



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

OCT 27 2008

Mr. Mark Vickery, P.G.
Executive Director
Texas Commission on Environmental Quality
Post Office Box 13087
Austin, TX 78711-3087

Dear Mr. Vickery:

I am writing in response to the series of four letters, dated June 13, 2008, sent to me by former Texas Commission on Environmental Quality (TCEQ) Executive Director Glenn Shankle. Each letter relates to some aspect of the Texas flexible air permitting program, as established in Chapter 116, Subchapter G of Title 30 of the Texas Administrative Code. Region 6 appreciates the efforts of TCEQ to resolve issues related to the flexible air permitting program, as outlined in our letter of March 12, 2008, as well as the subsequent discussions between our offices on June 3, 2008. As TCEQ notes, many of the revisions necessary for approval of the flexible air permitting program are broader in applicability than that program and, indeed, may have consequences for other parts of the New Source Review (NSR) permitting programs in Texas. Region 6 agrees and commits to prioritizing our review of the proposed revisions to the Texas State Implementation Plan (SIP) to ensure that some of these broader issues may be addressed first. For example, Texas' proposed revisions to its public participation provisions cut across all air permitting programs. We think it makes sense to take action first on those provisions. Region 6 will also be moving forward and taking action on the other currently pending SIP revision submittals with broad air permitting program application, including major NSR reform, qualified facilities, standard permit for pollution control projects, and flexible permits.

At our August 29 meeting in Waco, we discussed some of the SIP submittals with you and your staff. The U.S. Environmental Protection Agency (EPA) will use those discussions to determine the most appropriate path forward in the near term for proposing action on the various SIP submittals. The actions that Region 6 proposes will be based upon whether or not the SIP submittals meet the requirements of the federal Clean Air Act and implementing federal regulations. Please note that proposed full approval of the SIP revision may not be an option in cases where it cannot be shown that the state-adopted rules are at least as stringent as federal requirements. In some cases, our air permitting staff has requested supplemental information and clarification of regulatory provisions to facilitate our review.

Region 6 will notify you of any deficiencies in the current record, and will afford you the opportunity to submit additional information prior to or during our public comment period on the proposed actions.

During the June 3, 2008, conference call, our staffs discussed the process by which terms and conditions of previously issued air permits and authorizations are incorporated into a flexible permit. EPA supports the adoption of the "cross-walk" process through a rule clarification so that the preliminary determination analysis and review process will include: 1) the identification of all permits, major and minor, that are being incorporated into the flexible permit; 2) a statement that all terms and conditions from underlying permits are incorporated into the flexible permit, or the specific identification of all terms or conditions that are being deleted, combined, modified, or added; 3) a rationale for all changes from existing terms and conditions contained in underlying permits; and 4) public participation for the analysis in accordance with the requirements in 40 CFR 51.161. We hope that we can work with you on such an approach. We can also discuss options for the re-issuance of existing flexible permits after the program revisions are approved.

Finally, Region 6 would like to work with you and your staff to develop a mutual understanding of how to resolve issues that cannot be addressed within the context of a specific rulemaking. For example, one of the June 3, 2008, letters relates to Best Available Control Technology (BACT) issues. Region 6 agrees with many of the statements in TCEQ's letter; however, a recent citizen groups' petition filed with EPA alleges that TCEQ is failing to properly implement the Texas PSD program, including the BACT requirements. The BACT determination process applicable to major sources must be consistent with the federal BACT requirements. Region 6 proposes that TCEQ clarify this point in its existing guidance, thereby ensuring proper implementation of the Texas air permitting program. With respect to your statement regarding changes in feedstock or throughput, such changes may not trigger permit amendment requirements provided those changes were previously identified and included in the terms and conditions of a SIP permit, the emissions associated with those changes were previously accounted for in the air quality impacts analysis, the changes are tracked by the source, and they are legally and practically enforceable. In addition, our discussions should address concerns related to the use of permits by rule to effect minor modifications at major stationary sources.

We look forward to continuing our efforts to work with you and your staff to resolve any remaining concerns related to flexible permits and TCEQ's NSR permitting process. Should I be able to assist you further, please call me at (214) 665-7200, or your staff may contact Jeff Robinson of my staff, at (214) 665-6435.

Sincerely,



for
Carl E. Edlund, P.E.
Director
Multimedia Planning and
Permitting Division

cc: Dan Eden
Deputy Director
Office of Permitting, Remediation and Registration
Texas Commission on Environmental Quality

Richard A. Hyde, P.E.
Director
Air Permits Division
Texas Commission on Environmental Quality