



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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

MAY 21 2010

Mr. Richard A Hyde, P.E., Deputy Director
Office of Permitting and Registration
Texas Commission on Environmental Quality (MC 122)
P.O. Box 13087
Austin, TX 78711-3087

Re: Objection to Title V Permit No. O1294
Lockheed Martin Corporation, Air Force Plant 4
Tarrant County, Texas

Dear Mr. Hyde:

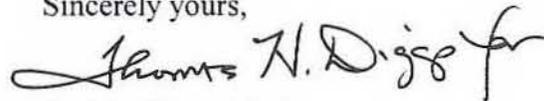
On April 6, 2010, we received the proposed minor revision of the Title V permit for the Lockheed Martin Air Force Plant 4 referenced above. As such, EPA's 45-day review period will end on May 21, 2010. This minor revision incorporates Flexible Permit No. 16862 and a Qualified Facility authorization into the draft Title V permit.

In accordance with 40 CFR § 70.8(c), EPA is objecting to the proposed permitting action. Section 505(b)(1) of the federal Clean Air Act (Act) and 40 CFR § 70.8(c) require EPA to object in writing to the issuance of a proposed Title V permit within 45 days of receipt of the proposed permit (and all necessary supporting information) if EPA determines that the permit is not in compliance with applicable requirements of the Act or requirements under 40 CFR Part 70. Specific reasons for each objection and a description of the terms and conditions that the permit must include to respond to the objections are enclosed.

Section 505(c) of the Act and 40 CFR § 70.8(c)(4) provide that if the permitting authority fails, within 90 days of the date of the objection, to submit a permit revised to meet the objections, then EPA will issue or deny the permit in accordance with the requirements of 40 CFR Part 71. Because the objection issues must be fully addressed within 90 days, we suggest that the revised permit be submitted with sufficient advance notice so that any outstanding issues may be resolved prior to the expiration of the 90-day period. We also note concerns related to the adequacy of permitting associated with the incorporation by reference of Permits by Rule (PBR) that may not meet the requirements of the federally-approved Texas State Implementation Plan (Texas SIP) have been raised in two citizen petitions filed with EPA, dated August 28, 2008, and January 5, 2009. Should the Title V permit be issued without resolving these concerns and EPA determines these concerns have merit, EPA may reopen the Title V permit for cause, pursuant to 40 CFR § 70.7(f) and (g).

We are committed to working with the TCEQ to ensure that the final Permit is consistent with the all applicable requirements, including the federally-approved Texas SIP and the Texas Title V air permitting program. If you have questions or wish to discuss this further, please contact Jeff Robinson, Chief, Air Permits Section at 214-665-6435, or Stephanie Kordzi, Texas Permit Coordinator at (214) 665-7520. Thank you for your cooperation.

Sincerely yours,

A handwritten signature in black ink that reads "Carl E. Edlund". The signature is written in a cursive style with a large, stylized "C" and "E".

Carl E. Edlund, P.E.

Director

Multimedia Planning and Permitting Division

Enclosure

cc: Manager, Environmental Affairs
Lockheed Martin Corporation

Mr. Steve Hagle, Director
Air Permits Division
Texas Commission on Environmental Quality (MC-163)

Enclosure

- 1. Objection to the Incorporation of Flexible Permit into the Title V permit.** The *New Source Review (NSR) Authorization References* table in the draft Title V permit incorporates by reference Flexible Permit No. 16862, renewed on December 22, 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).
- 2. Objection to the Incorporation of Permit No. 16862 into the Title V permit.** The *New Source Review (NSR) Authorization References* table in the draft Title V permit incorporates by reference Permit No. 16862. Available information indicates that Lockheed Martin requested an alteration to their flexible permit on July 20, 2005. TCEQ informed Lockheed Martin that 30 TAC 116.116(c)(1)(B)(iii) does not allow an alteration to include changes that result in an increase in the emission rate of any air contaminant. Therefore, TCEQ proposed to approve the request under 30 TAC 116.166(e) (Changes to Qualified Facilities) rather than as an alteration. Based upon TCEQ's review of the information, TCEQ had no objection to the proposed change and approved the request on October 7, 2005. This change affects Permit No. 16862¹, which is a Flexible Permit, 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).² EPA disapproved the Texas Qualified Facilities Program on April 14, 2010, pursuant to Section 110 of the federal Clean Air Act (CAA), 42 U.S.C. § 7410.³

¹ See information on this Qualified Facility at <https://webmail.tceq.state.tx.us/gw/webpub>.

² See also 30 TAC §§ 116.10; 116.116(e); and § 116.117.

³ The currently approved SIP regulation is 30 TAC 116.160 adopted by the Texas Natural Resource Conservation Commission (renamed the Texas Commission on Environmental Quality) on October 10, 2001, effective November 1, 2001, which was approved by EPA on July 22, 2004 (69 FR 43752), effective September 20, 2004.

75 FR 19468. 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.

3. **Objection to Special Condition 15 for Failing to Meet Compliance Certification Requirements.** Special Condition 15 of the draft Title V permit states that the permit holder shall certify compliance with all terms and conditions. The compliance certification requirements for Title V permits are stated in 40 CFR § 70.6(c)(5) and incorporated at 30 TAC § 122.146. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because Special Condition 15 of the draft Title V permit conflicts with the general terms and conditions reference to 30 TAC § 122.146. In response to this objection, TCEQ must amend Special Condition 15 to include all the requirements for compliance certifications, as set forth in 30 TAC § 122.146 including the identification of the methods or other means for determining the compliance status with each term and condition of the permit.
4. **Objection to the Permit Shield.** Special Condition 21 of the draft Title V permit references a "Permit Shield" attachment which identifies emission units, groups and processes TCEQ has determined are exempt from specifically identified potentially applicable requirements. The statement of basis (SOB) does not fully discuss the factual or legal basis for TCEQ's determinations. EPA has previously objected to negative applicability determinations based on blanket statements claiming a "grandfathered" status (*See, e.g.*, letter from Kerrigan G. Clough, Assistant Regional Administrator, EPA, Region 8 to the Colorado Department of Public Health and Environment, Re: EPA Review of Proposed Title V Operating Permit for TriGen-Colorado Energy Corporation, dated September 13, 2000 ("TriGen Objection")). Similar blanket statements such as those contained in the draft Title V permit and the accompanying SOB do not meet the permit shield requirements of 40 CFR § 70.6(f). Pursuant to 40 CFR § 70.8(c)(1) and (3), EPA objects to the issuance of the Title V permit because the permit shield provisions in draft Title V permit are only supported by conclusory statements in the SOB. The SOB fails to provide an adequate discussion of the legal and factual basis for the determinations made under 40 CFR § 70.6(f) used to support the nonapplicability of those requirements identified in the "Permit Shield" attachment to the Title V permit. In response to this objection, the Title V permit renewal application must be revised to include all potentially relevant facts supporting a request for a determination of nonapplicability, and the SOB must be revised to provide an adequate discussion TCEQ's legal and factual basis for all determinations of nonapplicability for those requirements identified in the "Permit Shield" attachment to the Title V permit. Alternatively, Special Condition 21 and the "Permit

Shield” attachment must be deleted from the Title V permit.

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

6. **Objection for Failure to Include Applicable Monitoring Requirements.** The draft Title V permits incorporates Flexible Permit 16862 and minor NSR permits 36888 and 48967. Special Condition 3 of Flexible Permit 16862 states “Opacity of particulate matter emissions shall not exceed five percent. Monitoring methods and frequencies prescribed and approved in the Site Operating Permit No. O-1294 for sources covered by this permit shall be used to demonstrate compliance with this opacity limit”. The draft Title V permit does not appear to include any monitoring methods or frequencies to comply with 5% opacity for the emission units covered by Flexible Permit 16862. Special Condition 6 of NSR permit 36888 gives opacity limits for Boilers CBP1, CBP2, and CBP3 of 10%, and 5% for CBP4, CBP5, and CBP6. Special Condition 4 of NSR permit 48967 states that “no visible emissions that result from the permitted activities...” All references to opacity in the draft Title V permit refer to an opacity limit of 20%. EPA objects to the issuance of the Title V permit since it is not in compliance with the requirements of 40 CFR § 70.6(a)(1) & (3). In response to this objection, the Title V permit must be revised to identify each emission unit covered by the Title V permit and reference the specific emission limitations, applicable monitoring and testing, recordkeeping, and reporting requirements for each such unit, including those emission units covered by the special conditions referenced above.

Additional Concerns:

1. *New Source Review Authorization References* table - Some of the permits that are incorporated by reference may actually be old or outdated underlying permits. EPA recognizes that underlying permits are revised from time to time. Nonetheless, the most recent revision of the underlying permit (and the issuance date) must be stated in the table when incorporated by reference in the Title V permit so the public may properly comment on the Title V permit. TCEQ must confirm that the version of the underlying permit that is

incorporated into the Title V permit is readily available in the public records. *See, In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02 at 5 (May 28, 2009).

2. Permit Condition 11 – In accordance with 40 CFR § 70.6(a)(1)(i), permit conditions must define and provide regulatory citations referencing proper authority allowing TCEQ to grant special exemptions.
3. PBR 106.418 and 106.452 require registration. The TCEQ New Source Review database does not show a registration for 106.418 or 106.452. Please ensure that the permits included in the Title V permit are valid permits.