

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 13, 2008

Mr. Larry Starfield
Deputy Regional Administrator
United States Environmental
Protection Agency Region 6
1445 Ross Avenue Suite 1200
Dallas, Texas 75202

Re: Administrative Consolidation, Reissuance of and Amendment to Flexible Permits

Dear Mr. Starfield:

I'm writing in response to the letters from the U.S. Environmental Protection Agency (EPA) Region 6 and ongoing discussions between EPA and the Texas Commission on Environmental Quality (TCEQ) staff regarding Texas' flexible permit program. This response addresses the issue of continuation of permit conditions when existing permits are administratively consolidated under a flexible permit or when a flexible permit is amended. It also addresses the issue of the reissuance of permits under the Texas State Implementation Plan (SIP) approved rules, which are concerns that are broader in applicability than the flexible permit program. The concerns raised in your letters may have consequences for other parts of the New Source Review (NSR) permitting programs in Texas and have the potential to affect both major NSR and minor NSR permit reviews. These issues will need to be resolved before the concerns which are specific to the flexible permitting program can be addressed.

We understand your recommendation that, after rules for the flexible permit program have been approved as a revision to the SIP, all previously issued permits be reissued so that the permits are issued under a SIP approved permitting program. The EPA recommends further discussion of this topic, including how such permits can be reissued and development of a mutually agreed upon schedule for doing so.

In our discussion of permit consolidation, we made some progress on a piece of the administrative consolidation issue. We established an understanding that BACT is evaluated for each facility during the review of a flexible permit, including those facilities covered by the permits being consolidated. This BACT is expressed in the new flexible permit as a rate (e.g., lbs/MMBtu), and short- and long-term caps are established for all facilities under the flexible

Mr. Larry Starfield

Page 2

June 13, 2008

permit. Additional discussion regarding amendments of permits under SIP approved permitting programs may also be necessary.

For TCEQ to consider changing its rules and reissuing permits after SIP approval of those rules, TCEQ needs EPA to provide specific federal legal authority to require such rules as well as amendment or reissuance of previously issued permits. We also need EPA to provide clear legal basis for any requirements which EPA finds necessary in order to consolidate legally issued permits into a single permit document, followed by the administrative discontinuance of the permit numbers for the consolidated permits. Sample rule language would also be helpful. Changes to TCEQ rules may require statutory changes which would need to be presented to the Texas Legislature.

Based on the June 3, 2008 conference call, we understand that EPA will select a flexible permit and perform a "cross-walk" of the permit requirements in previously issued permit(s) and the existing flexible permit and then schedule a conference call with TCEQ staff to step through the requirements. This discussion should facilitate a common approach for addressing EPA's practical enforceability concerns. The TCEQ is willing to work with the EPA to gain an understanding of EPA's specific concerns as they relate to and affect our air permitting program as a whole. After we have reached an understanding regarding the overall amendment and reissuance issues, we can then begin to address concerns that are specific to the flexible permitting program as a whole. After we have reached an understanding regarding the overall amendment and reissuance issues, we can then begin to address concerns that are specific to the flexible permitting program.

We appreciate the opportunity to discuss these concerns and look forward to reaching a position of clarity so that we can proceed in addressing your questions related to the flexible permit program.

Sincerely,



Glenn Shankle, Executive Director
Texas Commission on Environmental Quality

cc: Mr. Dan Eden, Deputy Director, Office of Permitting, Remediation and Registration
Ms. Stephanie Bergeron Perdue, Deputy Director, Office of Legal Services
Mr. John Sadlier, Deputy Director, Office of Compliance and Enforcement
Mr. Richard A. Hyde, P. E., Director, Air Permits Division