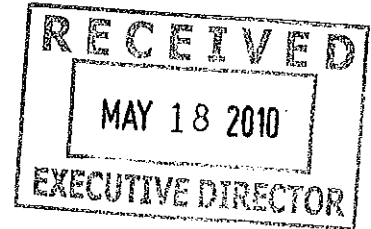




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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DALLAS, TX 75202-2733

31741
Mark

May 14, 2010



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

Dear Mr. Vickery:

During our meeting in Austin on April 1, 2010, EPA shared three discussion papers on how a permit rehabilitation process might proceed for flexible permits to address the consequences of a potential EPA decision to disapprove the flexible permit SIP package. The discussion papers address: 1) Creating unit-specific permit conditions, 2) Permit prioritization, and 3) an Audit program.

At our joint April 16, 2010 video conference call, you requested our position on four questions related to these discussion papers. These questions deal with issues such as EPA's interpretation of federal requirements (applicability, BACT and netting) as well as the impact of new standards.

We appreciate the benefit of our bi-weekly video calls and see these as an opportunity to continue to discuss next steps. We hope the next call will give us the opportunity to discuss any questions you may have on our answers, and to discuss your response to the three papers. Thank you for your continued willingness to devote staff and your time to the issues before us, ensuring that progress is made as quickly as possible.

Sincerely,

Lawrence E. Starfield
Deputy Regional Administrator

Enclosure

cc: Dr. Bryan W. Shaw, Chairman, TCEQ
Mr. Carlos Rubinstein, Commissioner, TCEQ
Mr. Buddy Garcia, Commissioner, TCEQ

- Will EPA require 2010 best available control technology (BACT) or lowest achievable emission rate (LAER) for restructured flexible permits?

In general, we have the following view of the appropriate date to consider of when BACT or LAER would apply in determining new unit-specific limits. We anticipate that BACT or LAER will be applied considering the time of major construction or major modification. However, if it is determined through an audit or during the restructuring of the flexible permit that a source circumvented or failed to obtain a major NSR permit before commencing construction of a major stationary source or a major modification as required by the approved State Implementation Plan (SIP) during the time frame when the source had a flexible permit, then we will require the emissions unit(s) that underwent a physical change or change in the method of operation to obtain a major NSR permit for any regulated NSR pollutants which exceeded significance levels as a result of the change. Consistent with EPA's policy, a source must apply current-day BACT or LAER to such emissions units.

- Will EPA require BACT for greenhouse gas emissions (GHGs) for permits restructured after January 2, 2011?

The assignment of unit-specific emission limits does not necessarily by itself result in the triggering of BACT requirements for GHG. GHGs are not currently a regulated NSR pollutant (63 FR 17019, April 2, 2010), and therefore, a source would not currently need to address GHG BACT. However, after the time GHGs become a regulated NSR pollutant, sources in all states undergoing new construction and modifications will need to address the applicability of the major NSR permitting requirements to GHGs in accordance with rules issued by EPA.

Once GHGs become subject to regulation for purposes of Title V, sources also must describe their GHG emissions to the extent necessary for the permitting authority to determine if there are any applicable requirements.

- What netting rules apply to evaluating whether modifications cause significant increases in emissions?

The federally approved rules that exist when a source undertakes a potentially major modification apply when determining if the change triggers major NSR permitting. In the case of Texas, the existing SIP-approved, major NSR program is the basis of the netting rules that apply to determine if past changes triggered major NSR.

- Will NAAQS compliance have to be addressed in permits being restructured?

We will not require modeling to show compliance with a NAAQS when the permitting authority restructures Title V permits to eliminate flexible permits and assure that the Title V permit properly incorporates all Federally applicable requirements for the source unless such modeling is otherwise required by EPA rules or guidance.

If a source going through the restructuring process is also obtaining a new major NSR permit, the source generally will have to model and show compliance for any of the NSR regulated pollutants covered by the new NSR permit, and as otherwise required by EPA rules or guidance.