);

(2) Afford the public an opportunity to express its views on resolving adverse effects in a manner appropriate to the magnitude of the project and its likely effects on historic properties;

(3) Consult with the SHPO, Native American tribes which have indicated an interest in the Undertaking, and consulting parties to seek ways to avoid, minimize or mitigate adverse effects; and

(4) Prepare an historic property treatment plan which describes mitigation measures C3P proposes to resolve the Undertaking's adverse effects and provide this plan for review and comment to the SHPO, consulting parties and Native American tribes which have indicated an interest in the Undertaking. All parties shall have 30 calendar days in which to provide a written response to the EPA. Treatment plans will consider the use of horizontal directional drilling ("HDD"), rerouting, or other prudent pipeline design or construction methods intended to preserve any substantial archaeological sites discovered.

b. If the EPA and SHPO fail to agree on how adverse effects will be resolved, the EPA shall request that the Advisory Council on Historic Preservation ("Council") join the consultation and shall proceed in accordance with the dispute resolution process under Stipulation 6.

STIPULATION 2. POST-REVIEW DISCOVERIES

A. *Scope*: Stipulation 2 shall be applicable to the entire APE for the Undertaking as defined herein and as described in the (i) March 2014, Cultural Resources Review of the PDH Project, Ascend Performance Materials Chocolate Bayou Plant, C3 Petrochemicals LLC, Brazoria County, Texas; (ii) March 2014, Cultural Resources Assessment of Linear Facilities Addendum, Ascend Performance Materials Chocolate Bayou Plant, C3 Petrochemicals LLC PDH Project, Brazoria County, Texas; (iii) July 2013, Intensive Cultural Resources Survey: Construction Parking and Laydown Parcel, Ascend Performance Materials, Chocolate Bayou Plant, C3 Petrochemicals LLC PDH Project, Brazoria County, Texas; and (iv) four sections of pipeline right-of-way surveyed under Stipulation 1.

B. *Unanticipated Discoveries or Effects*. If historic properties are discovered or unanticipated effects on historic properties are found after construction on the Project and Pipeline have commenced, C3P shall develop a treatment plan to resolve adverse effects and notify the EPA, SHPO and Native American tribes that might attach religious and cultural significance to the affected property within 48 hours of the discovery. The notification shall include C3P's assessment of National Register eligibility of affected properties and proposed actions to resolve the adverse effects. Comments received from the SHPO and/or Native American tribes within 48 hours of the notification shall be taken into account by C3P in carrying out the proposed treatment plan. The EPA and C3P may assume SHPO concurrence in its eligibility assessment unless otherwise notified by the SHPO. C3P shall provide the SHPO and Native American tribes which have expressed an interest in the Undertaking a report of its actions when completed.

STIPULATION 3. MONITORING AND REPORTING

Each six months following the execution of this PA until it expires or is terminated, C3P shall provide all parties to this PA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in C3P's efforts to carry out the terms of this PA. Upon execution of this PA, the EPA, SHPO and Council (if applicable) will each provide C3P with the name, physical address and email address of their respective designees for delivery of such reports and other communications.

STIPULATION 4. CURATION AND DISPOSITION OF RECOVERED MATERIALS AND RECORDS

Except as specified in Stipulation 5 for human remains, C3P shall ensure that all archeological materials from privately-owned lands are returned to their owners upon completion of analyses required for Section 106 compliance under this PA, or are curated at an approved repository if the landowner does not want the artifacts.

STIPULATION 5. TREATMENT OF NATIVE AMERICAN HUMAN REMAINS

A. Prior Consultation. Prior investigations conducted by C3P on behalf of EPA do not indicate a high likelihood that Native American Indian human remains may be encountered. In addition, prior to public notice on the proposed GHG PSD permit, EPA notified Native American Indian tribes of the Undertaking and inquired whether any would be interested in participating in the Section 106 consultation. EPA did not receive any responses from those tribes indicating an interest in the Undertaking. However, should any tribes express an interest in any post-review discoveries, EPA shall ensure that those tribes are afforded a reasonable opportunity to identify concerns, advise on identification and evaluation, and participate in the resolution of adverse effects in compliance with the terms of this PA.

B. Inadvertent Discovery. Immediately upon the inadvertent discovery of human remains during historic properties investigations or construction activities conducted pursuant to this PA, C3P shall ensure that all ground disturbing activities cease in the vicinity of the human remains and any associated grave goods. Immediately upon discovery, or at a minimum within 48 hours, C3P shall initiate consultation with the EPA, SHPO and Native American Indian tribes that might attach religious and cultural significance to identified historic properties. During the consultation process, C3P shall comply with Council's *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects* and the provisions of the Texas Health and Safety Code, Chapters 711-715.

STIPULATION 6. PA AMENDMENTS, DISPUTES AND TERMINATION

A. Amendments. Any party to this Agreement may propose to the other parties that it be amended, whereupon the parties will consult in accordance with 36 CFR § 800.6(c)(7) to consider such an amendment.

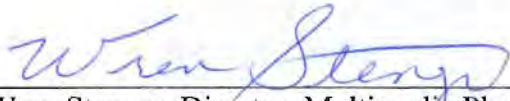
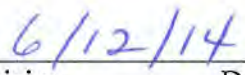
B. Disputes. Disputes arising at any stage regarding the completion of the terms of this agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, EPA or the SHPO may request the participation of the Council in resolving the dispute in accordance with the procedures outlined in 36 CFR § 800.9.

C. Termination of Consultation. If, after consulting to resolve adverse effects pursuant to Stipulation 6.B. above, the EPA or SHPO determines that further consultation will not be productive, then either party may terminate consultation in accordance with the notification requirements and process prescribed by 36 CFR § 800.7.

D. Termination of PA. This PA shall remain in effect for five (5) years from the date of its execution by all signatories (the "Term"). If completion of all construction activities related to this Undertaking occurs prior to the end of the Term, C3P may notify all signatories in writing and request termination of the PA. If there are no objections received within 60 days of the notice, the PA shall terminate. EPA or the SHPO may terminate this PA by providing (60) days' notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that will avoid termination. In the event of

termination of this PA by the SHPO, EPA and C3P shall comply with the provisions of 36 CFR § Part 800, Subpart B.

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 6 DALLAS

Wren Stenger, Director, Multimedia Planning and Permitting Division Date

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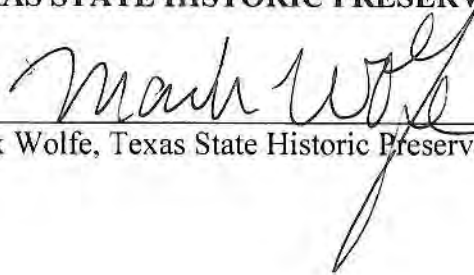
Dale Borths, Vice President



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TEXAS STATE HISTORIC PRESERVATION OFFICER



Mark Wolfe, Texas State Historic Preservation Officer

5/20/14

Date

Attachment A

Approximately 10 miles of the Propane 1 pipeline to be built as part of the Project will be located in areas that are currently not used as pipeline Right-of-Way. These are broken into four sections along the approximately 36 mile pipeline. Prior to construction these areas will be surveyed for cultural resources in accordance with this agreement and recommendations from the Texas Historical Commission. The sections of the pipeline to be surveyed are as follows:

- Section 1 (approximately 2.5 miles of pipeline), located approximately 2.3 miles east of Brazoria in Brazoria County, Texas. This section includes the Brazos River crossing. The Brazos River will be crossed via horizontal directional drilling.

Southern end: 29° 00' 59.42"N, -95° 31' 51.53"W

Northern end: 29° 02' 18.17"N, -95° 31' 40.07"W

- Section 2 (approximately 4.5 mile of pipeline), located approximately 3 miles northwest of Lake Jackson in Brazoria County, Texas. This section crosses previously disturbed agricultural fields.

Southern end: 29° 04' 7.64"N, -95° 30' 29.51"W

Northern end: 29° 07' 56.79"N, -95° 30' 34.76"W

- Section 3 (approximately 2 miles of pipeline), located 0.8 miles west of Bailey's Prairie in Brazoria County, Texas. This section is mostly cattle pasture on the southern end and adjacent to existing County Road 521 in the north.

Southern end: 29° 08' 53.43"N, -95° 30' 30.97"W

Northern end: 29° 10' 33.37"N, -95° 30' 18.65"W

- Section 4 (approximately 1 mile of pipeline), located approximately 2 miles southeast of Holiday Lakes in Brazoria County, Texas. This section will be constructed adjacent to existing County Road 521.

Western end: 29° 11' 36.29"N, -95° 28' 51.57"W

Eastern end: 29° 12' 08.26"N, -95° 28' 28.00"W