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

July 22, 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: O1253
Valero Refining-Texas, L.P.
Texas City Refinery
Texas City, Galveston County
Regulated Entity Number: RN100238385
Customer Reference Number: CN600127468

Dear Mr. Edlund:

On October 30, 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 Title 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. Adrian Araiza, Manager, Environmental Affairs, Valero Refining-Texas, L.P.,
Texas City
Mr. Don Wilson, Director of Refinery Operations, Valero Refining-Texas, L.P., Texas City
Director, Pollution Control Division, Galveston County Health District, La Marque
Air Section Manager, Region 12 - Houston

Enclosures: TCEQ Executive Director's Response to EPA Objection
Proposed Permit
Statement of Basis
Permit Numbers 39142 and PSDTX822M2 and Technical Review

Project Number: 13846

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

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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 Valero Refining-Texas, L.P., Texas City Refinery, Permit No. O1253, Galveston 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. Valero Refining-Texas, L.P. applied to the TCEQ for a minor revision of the FOP for the Texas City Refinery located in Texas City, Galveston County on June 15, 2009, and announcement began on September 15, 2009. The public comment period ended on October 15, 2009. During the concurrent EPA review period, TCEQ received an objection to the permit from EPA on October 30, 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

Valero Refining-Texas, L.P., owns and operates the Texas City Refinery, located at 1301 Loop 197 South in Texas City, Galveston Texas 77590.

The Valero Texas City Refinery produces a diverse range of petroleum products. These products include a variety of gasolines and low-sulfur diesel and distillate oils, such as home heating oils, kerosene, and jet fuel. The design of the refinery allows the facility a great deal of flexibility in processing different grades of crude feedstock. Feedstocks are received at the facility from pipeline and marine vessels. Finished products from the facility are shipped to commercial markets via pipeline and marine vessels. To support facility operation, the refinery operates a large number of process units. Each of the process units which form a complex interrelationship with one another plays an important role in supporting facility operations. The process units found at the facility include: crude distillation units, residfiner process unit, residual vacuum distillation unit, residual oil supercritical extraction unit, fluid catalytic cracking unit, distillate hydrotreater units, Naphtha reformer units, MTBE unit, and alkylation unit. To support the refinery operations, a number of other, less principal, process units are operated. These units provide purification, sulfur recovery, product blending, and other functions critical to support overall refinery operations. These less principal process units include: amine unit, FCC gas con

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unit, propylene unit, residfiner amine unit, residfiner sulfur recovery and sour water stripper units, residfiner tail gas unit, saturates gas plant unit, #3 sulfur recovery unit, #3 sour water stripper unit, south plant tail gas unit, treater unit, fuel gas mixing treatment unit, utilities and cogeneration unit.

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 Flexible Permit No. 39142, most recently amended on August 18, 2009. Flexible permits are issued pursuant to 30 TAC Chapter 116, Subchapter G; however, those provisions have not been approved, pursuant to Section 110 of the federal Clean Air Act (CAA), 42 U.S.C. § 7410, as part of the applicable implementation plan for the State of Texas (Texas SIP). Therefore, pursuant to 40 CFR § 70.8(c)(1), EPA must object to the issuance of this Title V permit because the terms and conditions of the incorporated flexible permit 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 order to respond to this objection, additional information must be provided by the applicant showing how the emissions authorized by the flexible permit meet the air permitting requirements of the federally-approved provisions of the Texas SIP. Furthermore, the Title V permit must include an additional condition specifically requiring 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. Finally, the terms and conditions of flexible permits based upon the requirements of 30 TAC Chapter 116, Subchapter G must be identified as State-only terms and conditions, pursuant to 40 CFR § 70.6(b)(2).

TCEQ RESPONSE: As a preliminary matter, the ED believes that resolution of EPA concerns regarding flexible permits is a common objective for both TCEQ and the EPA. The concerns discussed below regarding the use of the Title V permitting process to challenge independent flexible permits on a case-by-case basis does not diminish the importance of reaching an expeditious resolution to the NSR flexible permit issue. The ED recognizes the flexible permit rules, located in 30 TAC Chapter 116, Subchapter G, and submitted to EPA in 1994, have been disapproved by EPA effective August 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

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Chapter 116 and any term and condition of any preconstruction permit. As a Chapter 116 preconstruction authorization, flexible permits are applicable requirements, and shall be included in applications and Texas issued FOPs, in compliance with Texas's approved program. According to the EPA review procedures of Chapter 122, EPA may only object to issuance of any proposed permit which is not in compliance with the applicable requirements or requirements of this chapter. 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 flexible permits, 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 programmatic elements.

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. The flexible permit applications, technical reviews, and flexible permits clearly do not allow sources to utilize the flexible permit 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.

The ED also disagrees that additional information must be provided by the applicant showing how the emissions authorized by the flexible permit meet the air permitting requirements of the federally-approved provisions of the Texas SIP. The flexible permit application, technical review, and flexible permit documentation demonstrates that the emissions authorized by the flexible permits meet the air permitting requirements of the federally approved provisions of the SIP regarding requirements for impacts review, emission measurement, BACT, NSPS, NESHAP, MACT, performance demonstration, modeling or ambient monitoring if required, MECT applicability, and nonattainment or PSD permitting if applicable. Texas submitted the initial flexible permit rule for EPA review and action in 1994. EPA's delay in acting on the flexible permit 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 flexible permits, resulted in a very long period of detrimental reliance on this permit mechanism by regulated entities and TCEQ.

Notwithstanding the pending final disapproval of the flexible permit rules in 30 TAC Chapter 116, Subchapter G, the flexible permit review requirements are parallel to the SIP-approved 30 TAC Chapter 116, Subchapter B permit review and no substantive differences in significant permit elements exist. Indeed, the technical review of the flexible permit No. 39142 application provides information regarding how Subchapter B requirements in § 116.111 are met, including: compliance with the SIP approved Subchapter B rules and review

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requirements, unit-specific limits based on BACT review at the time of the permit issuance, demonstrations that each emission unit and the facility covered by Permit No. 39142 meets all applicable NSPS, NESHAP requirements, and air dispersion modeling conducted by applicant. The flexible permit and technical review are enclosed with this response. Valero Refining-Texas, L.P. may separately submit to EPA additional information showing compliance with the Subchapter B requirements. Additionally, the ED does not agree that it is 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 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.

However, the ED recognizes that some companies are in negotiations with EPA to include a special term and condition in the draft FOP requiring that they submit an application to reissue a permit, through the SIP-approved amendment, alteration, or renewal process, with a deadline for application submittal, and specific information to EPA and TCEQ for review prior to public notice. If Valero Refining-Texas, L.P. agrees to such a process, the TCEQ will work with Valero Refining-Texas, L.P. to change the draft permit appropriately.

Finally, the flexible permit terms and conditions are not appropriate to be identified as state-only in the FOP. The EPA approved definition of a "state-only requirement" in 30 TAC § 122.10(28) is "any requirement governing the emission of air pollutants from stationary sources that may be codified in the permit at the discretion of the ED. State-only requirements shall not include any requirement required under the Federal Clean Air Act or under any applicable requirement." Therefore, the EPA approved program provides the ED with discretion to determine which requirements must be identified as "state-only" and explicitly prohibits anything defined as an "applicable requirement" from being "state-only." Since flexible permits issued in 30 TAC Chapter 116 are "applicable requirements," they may not be included as "state-only" requirements. Instead, they are applicable requirements which are subject to public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping requirements, compliance demonstration and certification requirements, and appropriate periodic or compliance assurance monitoring requirements. "State-only" requirements are specifically not required to meet requirements that are specific to 40 CFR Part 70. See 122.143(18). As stated previously, the flexible permit terms and conditions comply with SIP approved permit rules and assure compliance with future applicable NSR requirements. Again, with regard to flexible permits, the TCEQ will continue its dialogue with EPA to achieve the mutual goal of NSR permits issued under SIP approved rules.

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EPA OBJECTION: The *New Source Review (NSR) Authorization References* table in the draft Title V permit incorporates PSDTX822M2, most recently amended on April 14, 2009, 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 emission 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). In approving Texas' limited use of incorporation by reference of emission 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 PSDTX822M2 and fails to include emission limitations and standards as necessary to assure compliance with all applicable 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 PSDTX822M2 necessary to ensure compliance with all applicable requirements. Alternatively, TCEQ could add conditions to the Title V permit that specify those provisions of PSDTX822M2 necessary to ensure such compliance with all applicable requirements and physically attach a copy of PSDTX822M2 to the Title V permit.

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TCEQ RESPONSE: In response to EPA's objection, the ED has revised FOP No. O1253 to include, in a new Appendix B of the permit, a copy of NSR Permit No. 39142 and PSDTX822M2 and its corresponding terms and conditions, and emission limitations. With regard to IBR of major NSR, the ED respectfully disagrees with EPA's interpretation of its approval of Texas's operating permit program on this issue. The ED recognizes that respective agency staff are actively involved in continuing, extensive discussions on how to resolve this issue; namely, how much detail of the underlying major NSR authorization should be reiterated in the face of the Title V permit. The federally approved operating permit program for Texas has allowed for applicable requirements to be incorporated by reference into the FOP since 1996. *See* Final Interim Approval, 61 Fed. Reg. 32693, June 25, 1996; Final Full Approval, 66 Fed. Reg. 63318, December 6, 2001; and Final Approval of Resolution of Deficiency, 70 Fed. Reg. 16134, March 30, 2005. Title 30 TAC §122.142 states that the operating permit shall contain the specific regulatory citations in each applicable requirement identifying the emission limitations and standards. Additionally, EPA discussed the use of incorporation by reference in the preamble to the final Part 70 rule, discussing the requirements of § 70.6, Permit Content, stating:

Section 70.6(a)(1)(i) requires that the permit reference the authority for each term and condition of the permit. Including in the permit legal citations to provisions of the Act is critical in defining the scope of the permit shield, since the permit shield, if granted, extends to the provisions of the Act included in the permit. Including the legal citations in the permit will also ensure that the permittee, the permitting authority, EPA, and the public all have a common understanding of the applicable requirements included in the permit. *This requirement is satisfied by citation to the State regulations or statutes which make up the SIP or implement a delegated program. See 57 Fed. Reg. 32250, 32275 July 21, 1992, emphasis added.*

In comments on the proposed final interim approval of the operating permit program, in 1995, the commission (then-TNRCC) proposed to include a standardized permit provision that incorporated by reference all preconstruction authorizations, both major and minor, to resolve the EPA identified deficiency of Texas' failure to include minor NSR as an applicable requirement. In the June 25, 1996 Final Interim Approval, EPA directed, "the State must be quite clear in any standardized permit provision that all of its *major 'preconstruction authorizations* including permits, standard permits, flexible permit, special permits, or special exemptions' are incorporated by reference into the operating permit *as if fully set forth therein* and therefore enforceable under regulation XII (the Texas Operating Permit Regulation) as well as regulation VI (the Texas preconstruction permit regulation)." (61 Fed. Reg. at 32695, emphasis added.) Given this explicit direction in EPA's 1996 final interim approval of the Texas program, TCEQ understood that the standardized permit provision for preconstruction authorizations incorporated all NSR authorizations by reference, including major NSR

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As a result of Texas' initial exclusion of minor NSR as an applicable requirement of the Texas Operating Permit program, and EPA's final interim approval of a program that provided for a phase-in of minor NSR requirements using incorporation by reference, EPA was sued by various environmental groups. See *Public Citizen, Inc. v. U.S. E.P.A.*, 343 F.3d 449 (5th Cir. 2003). The petitioner's brief raised several issues, including the use of incorporation by reference of minor NSR, because the exclusion of minor NSR as an applicable requirement was a program deficiency identified by EPA. The petitioner's brief acknowledges that Texas' Operating Permit program incorporates all preconstruction authorizations by reference, through use of a table entitled "Preconstruction Authorization References". The Petitioner's brief includes an example of this table, which clearly contains sections for Prevention of Significant Deterioration (PSD), nonattainment (NA), 30 TAC Chapter 116 Permits, Special Permits and Other Authorizations, and Permits by Rule under 30 TAC Chapter 106. See Brief of Petitioners, p. 30. The brief goes on to discuss the sample permit, Permit No. O-00108, which documents "six different minor NSR authorizations and one PSD permit" requiring one to look at each of the underlying permits in addition to the Title V permit. The Department of Justice (DOJ), in its reply brief for EPA, responded to this allegation of improper use of IBR in the context of the specific allegation – whether "EPA reasonably determined that Texas corrected the interim deficiency related to minor new source review", answering unequivocally "yes". "Nothing in the statute or regulations prohibits incorporation of applicable requirements by reference. The Title V and Part 70 provisions addressing the content of Title V permits specify what Title V permits 'shall include,' but do not speak to how the enumerated items must be included." See, Brief of Respondents, pp. 25-26. The Court did not distinguish between minor and major NSR when concluding that IBR is permissible under both the CAA and Part 70.

Thus, it is the ED's position that incorporation by reference of both major and minor NSR permits is acceptable and was fully approved by EPA. However, given EPA's differing opinion, as reflected in the Premcor and CITGO orders, this objection, and the June 10, 2010 letter from EPA Region VI regarding this issue, the ED has revised FOP No. O1253 to include, in a new Appendix B of the permit, a copy of NSR Permit No. 39142 and PSDTX822M2 and its corresponding terms and conditions, and emission limitations, which was initially suggested by EPA as adequate to resolve this objection. Inclusion of the major NSR permits as an appendix should address EPA's objection and ensure that the Title V permit is clear and meaningful to all affected parties. The ED will continue efforts with EPA on how to resolve IBR of major NSR on a broader, programmatic basis.

EPA OBJECTION: 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 30 of Flexible Permit No. 39142 and PSDTX822M2 (issued August 18, 2009) only requires records be kept for two years. This condition is inconsistent with 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 recordkeeping requirements of PSDTX822M2 are not in compliance with the requirements of 40 CFR § 70.6(a)(3)(ii)(B). In

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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, notwithstanding the requirements of any other permit conditions or applicable requirements.

TCEQ RESPONSE: : The TCEQ requires five year recordkeeping for all FOPs. Pursuant to 30 TAC §122.144(1), all records of required monitoring data and other permit support information must be kept for a period of five years from the date of the monitoring report, sample, or application unless a longer data retention period is specified in an applicable requirement. This is consistent with the recordkeeping requirements of 40 CFR §70.6(a)(3)(ii)(B). The requirements of 30 TAC § 122.144(1) have been and will continue to be incorporated for all FOPs through the general terms and conditions of the FOP, which specifically require “The permit holder shall comply with all terms and conditions contained in 30 TAC § 122.143 (General Terms and Conditions), 30 TAC § 122.144 (Recordkeeping Terms and Conditions), and 30 TAC § 122.146(Compliance Certification Terms and Conditions).” These requirements were and will continue to be reiterated on the cover page of the FOP.

As all terms and conditions of preconstruction authorizations issued under 30 TAC Chapter 106, Permits by Rule (PBR) and 30 TAC Chapter 116, New Source Review (NSR) are applicable requirements and enforceable under the FOP, the five year record retention requirement of 30 TAC § 122.144(1) supersedes any less stringent data retention schedule that may be specified in a particular PBR or NSR permit. To further clarify the five year recordkeeping retention schedule for the FOP, the following text will be added to the General Terms and Conditions of the FOP:

“In accordance with 30 TAC § 122.144(1), records of required monitoring data and support information required by this permit, or any applicable requirement codified in this permit, are required to be maintained for a period of five years from the date of the monitoring report, sample, or application unless a longer data retention period is specified in an applicable requirement. The five year record retention period supersedes any less stringent retention requirement that may be specified in a condition of a permit identified in the New Source Review Authorization attachment.”

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).

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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.

As a result of EPA's objection, TCEQ communicated with the applicant stating that although it is the agency's position, based on EPA's guidance, that listing the individual vents subject to a generic Chapter 111 opacity limit is not required, the applicant can choose to list the units in the permit. Valero Refining-Texas, L.P. has provided the list of units and the draft Title V permit has been revised to include all stationary vents subject to the requirements of 30 TAC Chapter 111 in the Applicable Requirements Summary Table. Special Condition 3 was revised to take out the site wide requirements for vents. Furthermore, the legal and factual basis is included in the Statement of Basis for each stationary vent in the Determination of Applicable Requirements table.

EPA OBJECTION: Permit Condition 30E.(ii) of the draft Title V permit requires inspection requirements for fugitive emissions at the particulate matter capture system. However, this condition does not require documentation of the inspection, and, therefore, does not meet the requirements specified in 40 CFR §70.6(a)(3)(ii)(A). In response to this objection, TCEQ must

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revise Condition 3 of the draft Title V permit to include sufficient recordkeeping provisions, as necessary to comply with the requirements of 40 CFR §70.6(a)(3)(ii)(A), including, but not limited to, the requirement to document all fugitive emissions, the date they were discovered, and the date they were repaired.

TCEQ RESPONSE: The ED respectfully disagrees that this permit is deficient regarding recordkeeping for required inspections of fugitive emissions. Recordkeeping terms and conditions for all Title V permits issued by Texas are located in 30 TAC §122.144. The requirement to document all sampling or measurements, including the date, time and location is reflected in § 122.144(1)(A). This section mirrors 70.6(a)(3)(ii)(A), which, the ED notes, does not require documentation of any repair date. In addition, the first section of every FOP contains a General Terms and Conditions section that states:

“The permit holder shall comply with all terms and conditions contained in 30 TAC § 122.143 (General Terms and Conditions), *30 TAC § 122.144 (Recordkeeping Terms and Conditions)*, 30 TAC § 122.145 (Reporting Terms and Conditions), and 30 TAC § 122.146 (Compliance Certification Terms and Conditions).”

Nevertheless, in order to allay EPA's concerns, the following term has been added to the permit to clarify these requirements.

“The permit holder shall comply with the requirements of 40 CFR §70.6(a)(3)(ii)(A) and 30 TAC §122.144(1)(A)-(F) for documentation of all required inspections.”

ADDITIONAL CONCERNS: TCEQ acknowledges the additional concerns EPA has with the Texas City Refinery FOP and will address these issues as appropriate.