



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

NOV 25 2009

Mr. Richard A Hyde, P.E., Deputy Director
Office of Permitting and Registration
Texas Commission on Environmental Quality (MC 122)
P.O. Box 13087
Austin, TX 78711-3087

Re: Objection to Federal Part 70 Operating Permit
Union Carbide Corporation, L.P. Polyethylene & Catalyst Units
(TCEQ Permit No. O2032)
Calhoun County, Texas

Dear Mr. Hyde:

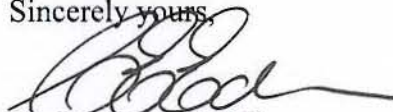
We received the proposed minor revision for the Federal Operating Permit (FOP) for the Union Carbide L.P. Polyethylene & Catalyst Units in our office on October 12, 2009. The EPA's 45-day review period will end on November 27, 2009. The revision incorporates Prevention of Significant Deterioration (PSD) Permit No. PSD-TX-118M4 and Qualified Facility permit No. 18773 and 6141A, and Pollution Control Project (PCP) permit No. 56757 and 46922 into the FOP.

In accordance with 40 CFR 70.8(c), EPA is objecting to the proposed permit action. Section 505(b)(1) of the federal Clean Air Act (Act) and 40 CFR § 70.8(c) require EPA to object in writing to the issuance of a proposed Title V permit within 45 days of receipt of the proposed permit (and all necessary supporting information) if EPA determines that the permit is not in compliance with applicable requirements of the Act or requirements under 40 CFR Part 70. Specific reasons for each objection and a description of the terms and conditions that the permit must include to respond to the objections are enclosed.

Section 505(c) of the Act and 40 CFR § 70.8(c)(4) provide that if the permitting authority fails, within 90 days of the date of the objection, to submit a permit revised to meet the objections, then EPA will issue or deny the permit in accordance with the requirements of 40 CFR Part 71. Because the objection issues must be fully addressed within 90 days, we suggest that the revised permit be submitted with sufficient advance notice so that any outstanding issues may be resolved prior to the expiration of the 90-day period. We also note concerns related to the adequacy of permitting associated with the incorporation by reference of Permits by Rule (PBR) and Standard Permits that may not meet the requirements of the federally-approved Texas State Implementation Plan (Texas SIP) have been raised in two citizen petitions filed with EPA, dated August 28, 2009, and January 5, 2009. Should the Title V permit be issued without resolving these concerns, EPA may reopen the Title V permit for cause, pursuant to 40 CFR § 70.7(f) and (g).

We are committed to working with the TCEQ to ensure that the final Permit is consistent with the all applicable requirements, including the federally-approved Texas SIP and the Texas FOP program. If you have questions or wish to discuss this further, please contact Jeff Robinson, Chief, Air Permits Section at 214-665-6435, or Stephanie Kordzi, Texas Permit Coordinator at (214) 665-7520. Thank you for your cooperation.

Sincerely yours,



Carl E. Edlund, P.E.

Director

Multimedia Planning and Permitting Division

Enclosure

cc: Manager, Environmental Affairs
Union Carbide

Mr. Steve Hagle, Director
Air Permits Division
Texas Commission on Environmental Quality (MC-163)

Enclosure

- 1. Objection to the incorporation by reference of PSD Permit.** The *New Source Review Authorization References* table of the draft Title V permit incorporates PSD-TX-118M4, amended on February 11, 2004, by reference. EPA has discussed the issue of incorporation by reference in *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program* (March 5, 1996)(*White Paper 2*). As EPA explained in *White Paper 2*, incorporation by reference may be useful in many instances, though it is important to exercise care to balance the use of incorporation by reference with the obligation to issue permits that are clear and meaningful to all affected parties, including those who must comply with or enforce their conditions. *Id.* at 34-38. See also *In the Matter of Tesoro Refining and Marketing*, Petition No. IX-2004-6 at 8 (March 15, 2005)(*Tesoro Order*). As EPA noted in the *Tesoro Order*, EPA's expectations for what requirements may be referenced and for the necessary level of detail are guided by Sections 504(a) and (c) of the CAA and corresponding provisions at 40 CFR § 70.6(a)(1) and (3). *Id.* Generally, EPA expects that Title V permits will explicitly state all emission limitations and operational requirements for all applicable emission units at a facility. *Id.* We note that TCEQ's use of incorporation by reference for emissions limitations from minor NSR permits and Permits by Rule is currently acceptable. See 66 Fed. Reg. 63318, 63324 (Dec. 6, 2001); see also, *Public Citizen v. EPA*, 343 F.3d 449, at 460-61 (5th Cir. 2003)(upholding EPA's approval of TCEQ's use of incorporation by reference for emissions limitations from minor NSR permits and Permits by Rule).¹ In approving Texas' limited use of incorporation by reference of emissions limitations from minor NSR permits and Permits by Rule, EPA balanced the streamlining benefits of incorporation by reference against the value of a more detailed Title V permit and found Texas' approach for minor NSR permits and Permits by Rule acceptable. See *Public Citizen*, 343 F.3d, at 460-61. EPA's decision approving this use of IBR in Texas' program was limited to, and specific to, minor NSR permits and Permits by Rule in Texas. EPA noted the unique challenge Texas faced in integrating requirements from these permits into Title V permits. See 66 Fed. Reg. at 63,326; 60 Fed. Reg. at 30,039; 59 Fed. Reg. 44572, 44574. EPA did not approve (and does not approve of) TCEQ's use of incorporation by reference of emissions limitations for other requirements. See *In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02 at 5 and *In the Matter of CITGO Refining and Chemicals Co.*, Petition No. VI-2007-01 at 11. Pursuant to 40 § CFR 70.8(c)(1), EPA objects to the issuance of the Title V permit because it incorporates by reference the major New Source Review permit PSD-TX-118M4 and fails to include emission limitations and standards as necessary to assure compliance with all applicability requirements. See 40 CFR § 70.6(a)(1). In response to this objection, TCEQ must include (as conditions of the Title V permit) all the emission limitations and standards of PSD-TX-118M4 necessary to ensure compliance with all

¹ Please note that *In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02 at 6, fn 3 (May 28, 2009) and *In the Matter of CITGO Refining and Chemicals Co.*, Petition No. VI-2007-01 at 11-12, fn 5 (May 28, 2009) EPA stated that the Agency will be evaluating the use of incorporation by reference for emissions limitations in minor NSR permits and Permits by Rule to determine how well this practice is working.

applicable requirements. Alternatively, TCEQ could add conditions to the Title V permit that specify those provisions of PSD-TX-118M4 necessary to ensure such compliance with all applicable requirements and physically attach a copy of PSD-TX-118M4 to the Title V permit.

2. **Objection to the Incorporation of Permit No. 18773 and 6141A into the Title V permit.** The *New Source Review (NSR) Authorization References* table in the draft Title V permit incorporates by reference Permit No. 18773 and 6141A. Available information indicates that on January 19, 2001, Union Carbide forwarded a Form PI-E to TCEQ (Notification of Changes to Qualified Facilities) for permit no. 18773. In 2003 Union Carbide forwarded a form PI-E for permit No. 6141A. Based upon TCEQ's review of the information, TCEQ had no objection to the proposed changes. These changes affect Permit No. 18773, 6141A, and PSD permit no. PSD-TX-118M4² under the Texas Qualified Facilities Program. This program authorizes facilities to become "qualified" to net out of NSR SIP permitting requirements under 30 TAC § 116.118 (pre-change qualification).³ To date EPA has not approved the Texas Qualified Facilities Program revisions into the Texas SIP, pursuant to Section 110 of the federal Clean Air Act (CAA), 42 U.S.C. § 7410.⁴ Therefore, pursuant to 40 CFR § 70.8(c)(1), EPA must object to the issuance of this Title V permit because physical or operational changes made under the Qualified Facility rule cannot be determined to be in compliance with the applicable requirements of the Texas SIP. The failure to have submitted information necessary to make this determination constitutes an additional basis for this objection, pursuant to 40 CFR § 70.8(c)(3)(ii). In response to this objection, TCEQ must revise the draft Title V permit to include a condition that specifically requires the source to prepare and submit to TCEQ a written analysis of any future change/modification to ensure that minor and/or major new source review requirements under the federally-approved Texas SIP have not been triggered. This source must comply with *both* the requirements of the approved SIP *and* with any requirements of the State.
3. **Objection to General Recordkeeping Provision.** Under the *General Terms and Conditions* provision of the draft Title V permit, reference is made to 30 TAC § 122.144 of the Texas FOP program which requires records be kept for 5 years; however, Special Condition 15 of Qualified Facility Permit No. 18773 (altered July 13, 2009) only requires records be kept for three years. Also Special Condition 19 and 20 of Permit No. 1567 (altered July 18, 2008) only requires records to be kept for 2 years. Special Condition 2 of Permit No. 3639 (amended and renewed May 15, 2006) only requires records to be kept for 2 years. Special Condition 11 of Permit No. 6361 (amended and renewed November 23, 2005) only requires records to be kept for 2 years. These conditions are inconsistent with

² See information on this Qualified Facility at <https://webmail.tceq.state.tx.us/gw/webpub>.

³ See also 30 TAC §§ 116.10, 116.116(e), and § 116.117.

⁴ The currently approved SIP regulation is 30 TAC 116.160 adopted by the Texas Natural Resource Conservation Commission (renamed the Texas Commission on Environmental Quality) on October 10, 2001, effective November 1, 2001, which was approved by EPA on July 22, 2004 (69 FR 43752), effective September 20, 2004.

the 5 year recordkeeping requirements of 40 CFR § 70.6(a)(3)(ii)(B) and cannot be carried forward into the Title V permit. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit since the recordkeeping requirements of Qualified Facility Permit No. 8442 are not in compliance with the requirements of 40 CFR § 70.6(a)(3)(ii)(B). In response to this objection, TCEQ must revise the Title V permit to include a condition that states that records of monitoring data and supporting information must be maintained for a minimum of five years from the date of monitoring, not withstanding the requirements of any other permit conditions or applicable requirements.

- 4. Objection to Special Permit Condition 3.** Under the *Special Terms and Conditions* provisions of the draft Title V permit, Condition 3 requires stationary vents with certain flow rates comply with identified provisions of 30 TAC Chapter 111 of the Texas SIP. However, there is no identification of the specific stationary vents that are subject to those requirements. As such, this condition fails to meet the requirement of 40 CFR § 70.6(a)(1), in that the condition lacks the specificity to ensure the compliance with the applicable requirements associated with those unidentified emission units. In addition, the Statement of Basis document for the draft Title V permit does not provide the legal and factual basis for Condition 3, as required by 40 CFR § 70.7(a)(5). Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit since Condition 3 is not in compliance with the requirements of 40 CFR § 70.6(a)(1) and 70.7(a)(5). In response to this objection, TCEQ must revise Condition 3 of the draft Title V permit to list the specific stationary vents that are subject to the specified requirements of 30 TAC Chapter 111 and provide an explanation in the Statement of Basis for the legal and factual basis for Condition 3.

Additional Concerns:

1. Table *New Source Review Authorization References* - Some of the permits that are incorporated by reference in the draft permit (e.g., NSR Permit 1243) may actually be old or outdated underlying permits. EPA recognizes that underlying permits are revised from time to time. Nonetheless, the most recent revision of the underlying permit (and the issuance date) must be stated in the table when incorporated by reference in the Title V permit so the public may properly comment on the Title V permit. TCEQ must confirm that the version of the underlying permit that is incorporated in the title V permit is readily available in the public records. Please see page 5, Section IV.A.2. of the EPA Administrator's decision regarding requirements per the Premcor Title V Petition responses issued on May 28, 2009.
2. Permit Condition 10 – In accordance with 40 CFR Section 70.6(a)(1)(i), permit conditions must define and provide regulatory citations referencing proper authority allowing TCEQ to grant special exemptions.
3. Union Carbide submitted a letter to TCEQ on January 26, 2001 requesting alteration of the maximum allowable emission rates table (MAERT) for permit no. 6141A and PSD-TX-118M3. Permit no. 6141A is a qualified facility permit. The request was based on the

replacement of a flare tip that was authorized under permit no. 46922 issued on February 22, 2001. Permit No. 46922 is for a PCP. TCEQ's response to Union Carbide states "Standard Permit No. 46922 will be incorporated into Permit No. 6141A when that permit is next amended". There is no evidence that permit no. 46922 was ever incorporated into permit no. 6141A. Both permits are incorporated by reference into the title V permit. TCEQ needs to investigate why permit no. 46922 was not incorporated, and if both permits are valid.