



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS TX 75202-2733

JUN 04 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. O1555  
Diamond Shamrock Refining Company, Valero McKee Refinery  
Moore County, Texas

Dear Mr. Hyde:

On April 20, 2010, we received the proposed minor revision of the Title V permit for the Diamond Shamrock Valero McKee Refinery referenced above. As such, EPA's 45-day review period will end on June 4, 2010. This minor revision incorporates Flexible Permit No. 9708 and Prevention of Significant Deterioration (PSD) Permit No. PSDTX861M1 into the draft Title V permit.

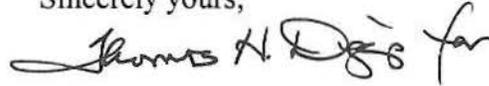
In accordance with 40 CFR § 70.8(c), EPA is objecting to the proposed permitting action. Section 505(b)(1) of the federal Clean Air Act (Act) and 40 CFR § 70.8(c) require EPA to object in writing to the issuance of a proposed Title V permit within 45 days of receipt of the proposed permit (and all necessary 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, appearing to read "Carl E. Edlund".

Carl E. Edlund, P.E.

Director

Multimedia Planning and Permitting Division

Enclosure

cc: Manager, Environmental Affairs  
Diamond Shamrock Refinery Company

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. 9708, issued on October 1, 2004, with two amendments and two revisions pending. 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 by reference of PSD Permit.** The *New Source Review Authorization References* table of the draft Title V permit incorporates PSDTX861M1, issued on July 29, 2003, 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 emissions 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).<sup>1</sup> In approving Texas' limited use of incorporation by reference of emissions 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 PSDTX861M1 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 the emission limitations and standards, including any operational requirements as specific provisions in the body of the Title V permit, or, alternatively, conditions may be added to the Title V permit that reference the specific permit condition(s) for each individual applicable emission limitation term and condition, for individual emission points, from PSDTX861M1 as necessary to ensure compliance with all applicable requirements contained therein and physically attach a copy of PSD-TX-861M1 to the Title V permit

3. **Objection to Special Condition 19 for Failing to Meet Compliance Certification Requirements.** Special Condition 19 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 19 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 19 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 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),

---

<sup>1</sup> Please note that *In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02 at 6, fn 3 (May 28, 2009) and *In the Matter of CITGO Refining and Chemicals Co.*, Petition No. VI-2007-01 at 11-12, fn 5 (May 28, 2009) EPA stated that the Agency will be evaluating the use of incorporation by reference for emissions limitations in minor NSR permits and Permits by Rule to determine how well this practice is working.

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.

- 5. Objection to the Adequacy of the Compliance Schedule in the Title V permit.** On November 2, 2005, a Consent Decree was entered in federal court resolving alleged violations of the federal Clean Air Act at several of Valero and Tesoro refineries, including the Diamond Shamrock Valero McKee Refinery. See *United States v. Valero Refining Company et al, and Tesoro Refining and Marketing Corporation*, SA-05-CA-0569. The Consent Decree requires Valero to effect changes to its operations in accordance with an agreed upon schedule and to incorporate those changes into federally enforceable new source review permit(s) and then to seek revisions to its Title V permit(s) to incorporate the amended new source review permit(s). In addition, since the changes extend into the future, the CAA-related requirements of the Consent Decree must be included in the Title V permit and reflected in the Title V permit's Compliance Schedule. See *In the Matter of CITGO Refining and Chemicals Co.*, Petition No. VI-2007-01 at 12-14. 40 CFR § 70.6(c)(3) requires Title V permits to contain “[a] schedule of compliance consistent with § 70.5(c)(8).” In turn, 40 CFR § 70.5(c)(8) requires, among other things, that compliance schedules “shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.” 40 CFR § 70.5(c)(8)(iii)(C). The Compliance Schedule in the draft Title V permit is deficient because it fails to reference all of the CAA-related requirements of the Consent Decree for actions and dates that extend into the future and it fails to include provisions that ensure that changes required by the Consent Decree will be incorporated into federally enforceable new source review permit(s), as required by Paragraphs 291 and 292 of the Consent Decree. Pursuant to 40 CFR § 70.8(c)(1), EPA must object to the issuance of this permit because the compliance schedule in the Title V permit fails to meet the requirements of 40 CFR § 70.6(c)(3) and 40 CFR § 70.5(c)(8). In response to this objection, TCEQ must revise the Title V permit to include a compliance schedule that meets the requirements of the 40 CFR § 70.6(c)(3) and 40 CFR § 70.5(c)(8).

#### 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 14 – 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 106.452 and 106.533 require registration. The TCEQ New Source Review database does not show a registration for 106.452 or 106.533 for RN100210517. Please ensure that the permits included in the Title V permit are valid permits.