



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

JAN 08 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 Federal Operating Permit No. O1626  
ConocoPhillips Company, Sweeny Refinery  
Brazoria County, Texas

Dear Mr. Hyde:

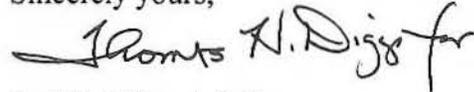
We received the proposed significant revision for the Federal Operating Permit (FOP) for the ConocoPhillips Company, Sweeny Refinery in our office on November 24, 2009. The EPA's 45-day review period will end on January 8, 2010. The FOP incorporates Prevention of Significant Deterioration (PSD) Permit No. PSD-TX-103M3 and Pollution Control Project (PCP) permit No. 70113. The FOP also incorporates five minor NSR permits that are affected by consent decree H-05-0258 filed January 27, 2005.

In accordance with 40 CFR § 70.8(c), EPA is objecting to the proposed permit 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) and Standard Permits 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, 2009, 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 FOP 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" with a stylized flourish at the end.

Carl E. Edlund, P.E.

Director

Multimedia Planning and Permitting Division

Enclosure

cc: Manager, Environmental Affairs  
ConocoPhillips Company

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

## Enclosure

- 1. Objection to the incorporation by reference of PSD Permit.** The *New Source Review Authorization References* table of the draft Title V permit incorporates PSD-TX-103M3, amended on September 14, 2006, 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 PSD-TX-103M3 and fails to include emission limitations and standards as necessary to assure compliance with all applicability requirements. See 40 CFR § 70.6(a)(1). In response to this objection, TCEQ must include (as conditions of the Title V permit) all the emission limitations and standards of PSD-TX-103M3 necessary to ensure compliance with all applicable requirements. Alternatively, TCEQ could include a specific condition for each emissions unit to reference the exact provisions of PSD-TX-103M3 that contain the emission limitations and standards reflecting the applicable

---

<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.

requirements for that unit and then physically attach a copy of PSD-TX-103M3 to the Title V permit. Thus, the Title V permit would contain all the emission limitations (including the MAERT) and standards of the PSD permits with a special condition for each emissions unit directing the reader to the specific location in the attached PSD permit containing the applicable requirements for that unit.

2. **Objection to General Recordkeeping Provision.** Under the *General Terms and Conditions* provision of the draft Title V permit, reference is made to 30 TAC § 122.144 of the Texas FOP program which requires records be kept for 5 years; however, Special Condition 5(F) of NSR Permit No. 5920A and PSD-TX-103M3 (revised April 30, 2008) only requires records be kept for two years. This condition is inconsistent with the 5 year recordkeeping requirements of 40 CFR § 70.6(a)(3)(ii)(B) and cannot be carried forward into the Title V permit. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit since the recordkeeping requirements of NSR Permit No. 5920A and PSD-TX-103M3 are not in compliance with the requirements of 40 CFR § 70.6(a)(3)(ii)(B). In response to this objection, TCEQ must revise the Title V permit to include a condition that states that records of monitoring data and supporting information must be maintained for a minimum of five years from the date of monitoring, notwithstanding the requirements of any other permit conditions or applicable requirements.
3. **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.
4. **Objection to the Statement of Basis.** TCEQ prepared a Statement of Basis (SOB) for the draft Title V permit which states that this is a significant revision. The SOB does not list any other FOPs at the refinery. The SOB gives a list of permit revisions. The list gives emission unit numbers, but fails to provide information on the permit the unit is authorized under. The SOB needs to be clear when an incorporated permit is removed or altered in a way that affects the Title V permit. The *Permit Area Process Description* of the SOB states "Selected Refinery Units – See application for full description". Is the application available to the public as part of the public docket for comment? Since the Sweeny Refinery has no other FOP, the SOB should explain why any units are being excluded from the Title V permit, and how those other units are operated. Pursuant to 40 CFR

§ 70.7(a)(5), the statement of basis must set forth the legal and factual basis for the draft permit conditions (including reference to the applicable statutory or regulatory provisions). As indicated in previously issued EPA orders in response to petitions to review Title V permits, the SOB serves to highlight elements that EPA and the public would find important to review (*See, e.g., In the Matter of Bristol-Myers Squibb Co, Inc.*, Petition No. II-2002-09, February 18, 2005). Therefore, pursuant to 40 CFR § 70.8(c)(1), EPA must object to the issuance of this Title V permit because the SOB fails to meet the requirements of 40 CFR § 70.7(a)(5). In order to respond to this objection, the SOB must be revised to include a discussion of the process units that are in the Title V permit, the changes being made to FOP No. O1626 since its last revision or amendment, and the rationale for all monitoring for all the applicable requirements in the PSD permit, minor NSR permits, standard permit, and PBR authorizations. The SOB should also address the changes that have been made to the incorporated permits as stated in Additional Concern Number 3 below.

5. **Objection to the Adequacy of the Compliance Schedule in the Title V permit.** On January 27, 2005, a Consent Decree was lodged in federal court resolving alleged violations of the federal Clean Air Act at several of ConocoPhillips refineries, including the Sweeny Refinery. *See United States v. ConocoPhillips Company*, Civ. H-05-0258. The Consent Decree requires ConocoPhillips to effect changes to its operations in accordance with an agreed upon schedule and to incorporate those changes into federally enforceable permits, including Title V permits. Since the changes extend into the future, the CAA-related requirements of the Consent Decree must be included in the Title V 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 any of the requirements of the Consent Decree for actions and dates that extend into the future. 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). In addition, TCEQ must review the incorporated minor NSR permits to ensure that the CAA-related requirements of the Consent Decree have been appropriately incorporated therein.
6. **Objection to Special Condition 22 for Failing to Meet Compliance Certification Requirements.** Special Condition 22 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). Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because Special Condition 22 of the draft renewal does not meet the regulatory requirements. In response to this objection, TCEQ must amend Special Condition 22 to include the all the requirements for

compliance certifications, as set forth in 40 CFR § 70.6(c)(5), including the identification of the methods or other means for determining the compliance status with each term and condition of the permit.

- 7. Objection to the Permit Shield.** The draft Title V permit includes a “Permit Shield” attachment that covers many “grandfather” facilities, and TCEQ’s statement of basis (SOB) includes statements that a specific facility was constructed before a certain date. EPA has previously objected to negative applicability determinations based on blanket statements on “grandfathered” units claiming that no modifications have occurred that triggered PSD, NSR or a modification subject to NSPS applicability (*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), EPA objects to the issuance of the Title V permit because the permit shield provisions of the draft title V permit are not supported by an adequate determination that meets the requirements of 40 CFR § 70.6(f), as further explained in the TriGen Objection referenced above. In response to this objection, TCEQ must provide an adequate demonstration consistent with the requirements described above or delete the permit shield requirements in the Title V permit.

Additional Concerns:

1. Table *New Source Review Authorization References* - 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 in 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 19 – 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. Table *New Source Review Authorization References* – The NSR Permit No. 2849A is shown as VOID on the TCEQ New Source Review Air Permits database. From a search of data on the Remote Document server, it appears that Permit No. 2849A was incorporated into Permit No. 30513 sometime before August of 2005. It also appears that permit No. 2849A was for emission unit 11-36-6. Neither Emission unit no. 11-36-6 or permit No. 2849A are shown in the New Source Review Authorization References by Emissions Unit table. TCEQ needs to verify if the emission units covered by permit no. 2849A are properly

incorporated into the draft Title V permit. The TCEQ New Source Review Air Permits database also showed that incorporated PBR registration no. 53552 as void. A search of the Remote Document Server shows that this PBR registration was incorporated into NSR Permit No. 21265 in November 2006. TCEQ must ensure that they are only incorporating valid permits and ensure that all information in the permit is accurate. If these changes have been made since the last renewal or revision of the Title V permit, then the changes must be detailed in the statement of basis.