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

August 19, 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: O1294  
Lockheed Martin Corporation  
Air Force Plant 4  
Fort Worth, Tarrant County  
Regulated Entity Number: RN100212356  
Customer Reference Number: CN600320055

Dear Mr. Edlund:

On May 21, 2010, 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. The revised proposed permit and statement of basis are attached for your review. The permit will be re-announced with updates as specified in the responses below.

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

Mr. Carl E. Edlund, P.E.  
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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. Camilla Widenhofer at (512) 239-1028 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/CW/ssl

cc: Mrs. Sarah Hall, Environmental Engineer, Lockheed Martin Corporation, Fort Worth  
Mr. Richard M. Stevenson, Executive Vice President and General Manager, Aero Ops,  
Lockheed Martin Corporation, Fort Worth  
Mr. Ruben I. Valesquez, P.E., Senior Engineer, Air Quality, PBS&J, Austin  
Air Program Manager, Environmental Management Department, City of Fort Worth,  
Fort Worth  
Air Section Manager, Region 4 - Fort Worth

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

Project Number: 14700

## EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

### Permit Number O1294

The Texas Commission on Environmental Quality (TCEQ) Executive Director provides this Response to EPA's Objection to the minor revision of the Federal Operating Permit (FOP) for Lockheed Martin Corporation, Air Force Plant 4, Permit No. O1294, Tarrant 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. Lockheed Martin Corporation applied to the TCEQ for a minor revision of the FOP for the Air Force Plant 4 located in Fort Worth, Tarrant County on January 22, 2010, and public announcement was posted on April 6, 2010 at the TCEQ Web site:

[www.tceq.state.tx.us/assets/public/permitting/air/Title\\_V/announcements/table.htm](http://www.tceq.state.tx.us/assets/public/permitting/air/Title_V/announcements/table.htm)

The public announcement period ended on May 6, 2010. During the concurrent EPA review period, TCEQ received an objection to the permit from EPA on May 21, 2010.

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

#### Description of Site

Lockheed Martin Corporation owns and operates the Air Force Plant 4, located at 1 Lockheed Boulevard, in Fort Worth, Tarrant County, Texas 76108.

Lockheed Martin Corporation's Air Force Plant 4 is an aircraft facility subject to the requirement of 30 TAC Chapter 122. The Federal Operating Permit (FOP) renewed on September 21, 2009 (Permit # O1294). A minor revision application was received by the TCEQ on January 22, 2010 for the addition of 2 cooling towers, 2 vacuum systems and 3 stacks, and for moving unit RPBF422 from group GRPNPROD to group GRPRODNEW. Significant emission sources at the site include boilers, cleaning /depainting operations, loading /unloading operations, storage tanks, degreasing processes, stationary /process vents, water separation and surface coating operations, which are subject to State and/or Federal regulations.

The facility operations include research, development, and manufacturing of aircraft components and assembly of aircraft for the United States Air Force/Air Force Material Command.

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. 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), 40 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 Title 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. 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. 16862 application provides information regarding how Subchapter B requirements in § 116.111 are met, including: compliance with the SIP approved Subchapter B rules and review 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. 16862 meets all applicable NSPS, NESHAP requirements, and air dispersion modeling conducted by applicant. The flexible permit and technical review are enclosed with this response. Lockheed Martin Corporation 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 Lockheed Martin Corporation agrees to such a process, the TCEQ will work with Lockheed Martin Corporation 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.

**EPA OBJECTION:**

*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)(ii) 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. 16862, 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). EPA disapproved the Texas Qualified Facilities Program on April 14, 2010, pursuant to Section 110 of the federal clean Air Act (CAA), 40 U.S.C. § 7410. 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.

#### **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).<sup>1</sup> 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 Title 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. 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.

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<sup>1</sup> The TCEQ has filed a Petition for Review of EPA’s final action with the U.S. Court of Appeals for the 5<sup>th</sup> 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.

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.

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 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 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:**

Special Condition No. 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 the 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 No. 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 No. 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.

**TCEQ RESPONSE:**

The ED does not agree that Special Condition No. 15 of the draft permit needs to be revised. Special Condition No. 15 of the draft permit is in compliance with the specific requirements of the EPA approved Federal Operating Permit program, as found in 30 TAC Chapter 122. Specifically, § 122.146(5), requires the annual compliance certification to include or reference the specified elements, including: the identification of each term or condition of the permit for which the permit holder is certifying compliance, the method used for determining the compliance status of each emission unit, and whether such method provides continuous or intermittent data; for emission units addressed in the permit for which no deviations have occurred over the certification period, a statement that the emission units were in continuous compliance over the certification period; for any emission unit addressed in the permit for which one or more deviations occurred over the certification period, specific information indicating the potentially intermittent compliance status of the emission unit; and the identification of all other terms and conditions of the permit for which compliance was not achieved. All permit holders are required to comply with the requirements of 30 TAC § 122.146, as well as all other rules and requirements of the commission.

In addition, in 2006, EPA's Title V Task Force endorsed the 'short-form' approach used by TCEQ, as an option for compliance certification. (*See* Title V Task Force, Final Report to the Clean Air Act Advisory Committee, page 108 (April 2006)).

However, in order to help clarify any confusion, the term has been revised to read as follows:

The permit holder shall certify compliance in accordance with 30 TAC § 122.146. The permit holder shall comply with 30 TAC § 122.146 using at a minimum, but not limited to, the continuous or intermittent compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other credible evidence or information. The certification period may not exceed 12 months and the certification must be submitted within 30 days after the end of the period being certified.

**EPA OBJECTION:**

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 applicable requirements. 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 object to the issuance of the Title V permit because the permit shield provisions in the 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 minor revision 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 of TCEQ’s legal and factual basis for all determinations of nonapplicability for those requirements identified in the “Permit Shield” attached to the Title V permit. Alternatively, Special Condition No. 21 and the “Permit Shield” attachment must be deleted from the Title V permit.

**TCEQ RESPONSE:**

The ED disagrees that the permit shield does not meet the requirements of 40 CFR § 70.6(f). Special Condition No. 21 was drafted in compliance with the requirements of the EPA approved federal operating permit program for the State of Texas, 30 TAC Chapter 122. Section 122.142(f), Permit Content Requirements, clearly allows the ED discretion to grant a permit shield for specific emission units at the request of an applicant. Additionally, § 122.148, Permit Shield, provides the requirements for the exercise of discretion by the ED, including that specific information be submitted by the applicant, in addition to other requirements. The ED determined that the application information submitted by Lockheed Martin Corporation and certified by a responsible official was sufficient to grant the permit shield.

Furthermore, the permit shield as listed in FOP O1294 provides a “concise summary” of the negative applicability determination for each regulation that may potentially apply to emission units listed in the Permit Shield table as required by 40 CFR § 70.6(f)(1)(ii). This concise summary contains both the determination and the relevant facts upon which the determination was based, as supported by a certification by the responsible official as to the truth, accuracy and completeness of the facts for which the responsible official is liable both civilly and criminally. The SOB notes that a permit shield was requested and granted, and refers the reader back to the permit shield attachment to the permit for information regarding the permit shield. The ED has thus exercised his discretion, as allowed under the EPA approved operating permit program for the State of Texas, and the permit shield thus is not an unsupported or unenforceable “blanket statement”. The ED is aware of no provision in 40 CFR Part 70 stating that a permit shield cannot be granted based on certified representations regarding construction, modification, or reconstruction date information.

EPA's reliance on the TriGen-Colorado Energy Corporation objection to support an objection to the permit shield for Lockheed Martin Corporation is misplaced. In the TriGen objection, EPA Region 8 stated the state permitting authority must remove the permit shields for PSD and NSPS nonapplicability based on a statement of no modification subsequent to initial construction. However, EPA also concluded the permit authority "may retain the permit shield for original NSPS applicability based on the date of construction of the boilers."

As a result of EPA's objection, TCEQ communicated with the applicant stating that although it is the agency's position that removing the permit shield is not required, the applicant can choose to remove the permit shield. Lockheed Martin Corporation chose to remove the permit shield; and the revised draft permit has been updated to remove the permit shield.

**EPA OBJECTION:**

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 identified 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:**

Condition 3 of the permit does not address stationary vents. All stationary vents were previously provided and identified in the applicable requirements summary. The specific emission limitations, applicable monitoring and testing, recordkeeping, and reporting requirements for each such unit are included in the Title V permit. Furthermore, the legal and factual basis for Chapter 111 Visible emissions requirements is included in the Statement of Basis for each stationary vent.

**EPA OBJECTION:**

The draft Title V permit 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 5 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 No. 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 No. 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.

**TCEQ RESPONSE:**

TCEQ regrets any confusion between opacity limits in Special Condition No. 3 of NSR Permit No. 16862 and FOP No. O1294. Special Condition 3 of NSR Permit No. 16862 includes a 5% opacity limit for units listed in "Table 1 Facility Listing" in that permit. Units from "Table 1 Facility Listing" are represented in FOP No. O1294 as several different groups and include a 20% opacity limit for 30 TAC Chapter 111, Visible Emissions. The building fugitives noted in "Table 1 Facility Listing" are subject to Special Term and Condition 3 and include a 30% opacity limit for 30 TAC Chapter 111, Visible Emissions. The NSR requirements are incorporated by reference in the Title V permit as an applicable requirement. NSR Permit No. 16862 should not have referenced the FOP. A permit alteration request was received by TCEQ on June 30, 2010 for NSR Permit No. 16862 to clarify opacity emissions monitoring practices within that permit and to remove any reference to the FOP. Specifically, Special Condition No. 3 concerning opacity was revised by specifying a quarterly opacity/visible emissions monitoring schedule, and Special Condition No. 6 concerning pressure drop at the paint booths was revised to specify an acceptable range pressure drop range and to require that pressure drop readings be taken and recorded at least once per shift for each booth that is operated during that shift. The alteration was issued on August 16, 2010, and the updated NSR Permit No. 16862 is included in the revised draft permit that will be available to the public during the additional public announcement period that begins on August 24, 2010.

TCEQ regrets any confusion between opacity limits in Special Condition No. 6 of NSR Permit No. 36888 and Site Operating Permit No. O1294. Special Condition No. 6 of NSR Permit No. 36888 includes a 10% opacity limit for units CBP1, CBP2, and CBP3, and a 5% opacity limit for units CBP4, CBP5, and CBP6 in that permit. The NSR permit requirements are incorporated by reference in the Title V permit as an applicable requirement. Units CBP1, CBP2, and CBP3 are represented in FOP No. O1294 as GRPCBPBOIL, and are subject to a 20% opacity limit for 40 CFR Part 60, Subpart Db. A permit alteration request was received by TCEQ on June 30, 2010 for NSR Permit No. 36888 to clarify opacity emissions monitoring practices within that permit and to remove references to CBP4, CBP5, and CBP6 since these units were never constructed. Specifically the alteration was revised to require a quarterly opacity/visible emissions monitoring schedule, along with a maximum opacity of 10 percent when firing fuel oil and 5 percent when firing natural gas. A new Special Condition No. 10B requires Lockheed to maintain records of either quarterly opacity observations or of visible emissions observations. All references to a two-year recordkeeping retention period were replaced with a five-year recordkeeping retention period. In addition, all references to Boilers CBP4, CBP5, and CBP6 were removed because construction of these units never began, and the already-extended deadline for start of construction (April 9, 2010) has passed.

All representations of CBP4, CBP5, and CBP6 were removed from the FOP as well. The permit alteration was issued on August 12, 2010 and the updated NSR Permit No. 36888 is included in the revised draft permit that will be available to the public during the additional public announcement period that begins on August 24, 2010.

NSR permit 48967 has been voided effective June 30, 2010. All associated units have been shutdown and are removed from the FOP.

Stationary vents subject to 30 TAC Chapter 111, Visible Emissions have been identified in the Applicable Requirements Summary of the FOP. These vents are subject to § 111.111(a)(1)(B), which has a 20% opacity limit. The group of boilers, identified as GRPCBPBOIL, is subject to 40 CFR Part 60, Subpart Db, which has a 20% opacity limit. 20% opacity is the emission limitation identified by these rules. These are the only two rules identified with opacity limits in the Applicable Requirements Summary table.