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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

June 28, 2010

MR CARL E EDLUND PE
DIRECTOR MULTIMEDIA PLANNING AND PERMITTING DIVISION
US ENVIRONMENTAL PROTECTION AGENCY REGION 6
1445 ROSS AVE STE 1200
DALLAS TX 75202-5766

Re: Executive Director's Response to EPA Objection
Minor Revision
Permit Number: O2420
Dal-Tile Corporation
El Paso, El Paso County
Regulated Entity Number: RN100542976
Customer Reference Number: CN600128797

Dear Mr. Edlund:

On December 18, 2009, the U.S. Environmental Protection Agency (EPA) Region 6 office signed a letter identifying objections to the issuance of the proposed federal operating permit for the above-referenced site. In accordance with Title 30 Texas Administrative Code § 122.350 (30 TAC § 122.350), the Texas Commission on Environmental Quality (TCEQ) may not issue the permit until the objections are resolved. In addition, the letter identifies certain additional concerns. The TCEQ understands that the additional concerns are provided for information only, and do not need to be resolved in order to issue the permit.

The TCEQ has completed the technical review of your objections and offers the enclosed responses to facilitate resolution of the objections. In addition, the attached responses to the objections describe the changes, if applicable, that have been made to the revised proposed permit and supporting statement of basis (SOB). The revised proposed permit and SOB are attached for your review.

Mr. Carl E. Edlund, P.E.

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Consistent with 30 TAC §122.350, please provide an indication of your acceptance or assessment of the responses and resolutions to the objections as soon as possible. After receipt of your acceptance to the responses and resolutions to the objections, TCEQ will issue the proposed permit. Thank you for your cooperation in this matter. Please contact Ms. Kim Strong, P.E., at (512) 239-0252 if you have any questions concerning this matter.

Sincerely,



Steve Hagle, P.E., Director
Air Permits Division
Office of Permitting and Registration
Texas Commission on Environmental Quality

SH/KDS/bb

cc: Mr. Steve Willis, Senior Engineer EHS, Dal-Tile Corporation, Dallas
Mr. David Lippert, Plant Manager, Dal-Tile Corporation, El Paso
Air Quality Manager, Environmental Services, City of El Paso, El Paso
Air Section Manager, Region 6 - El Paso

Enclosures: TCEQ Executive Director's Response to EPA Objection
Proposed Permit
Statement of Basis

Project Number: 13945

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

Permit Number O2420

The Texas Commission on Environmental Quality (TCEQ) Executive Director (ED) provides this Response to EPA's Objection to the minor revision of the Federal Operating Permit (FOP) for Dal-Tile Corporation, Dal-Tile Corporation - El Paso Manufacturing, Permit No. O2420, El Paso County, Texas.

BACKGROUND

Procedural Background

The Texas Operating Permit Program requires that owners and operators of sites subject to 30 Tex. Admin. Code (TAC) Chapter 122 obtain a FOP that contains all applicable requirements to facilitate compliance and improve enforcement. The FOP does not authorize construction or modifications to facilities, and it does not authorize emission increases. To construct or modify a facility, the responsible party must have the appropriate new source review authorization. If the site is subject to 30 TAC Chapter 122, the owner or operator must submit a timely FOP application for the site and ultimately must obtain the FOP to operate. Dal-Tile Corporation applied to the TCEQ for a minor revision of the FOP for the Dal-Tile Corporation - El Paso Manufacturing located in El Paso, El Paso County on July 2, 2009, and announcement began November 10, 2009. The public comment period ended on December 10, 2009. During the concurrent EPA review period, TCEQ received an objection to the permit from EPA on December 18, 2009.

In accordance with state and federal rules, the permit minor revision may not be issued until TCEQ resolves EPA's objections.

Description of Site

Dal-Tile Corporation owns and operates the Dal-Tile Corporation - El Paso Manufacturing, located at 12001 Railroad Drive in El Paso, El Paso Texas 79934.

The Dal-Tile manufacturing site produces ceramic wall tile from raw materials consisting primarily of clays, talc, and glazing compounds.

The processing of the raw materials into a finished process is performed through a series of eight (8) various steps. These process steps are identified as being: (1) the handling of raw materials, (2) pressing and drying, (3) tile drying, (4) biscuit firing, (5) glaze preparation, (6) glazing, (7) gloss firing, and (8) sorting and shipping.

The following responses follow the references used in EPA's objection letter.

EPA OBJECTION: The *New Source Review (NSR) Authorization References* table in the draft Title V permit incorporates by reference Permit No. 26080. Available information indicates that on July 14, 2008 Dal-Tile Corporation forwarded a Form PI-E to TCEQ (Notification of

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Changes to Qualified Facilities). Based upon TCEQ's review of the information, TCEQ had no objection to the proposed change. This change affects Permit No. 26080 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). 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. 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.

TCEQ RESPONSE: As a preliminary matter, the resolution of EPA concerns regarding qualified facility changes is a common objective for both TCEQ and the EPA. The EPA concerns discussed below regarding the use of the Title V permitting process to challenge qualified facility changes on a case-by-case basis does not diminish the importance of reaching an expeditious resolution to this NSR issue. The ED recognizes that the Qualified Facility rules, located in 30 TAC Chapter 116, §§ 116.116(e), 116.117 and 116.118 and submitted to EPA initially in 1996 and after re-adoption in 1998, have not been approved into the Texas SIP, and were specifically disapproved by EPA effective May 14, 2010. *See* 75 Fed. Reg. 19468 (April 14, 2010).¹ The commission proposed rule changes to address concerns noted by EPA regarding the approvability of the Qualified Facilities program. *See* 35 Tex. Reg. 2978 (April 16, 2010). However, the Texas federal operating permit (FOP) program is EPA-approved. TCEQ reviews applications and issues FOPs according to EPA-approved program rules found in 30 Texas Administrative Code (TAC), Chapter 122. The Texas Operating Permit Program was granted full approval on December 6, 2001 (66 FR 63318), and subsequent rule changes were approved on March 30, 2005 (70 FR 161634). The application procedures, found in 30 TAC § 122.132(a) require an applicant to provide any information required by the ED to determine applicability of, or to codify any "applicable requirement." In order for the ED to issue an FOP, the permit must contain all applicable requirements for each emission unit (30 TAC § 122.142). "Applicable requirement" is specifically defined in 30 TAC § 122.10(2)(h) to include all requirements of 30 TAC Chapter 116 and any term and condition of any preconstruction permit.

¹ The TCEQ has filed a Petition for Review of EPA's final action with the U.S. Court of Appeals for the 5th Circuit. As noted in the TCEQ's April 16, 2010 proposed rulemaking, "[t]he commission has always administered the qualified facility program as a minor NSR program and has not allowed its applicability for changes requiring major NSR. This is consistent with the requirements of the enabling statute in THSC, § 382.0512 which states that 'nothing in this section shall be construed to limit the application of otherwise enforceable state or federal requirements, nor shall this section be construed to limit the commission's powers of enforcement under this chapter.' The program does not, and has not, superseded or negated federal requirements." *See* 35 Tex. Reg. 2979, April 16, 2010.

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As a Chapter 116 authorization mechanism, Qualified Facility changes are applicable requirements, and shall be included in applications and Texas issued FOPs, in compliance with Texas' approved program. According to the EPA review procedures in 30 TAC § 122.350(c), EPA may only object to issuance of any proposed permit which is not in compliance with the applicable requirements or requirements of Chapter 122. Therefore, this objection is not valid under the program EPA has approved in Texas because the applicant provided information as to the applicable Chapter 116 requirements, including Qualified Facility changes, and the ED has included these requirements in the draft FOP. EPA objections to individual permits issued under an EPA approved operating permit program are not appropriate for concerns that relate to approved program elements.

The EPA's objection notes that the Qualified Facility rules allow facilities to become "qualified" to net out of NSR SIP Permitting requirements under 30 TAC § 116.118 (pre-change qualification). However, any change made at a qualified facility must comply with PSD and nonattainment NSR, (§ 116.117(a)(4)), must be reported annually to the commission, (§ 116.117(b)), and may be incorporated into the minor NSR permit at amendment or renewal (§ 116.117(c)). The Qualified Facilities rules in Chapter 116 provide that changes may be made to existing facilities without triggering the statutory definition of modification of existing facility found in Texas Clean Air Act (TCAA), Texas Health and Safety Code (THSC), §382.003(9) if either of the following conditions are met: the facility has received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur, or regardless of whether the facility has received a preconstruction permit or permit amendment, uses control technology that is at least as effective as the BACT that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur. Facilities that meet these requirements are designated as "qualified facilities." The rules do not allow construction of a new facility, nor can the change result in a net increase in allowable emissions of any air contaminant, or allow the emissions of an air contaminant category that did not previously exist at the facility undergoing the change. The use of the terminology in the phrase "net increase in allowable emissions of any air contaminant" in §116.116(e), Changes to Qualified Facilities, should not be confused with federal terminology, where "net increase" has specific meaning as it relates to federal (major) NSR applicability involving comparison of actual emissions. The qualified facility program compares allowable emissions at one facility to allowable emissions of the same type at another facility at a single site. Prior to making this comparison, the owner or operator must determine if a project requires federal nonattainment (NA) or prevention of significant deterioration (PSD) review. This is accomplished by comparing a facility's baseline actual emission rate to the planned emission rate resulting from the change using either proposed actual emissions or the facility's potential to emit (PTE), to a significance level for the pollutant involved. If the projected emissions increase equals or exceeds the significance level, the facility owner or operator must compute the result of all emissions increases and decreases at the facility according to the definition of contemporaneous period as defined in §116.12, Nonattainment and Prevention of Significant Deterioration Review Definitions, to determine the net emission increase. If this net increase equals or exceeds a major modification threshold, then federal

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major NSR is triggered, and the proposed change cannot be authorized using a qualified facility claim. The federal major NSR permitting program contemplates increases in both actual and allowable emissions through the approval of new permits. The qualified facilities program explicitly excludes the inclusion of new facilities or any increases in allowable emissions. Such changes must be accomplished through the use of another approved permitting program. The qualified facilities program is designed to allow minor changes at individual facilities within a single site by trading allowable emissions between facilities. A qualified facilities change results in no change to total allowable emissions that are authorized at a single site. Additionally, any change that moves emissions closer to a site boundary is carefully evaluated to ensure no adverse effects.

The ED disagrees with the allegation that the failure of the applicant to have submitted information necessary to make a determination of whether they were in compliance with the SIP constitutes an additional basis for this objection, pursuant to 40 CFR §70.8(c)(3)(ii). Section 70.8(c)(3)(ii) is premised on the *permitting authority* not "submitting any information necessary [for EPA] to review adequately the proposed permit." The ED has provided all information requested by EPA, when asked, including NSR permits and other supporting information. Additionally, the Qualified Facility rules, and subsequent authorizations, which may be incorporated into SIP approved minor NSR permits at amendment or renewal, pursuant to 30 TAC § 116.117(c) clearly do not allow sources to utilize the Qualified Facility authorization mechanism to circumvent major NSR permitting requirements. Specifically, 30 TAC Chapter 116 requires that all new major sources or major modifications be authorized through nonattainment or PSD permitting under Subchapter B, Divisions 5 and 6, and reiterates that documentation must be kept for changes at Qualified Facilities that demonstrates that the change meets the requirements of Subchapter B, Divisions 5 and 6. The commission has made this position clear since proposing and adopting rules to implement the legislative changes resulting in the flexibility available to qualified facilities. See the adoption of the qualified facility rules, 21 Tex Reg. 1569, February 27, 1996; TNRCC Guidance Document "Modification of Existing Facilities Under Senate Bill 1126" dated April 1996, RG-223; and comments submitted by the TCEQ regarding EPA's proposed disapproval of the qualified facility rules, Docket ID No. EPA-R06-OAR-2005-TX-0025. EPA's delay in acting on the Qualified Facility rules, the approval of the state's federal operating permit program and confusion regarding whether the approved federal operating permit program provided federal enforceability for Qualified Facility changes, resulted in a very long period of detrimental reliance on this permit mechanism by regulated entities and TCEQ.

It is not appropriate, necessary or legally required under either 40 CFR Part 70 or the EPA approved federal operating permit program in Texas to require a condition in the operating permit to require a source to prepare and submit a written analysis of any future change / modification to ensure that minor and/or major NSR requirements under the SIP have not been triggered. The federally approved SIP already requires this analysis as part of any future NSR review. See 30 TAC Chapter 116, Subchapter B, Divisions 5 and 6. Minor NSR applicability requirements are adequately specified in the permit and commission rules

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governing NSR permits; thus, the applicant is currently subject to the requirements to demonstrate, upon any future change, when minor or major NSR requirements will apply. Again, with regard to qualified facilities, the TCEQ will continue its dialogue with EPA to achieve the goal of a SIP-approved minor NSR program that includes the flexibility provided for qualified facilities by the Texas Legislature.

EPA OBJECTION: Under the *Special Terms and Conditions* provisions of the draft Title V permit, Condition 3 requires stationary vents with certain flow rates to comply with identified provisions of 30 TAC Chapter 111 of the in 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.

TCEQ RESPONSE: The EPA has supported the practice of not listing emission units in the permit that only have site-wide or "generic" requirements. See *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995. The ED documented in the draft FOP that the Chapter 111 visible emission requirements for stationary vents were site-wide requirements - applying uniformly to the units or activities at the site. Because the applicant indicated in its application that only the Chapter 111 site-wide requirements apply to these stationary vents and other sources, the applicant is not required to list these smaller units individually in the unit summary, and therefore, these emission units did not appear in the applicable requirements summary table in the draft FOP.

With regard to stationary vents, there are three basic opacity requirements in 30 TAC § 111.111 that may apply, depending upon specific applicability criteria. Stationary vents constructed on or before January 31, 1972 must meet the requirements of 30 TAC § 111.111(a)(1)(A), which states that opacity shall not exceed 30% averaged over a six-minute period. Stationary vents constructed after January 31, 1972 must meet the requirements of 30 TAC § 111.111(a)(1)(B), which states that opacity shall not exceed 20% averaged over a six-minute period. Lastly, stationary vents where a total flow rate is greater than or equal to 100,000 actual cubic feet per minute (acfm) may not exceed 15% opacity averaged over a six minute period, unless that source has an installed optical instrument capable of measuring opacity that meets specified requirements, specified in 30 TAC § 111.111(a)(1)(C). Subsection 111.111(b) merely states that any of the emission units subject to section 111.111 (for this permit area, this would include all stationary vents and gas flares) shall not include contributions from uncombined water in determining compliance with this section.

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However, the ED does agree that the FOP could be revised to more clearly group stationary vents according to which opacity limit applies. The site does not have any vents constructed prior to January 31, 1972, therefore, no vents are subject to the 30% opacity requirement of 30 TAC § 111.111(a)(1)(A). The term and condition for §111.111(a)(1)(A) has been removed. All other vents at the site are subject to 20% opacity, as noted in the revised Special Condition 3.A, which is a site-wide term and condition, as allowed in the *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995.

A determination of the legal and factual basis for Condition 3.A was added to the Statement of Basis document for the draft Title V permit and is enclosed.

ADDITIONAL CONCERNS: TCEQ acknowledges the additional concerns EPA has with the Dal-Tile Corporation - El Paso Manufacturing FOP and will address these issues as appropriate.