



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

DEC 30 2009

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. 2000
ExxonMobil Oil Corporation, Beaumont Refinery
Jefferson County, Texas

Dear Mr. Hyde:

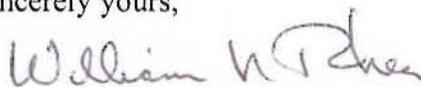
We received the proposed minor revision for the Federal Operating Permit (FOP) for the ExxonMobil Oil Corporation, Beaumont Refinery in our office on November 17, 2009. EPA's 45-day review period will end on January 1, 2010. The FOP incorporates Prevention of Significant Deterioration (PSD) Permit Nos. PSD-TX-799, PSD-TX-802, PDS-TX-932, PSD-TX-992M1, and PSD-TX-768M1, Flexible Permit No. 49138, as well as Qualified Facility authorizations to PSD-TX-802 and PSD-TX-768M1.

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 the requirements of 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 (e.g., Pollution Control Project 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 FOP is consistent with 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,



Carl E. Edlund, P.E.



Director

Multimedia Planning and Permitting Division

Enclosure

cc: Manager, Environmental Affairs
ExxonMobil Oil Corporation

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

Enclosure

- 1. Objection to the incorporation of Flexible Permit into the Title V permit.** The *New Source Review (NSR) Authorization References* table in the draft Title V permit incorporates by reference Flexible Permit No. 49138, most recently amended on November 24, 2009 (seven days after the Title V permit was received by EPA for comment). 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 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 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).
- 2. 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 renewal action. The SOB claims there are no other FOPs at the refinery, leaving one to conclude that the proposed action actually merges other Title V permits at the refinery (i.e., FOP Nos. O1356, O1870, O1871, O1999, and O2037) into this draft Title V permit (FOP No. O2000). The SOB fails to discuss this important change in the nature and scope of the Title V permit, as it constitutes more than a renewal of FOP No. O2000. In addition, the draft Title V permit incorporates Flexible Permit No. 49138, which was amended after the draft Title V permit went to public comment to include most if not all of the refinery's PSD permits, NSR permits, standard permits (including pollution control projects), and PBR authorizations. As stated in Objection 1 above, flexible permits are issued under a non-SIP approved permitting program, and the terms and conditions of such permits should be designated as state-only requirements. 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 covered by the Title V permit, the changes being made to FOP No. O2000 since its last

revision or amendment, and the rationale for all monitoring associated with all applicable requirements in the PSD permits, minor NSR permits, standard permits, and PBR authorizations. The SOB should also 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.

3. **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-799, issued May 20, 1991, PSD-TX-802 issued October 25, 1991, PSD-TX-932 revised August 29, 2002, PSD-TX-992M1 issued January 31, 2008, and PSD-TX-768M1 amended May 21, 1999 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 of what requirements may be referenced and the necessary level of detail are guided by Sections 504(a) and (c) of the Act 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).¹ 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 permits PSD-TX-799, PSD-TX-802, PDS-TX-932, PSD-TX-992M1, and PSD-TX-768M1 and fails to

¹ 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.

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 (as conditions of the Title V permit) all the emission limitations and standards of PSD-TX-799, PSD-TX-802, PSD-TX-932, PSD-TX-992M1, and PSD-TX-768M1 necessary to ensure compliance with all applicable requirements. Alternatively, the Title V permit could include a specific condition for each emissions unit to reference the exact provisions of PSD-TX-799, PSD-TX-802, PSD-TX-932, PSD-TX-992M1, and PSD-TX-768M1 that contain the emission limitations and standards reflecting the applicable requirements for that unit and then physically attach a copy of PSD-TX-799, PSD-TX-802, PSD-TX-932, PSD-TX-992M1, and PSD-TX-768M1 to the Title V permit. Thus, the Title V permit would contain all the emission limitations (including 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.

4. **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 9(N) of NSR Permit No. 4802 (amended December 29, 2008) only requires records be kept for three years. Also Special Condition 6(C) of Permit No. 19282 (altered January 30, 2008) only requires records to be kept for 2 years. These conditions are 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. 4802 and 19282 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 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.
5. **Objection to Special Permit Condition 3.** Under the *Special Terms and Conditions* provisions of the draft Title V permit, Condition 3 requires stationary vents with certain flow rates comply with identified provisions of 30 TAC Chapter 111 of the Texas SIP. However, there is no identification of the specific stationary vents that are subject to those requirements. As such, this condition fails to meet the requirement of 40 CFR § 70.6(a)(1), in that the condition lacks the specificity to ensure the compliance with the applicable requirements associated with those unidentified emission units. In addition, the Statement of Basis document for the draft Title V permit does not provide the legal and factual basis for Condition 3, as required by 40 CFR § 70.7(a)(5). Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit since Condition 3 is not in compliance with the requirements of 40 CFR § 70.6(a)(1) and 70.7(a)(5). In response to this objection, TCEQ must revise Condition 3 of the draft Title V permit to list the specific stationary vents that are subject to the specified requirements of 30 TAC Chapter 111 and provide an explanation in the Statement of Basis for the legal and factual basis for Condition 3.

- 6. Objection to Special Condition 1.G. for Failing Identify Specific Compliance Option.** The draft Title V permit incorporates by reference 40 CFR Part 63, Subpart GGGGG – National Emission Standards for Hazardous Air Pollutants: Site Remediation. This subpart provides multiple options for emission limitations for process vents covered by 40 CFR § 63.7890. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because Special Condition 1G. fails to identify the specific compliance option selected by the permit holder that will be used to demonstrate compliance with the emission limitations for process vents subject to 40 CFR § 63.7890. The failure to identify the selected compliance option fails to meet the requirements of 40 CFR 70.6(a)(1). In response to this objection, 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 governing process vents regulated under 40 CFR Part 63, Subpart GGGGG.
- 7. 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.
- 8. 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.
- 9. Objection to the Compliance Schedule.** On December 13, 2005, a Consent Decree was lodged in federal court resolving alleged violations of the federal Clean Air Act at several ExxonMobil plants, including the Beaumont Refinery. *United States v. Exxon Mobil*

Corporation and ExxonMobil Oil Corporation (N.D. IL). The Consent Decree requires ExxonMobil 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 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 draft Title V permit does not include a compliance schedule. 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.

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 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 18 – 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. The incorporated Flexible Permit No. 49138 amended on November 24, 2009, consolidated six standard permits into the flexible permit in the amendment. All six of these standard permits were Pollution Control Project (PCP) permits. TCEQ's creation of a PCP Standard Permit that can be used by sources may not fit within the scope or intent of our original approval of the TCEQ's standard permit program (See 68 *Fed. Reg.* 64548, November 14, 2003). Specifically, ExxonMobil should provide an analysis of major PSD, Non-attainment New Source Review (NNSR) applicability, or a minor New Source Review (NSR) case-by-case review for the activities covered by the PCP permits. Furthermore, a Title V permit should 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.

4. The timing of the Flexible Permit amendment is questionable since it was issued 7 days after EPA's receipt of the draft permit. Therefore it does not seem possible that the amended flexible permit and the incorporated permits were in the public docket for comment. Was the comment period extended to give the public sufficient time to review the Title V permit with the correct incorporated permits? If the amended flexible permit was not available in the public docket, TCEQ should reopen the comment period to allow for proper public participation.