



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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OFFICE OF  
PERMITTING & REGISTRATION

Mr. Richard Hyde, P.E.  
Director  
Office of Permitting, Remediation, & Registration  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

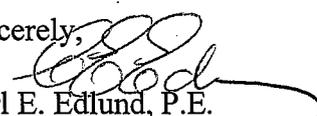
Dear Richard:

I know that TCEQ is looking at ways to resolve the objections that EPA has issued on numerous Clean Air Act Title V permits since October 2009. To assist, I asked our EPA staff to summarize the actions our agencies have taken over the last year to address objections in a small number of permits. The efforts to address objections over the last year have led to varied approaches that have either responded to, or altogether averted, some of EPA's objections.

We have collected these approaches on the enclosed Table in an attempt to offer examples and options to address the common objection issues that we have raised. These objections generally fall into 15 different categories and the table is structured to present the objection issue and a possible path forward. In addition, we have included a column identifying specific examples of successful approaches that have been put into practice. These examples and options in the Table are likely not the only way that any particular objection issue in a permit can be addressed; however, they might serve as viable approaches for many permits and for those companies seeking to address any outstanding case-specific objections from EPA.

We look forward to working with your office to discuss solutions that will allow Title V proposed permits to move forward. Our goal is to ensure that Title V permits comply with the Clean Air Act and to provide important certainty to industry. Please contact me if you have questions.

Sincerely,

  
Carl E. Edlund, P.E.

Director  
Multimedia Planning & Permitting  
Division

Enclosure

cc: Mr. Mark R. Vickery, P.G., Executive Director, TCEQ

## Texas Title V Objections and Possible Approaches for Addressing EPA Objections <sup>1</sup>

<b>Objection</b>	<b>Possible Approaches for Addressing EPA Objection</b>
<p><b>1. Objection to the incorporation of Flexible Permit into the Title V permit.</b></p> <p>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 the flexible permit, 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). The permittee may meet these conditions by committing to transition from a Subchapter G permit to a SIP approved Subchapter B permit by following the steps outlined in the EPA approved transition documents .</p>	<p><b>1) Flint Hills Example</b> Follow Flint Hills 4 Step Transition Process through the Air Permits program – See <a href="http://www.epa.gov/region6/6xa/pdf/10-20-10_entire_document_final-fhr_to_epa.pdf">http://www.epa.gov/region6/6xa/pdf/10-20-10_entire_document_final-fhr_to_epa.pdf</a>; or</p> <p><b>2) Ineos Example</b> Follow Ineos 4 Step Transition Process through the Air Permits program. See <a href="http://www.epa.gov/region6/6xa/pdf/commitment_letter_ineos_122110.pdf">http://www.epa.gov/region6/6xa/pdf/commitment_letter_ineos_122110.pdf</a>.</p> <p><b>3) Follow Streamlined Enforcement Approach</b> (contains a Covenant not to sue, but is not as broad as the Audit) – no examples available.</p>

<sup>1</sup> Approaches proposed by TCEQ would be subject to EPA's review period and a petition opportunity under CAA sections 505(b)(1) and (2).

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<p><b>2. Objection to the Incorporation of Permit Containing Changes under the Qualified Facilities (QF) Program into the Title V permit.</b></p> <p>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.</p>	<p>1) To address the Title V objection, include a condition in the permit requiring facilities to address QF Exemptions upon Title V permit action. The condition must state that for each unit, the source will demonstrate that any use or uses of the QF Exemption did not circumvent NSR, and revise its SIP-approved permit to reflect all applicable emissions limitations resulting from QF changes.</p> <p>2) <b>Flint Hills (O1272) and Ineos Examples</b> Follow 4 Step Transition Process through the Air Permits program- See <a href="http://www.epa.gov/region6/6xa/pdf/10-20-10_entire_document_final-flr_to_epa.pdf">http://www.epa.gov/region6/6xa/pdf/10-20-10_entire_document_final-flr_to_epa.pdf</a>; or <a href="http://www.epa.gov/region6/6xa/pdf/commitment_letter_ineos_122110.pdf">http://www.epa.gov/region6/6xa/pdf/commitment_letter_ineos_122110.pdf</a>; or</p> <p>3) Follow Streamlined Enforcement Approach (contains a Covenant not to sue, but is not as broad as the Audit). – no example to date.</p>
<p><b>3. Objection to the incorporation by reference of PSD Permit.</b></p> <p>TCEQ must include the emission limitations and standards, including any operational requirements or limitations that assure compliance with all applicable requirements as specific provisions in the body of the permit, or conditions may be added to the Title V permit that reference the specific page number and permit condition for each individual applicable emission limitation terms or conditions that are necessary to ensure compliance with all applicable requirements and physically attach a copy of the PSD permits to the Title V permit. In light of the multiple NSR permits and PBRs that apply to a particular source, it is difficult to determine from the record which NSR limits are in fact applicable to the source.</p>	<p>1) <b>TOTAL (O1267), Chevron Phillips Cedar Bayou (O2113), and Southwestern Harrington (O15) Examples:</b> PSD permits that are incorporated by reference are attached to Title V permit in addition to the inclusion of a Federal NSR Permit Emission Summary Table into the Title V permit. This table lists all the emission limits currently included in the PSD permits. See White Paper, Number 2, March 5, 1996 at the following link <a href="http://www.epa.gov/ttn/caaa/t5/memoranda/wtppr-2.pdf">http://www.epa.gov/ttn/caaa/t5/memoranda/wtppr-2.pdf</a>.</p>
<p><b>4. Objection to Special Permit Condition Regarding Stationary Vents.</b></p>	<p>1) <b>Southwestern Harrington (O15) Example:</b> TCEQ revised the permit to list the stationary vent units in the permit as provided by the applicant. The draft Title V permit was revised to include a listing of all</p>

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<p>TCEQ must revise 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 a legal and factual explanation in the Statement of Basis.</p>	<p>stationary vents subject to the requirements of 30 TAC Chapter 111 in the Unit Summary Table of the permit. In addition, TCEQ included the legal and factual basis for this requirement in the Statement of Basis for each stationary vent.</p> <p>2) <b>TOTAL (O1267) Example:</b> TOTAL submitted a revised application with all stationary vents individually identified. Terms 3A and 3B that were the subject of the objection were removed from the permit.</p> <p>3) <b>Garland P&amp;L (O17) Example:</b> Permit lists all vents and applicable TAC Chapter 111 requirements for opacity.</p>
<p><b>5. Objection to the Adequacy of the Compliance Schedule in the Title V permit.</b></p> <p>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.</p>	<p>1) <b>TOTAL (O1267) Example:</b> TCEQ revised "Compliance Schedule" permit language to require permittee to specify details ensuring that all NSR/PSD permits issued meet all requirements stipulated in issued Consent Decrees.</p>
<p><b>6. Objection to the Statement of Basis (SOB).</b></p> <p>The SOB must be revised to clarify the discussion of the process units covered by the Title V permit, the changes being made to FOP since its last revision or amendment, and the rationale for all monitoring for all the applicable requirements in the flexible permit, standard permits, and PBR authorizations. The SOB should include a discussion of whether or not the changes trigger the significant modification procedures set forth in 40 CFR § 70.7(e)(4) and the EPA-approved Texas Title V operating permit program requirements. TCEQ needs to make a full explanation and record available to the public explaining the permit. If a State uses a SOB approach, as Texas does, then that is the place it should be put placed for clarity. If a State uses another approach or document then this information should be made available in that kind of document.</p>	<p>A statement of basis should include, but is not limited to (1) a description of the facility; (2) a discussion of any operational flexibility that will be utilized at the facility; (3) the basis for applying the permit shield; (4) any federal regulatory applicability determinations; and (5) the rationale for the monitoring methods selected. 67 Fed. Reg 732 (January 7, 2002). See <a href="http://www.epa.gov/region07/air/title5/t5memos/txfrn.pdf">http://www.epa.gov/region07/air/title5/t5memos/txfrn.pdf</a>. Additional guidance was provided in a letter dated December 20, 2001 from EPA Region V to the State of Ohio on the content of an adequate statement of basis. See <a href="http://www.epa.gov/region07/air/title5/t5memos/sbguide.pdf">http://www.epa.gov/region07/air/title5/t5memos/sbguide.pdf</a>.</p> <p>1) <b>Goodyear Tire (O1227) Example: SOB should be unique to each facility:</b></p> <p>TCEQ clarified the SOB to include additional emission units and the following statement: "Please note that Unit IDs, F410E and F410F, previously used to identify the atmospheric vented vessels being demolished were reused to identify two of the three new closed pressure vessels." TCEQ stated this description states the changes made to the permit since its last revision and now includes all emission sources identified in the Title V</p>

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<p><b>7. Objection to Special Condition for Failing To Identify Specific Compliance Option.</b></p> <p>The draft Title V permit must reference the specific compliance option selected by the permit holder that will be used to ensure compliance with the emission limitations for the individual emission sources regulated under the specified regulations.</p> <p>OR - The draft Title V permit must reference the specific regulatory Subpart that the individual emission units must comply with as specified under the regulations.</p> <p>Where the cited applicable requirement provides for different/ independent compliance options, the permitting authority generally should require that the part 70 permit contain (or incorporate by reference) the specific option(s) selected by the source. Alternatively, the permit could incorporate by reference the entire applicable requirement provided that (1) such reference is unambiguous in its applicability and requirements, (2) the permit contains obligations to certify/report compliance monitoring data reflecting the chosen control approach, and (3) the permitting authority determines the relevant purposes of title V would be met through such referencing. The alternative approach would not be allowable if changing from one compliance option to another would trigger the need for a prior review by the permitting authority or EPA (e.g. NSR), unless prior approval is incorporated into the part 70 permit (i.e., advance NSR). <i>White Paper 2 for Improved Implementation of The Part 70 Operating Permits Program</i>, Lydia Wegman, U.S. EPA OAQPS, March 5, 1996.</p>	<p>permit.</p> <p><b>1) TOTAL (O1267) Example:</b> TCEQ incorporated the following permit provision and accepted revised permit application representations which committed the applicant to submit compliance options within 90 to 120 days of permit issuance:</p> <p>“A citation listed on the Applicable Requirements Summary attachment, which has a notation [G] listed before it, shall include the referenced section and subsection for all commission rules, or paragraphs for all federal and state regulations and all subordinate paragraphs, subparagraphs and clauses, subclauses, and items contained within the referenced citation as applicable requirements”</p> <p><b>2) Garland P&amp;L (O17) Example:</b> Garland included information in Section E of the revised permit application (Table E-2) that provides sufficient information on the compliance options used under 40 CFR 60 Subpart GG. For example, the Applicable Requirements Summary Table in the permit drilled down to provide the specific type of monitoring, recordkeeping and reporting at 40 CFR 60.334(b), (c), or (j) as appropriate.</p> <p><b>3) Occidental (O1240) Example:</b> TCEQ incorporated the applicable standards, monitoring and testing, recordkeeping, and reporting requirements, including test method options selected for emissions units subject to 40 CFR Part 63 in Subpart EEE into the Title V permit Applicable Requirements Summary tables. As an example, the permit drilled down to levels of citation such as 63.1206(b)(5)(i)(B). The information was provided by the company.</p>
<p><b>8. Objection to the Permit Shield.</b></p> <p>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</p>	<p><b>1) TOTAL (O1267), Lockheed Martin (O1294), and Garland P&amp;L (O17) Example:</b></p> <ul style="list-style-type: none"> <li>• Remove permit shield provisions in the Title V permit, or;</li> <li>• The permit should provide more specificity for each individual emission unit. For example, when there is a construction date for which a permit shield applies, the permit</li> </ul>

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<p>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 30 and the "Permit Shield" attachment must be deleted from the Title V permit.</p>	<p>should list the facility's construction start up date. When a shield applies for tanks of a specific size, the permit should list the tank sizes of the units in question. Providing this information assures that TCEQ has analyzed the individual unit's applicability and that there is a record which provides information to an inspector why regulatory requirements do not apply.</p>
<p><b>9. Objection for Failure to Submit a Complete Application.</b></p> <p>The permit application must be revised to include all the information required by 40 CFR § 70.5(c). The permit package at public notice must include a copy of all the permit actions that incorporated by reference into the Title V permit.</p>	<p>40 CFR 70.5(c) lists all the emissions related information that shall be included in an application for a title V permit.</p> <p><b>1) Garland P&amp;L (O17) Example:</b> The resolution package submitted by the company appears to contain all the required elements of a complete Title V application. The original objection indicated that the emission rate in tons per year (TPY), identification and description of air pollution control equipment and compliance monitoring devices, and calculations for the basis of emissions were not included with the permit application available for public review. The crosswalk table included in the resolution package contains the emission rates in TPY. The compliance monitoring device used by Unit 4 is indicated in Section E. The resolution package does not show any calculations in the form of a mathematical formula, but enough information is given in the textual descriptions in Sections B through F to perform the calculations. The resolution package also included the mathematical formula used to calculate the emissions as stated in 40 CFR 70.8 (c)(3)(viii).</p> <p>Note: All underlying minor NSR permits being incorporated by reference into the Title V should be public noticed with the Title V permit.</p>
<p><b>10. Objection to Monitoring Requirements.</b></p> <p>The Title V permit must be revised to identify each storage tank covered by the Title V permit and to list the applicable monitoring and testing, recordkeeping and reporting requirements for each such tank.</p>	<p>This particular objection must be addressed on a case by case basis for each individual permit action.</p> <p><b>1) ExxonMobil (O2715) Example:</b> TCEQ revised permit conditions to identify the specific NSR permit conditions that apply to each storage tank.</p>
<p><b>11. Failure to Identify Emission Units With an Applicable Requirement</b></p> <p>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.</p>	<p>This particular objection must be addressed on a case by case basis for each individual permit action.</p> <p><b>1) Flint Hills (O1272) Example:</b> TCEQ revised permit conditions to identify specific monitoring, recordkeeping, and reporting for individual emission units subject to MACT requirements.</p>
<p><b>12. Failure to Include all Applicable Requirements</b></p>	<p><b>1)</b> Revise the permit to identify all emission sources authorized by PBRs, and</p>

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<p>TCEQ must revise the draft Title V permit 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 the relevant and appropriate Permit by Rules (PBR) associated with each emission unit.</p>	<p>incorporate the specific monitoring, recordkeeping, and reporting requirements applicable to each of the emission units regulated by the PBRs.</p>
<p><b>13. Objection to General Recordkeeping Provision.</b></p> <p>TCEQ must revise the Title V permit to include a condition stating 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.</p>	<p><b>Southwestern Harrington (O15), and Flint Hills (O1445) Example:</b></p> <ul style="list-style-type: none"> <li>TCEQ proposed including a five-year record retention requirement of 30 TAC §§ 122.144(l) into the Title V permit superseding any less stringent data retention schedule as follows:</li> </ul> <p>“In accordance with 30 TAC §§ 122.144(l), records of required monitoring data and support information required by this permit, or any applicable requirement codified in this permit are required to be maintained for a period of five years from the date of the monitoring report, sample, or application unless a longer data retention period is specified in an applicable requirement. The five-year record retention period supersedes any less stringent retention requirement that may be specified in a condition of a permit identified in the NSR Authorization attachment.”</p>
<p><b>14. Objection to Recordkeeping Provision of Permit Condition 30.E.(ii).</b></p> <p>TCEQ must revise the draft Title V permit to include sufficient recordkeeping provisions – specifically, documentation of inspections, as necessary to comply with the requirements of 40 CFR § 70.6(a)(3)(ii)(A), including, but not limited to, the requirement to document all fugitive emissions, the date they were discovered, and the date they were repaired.</p>	<p><b>1) TOTAL (O1267)/ Example:</b></p> <ul style="list-style-type: none"> <li>TCEQ incorporated the following language into the Title V permit:</li> </ul> <p>“Documentation of inspections must include all items specified in 40 CFR 70.6(a)(3)(ii)(A).”</p> <p><b>2) Valero (O1253) Example:</b></p> <ul style="list-style-type: none"> <li>TCEQ incorporated the following language into the Title V permit:</li> </ul> <p>“The permit holder shall comply with the requirements of 40 CFR 70.6(a)(3)(ii)(A) and 30 TAC 122.144(l)(A)-(F) for documentation of all required inspections.”</p>
<p><b>15. Objection to Special Condition for Failing to Meet Compliance Certification Requirements.</b></p> <p>TCEQ must amend the Special Condition to include all the requirements for</p>	<p><b>1) Lockheed Martin (O1294) and ExxonMobil (O2715) Example:</b></p> <p>Permit language added to address objection:</p> <p>“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,</p>

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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.	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.”