



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
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DALLAS TX 75202-2733

JAN 20 2011

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. O2151
Chevron Phillips Chemical Company LP, Sweeny Complex
Brazoria County, Texas

Dear Mr. Hyde:

On December 7, 2010, we received the draft renewal of the Title V permit for Chevron Phillips Chemical Company, Sweeny Complex referenced above. As such, EPA's 45-day review period will end on January 20, 2011. We have reviewed this permit renewal. 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 draft 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.

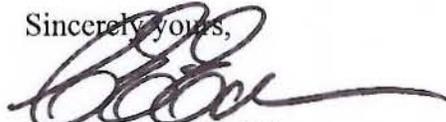
Section 505(c) of the Act and 40 CFR § 70.8(c)(4) provide that if the permitting authority fails, within 90 days of the date of the objection, to submit a permit revised to meet the objections, then EPA will issue or deny the permit in accordance with the requirements of 40 CFR Part 71. Because the objection 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.

One of our objections is the incorporation of a flexible permit into the Title V Permit. As you are aware, we have been objecting to Title V permits that incorporate terms or conditions from the Texas flexible permit program for over 12 months. EPA has worked with TCEQ and numerous companies to develop an acceptable approach for transitioning a flexible permit to a SIP approved Subchapter B permit.

Should EPA make a determination that TCEQ is not adequately administering or enforcing its Title V program, additional action requiring TCEQ to correct the deficiencies and/or the application of sanctions may be necessary, as provided for by Section 502(i) of the federal Clean Air Act and EPA's implementing regulations at 40 CFR Part 70.

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, and to discuss potential options to avoid future Title V objections. 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
Chevron Phillips Chemical 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. 22690, renewed on March 8, 2006. Flexible permits are issued pursuant to 30 TAC Chapter 116, Subchapter G; however, those provisions were disapproved by EPA on June 30, 2010, pursuant to Section 110 of the federal Clean Air Act (CAA), 42 U.S.C. § 7410, *See* 75 Fed. Reg. 41312 (July 15, 2010), and are not 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). To resolve 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. Also, 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 PSDTX751M1 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.*

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 PSDTX751M1 and fails to include emission limitations and standards as necessary to assure compliance with all applicable requirements. See 40 CFR § 70.6(a)(1).

We note that TCEQ's use of incorporation by reference for emissions limitations from minor NSR permits and Permits by Rule was approved by EPA. *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). 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 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.

All applicable requirements (including BACT limits, NSPS limits, MACT limits, SIP-required control limits, appropriate application representations, and the applicable monitoring, recordkeeping, and reporting (MRR) requirements) must be included in the Applicable Requirements Summary Table.

However, ensuring the references are clear and unambiguous to the applicable emission units in the draft renewal permit has not been accomplished. The Appendix B to the Title V permit on pages 172-221 provides information on the PSD/NSR authorizations for the emission units. However, when there are several applicable requirements to such authorizations, without a crosswalk, the review of the permit becomes a tedious maze and not practically enforceable. Not only is it a time consuming process for the public to complete review of the FOP in 30 days, but the ambiguity in obtaining and identifying the applicable requirements to the emission unit does not meet the approved program requirements of 40 CFR Part 70. There are options to address this issue. For example, a narrative-type permit organized by emission points that provides the emission limitations for each emission point with their assigned monitoring, recordkeeping, and reporting would be adequate. Or, provide a crosswalk table for each emission point identified in the Title V permit NSR/PSD authorization table linked to the specific conditions and emission limits with monitoring, recordkeeping, and reporting requirements is required. In the Title V permit issued by TCEQ for Southwestern Public Service Company, Harrington Station Power Plant (Permit No. O15), the permit featured a crosswalk table that EPA found to be adequate. A similar table incorporated into this Title V permit would resolve the objection.

- 3. Objection for Failure to Include all Applicable Requirements.** The draft Title V permit does not meet the requirements of 40 CFR § 70.6(a)(1), since it fails to include "emission limitations and standards, including those operational requirements and limitations that assure

compliance with all applicable requirements at the time of permit issuance.” Permits by Rule (PBRs) are included in the definition of “applicable requirement,” found at 30 TAC § 122.10(2) of the federally-approved Texas Title V program. The draft Title V permit lists the following PBRs as applicable requirements: 106.261, 106.262, 106.355, 106.478, and 106.512. However, as described below, the draft Title V permit fails to clearly identify all applicable requirements for emission units covered by the permit.

The *New Source Review Authorization References* table lists PBR 106.261, 106.262, and 106.355, but the *New Source Review Authorization References by Emissions Unit* table does not list any emission unit subject to those PBRs.

In addition, emission unit 22-7-1 is not listed in the *Unit Summary* table, *Applicable Requirements Summary* table, or *New Source Review Authorization References by Emissions Unit*. This emission unit is referred to in PSDTX751M1 and Flexible Permit 22690.

Pursuant to 40 CFR § 70.8(c)(1), 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). To resolve this objection, 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 PBRs associated with each emission unit.