



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

NOV 13 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 Part 70 Operating Permit, The Dow Chemical Company, Chemicals and Metals (2) - Industrial Organic Chemicals, TCEQ Permit No. O2202, Brazoria County, Texas

Dear Mr. Hyde:

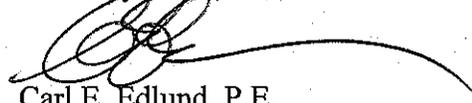
We received the proposed renewal of the Federal Operating Permit (FOP) for The Dow Chemical Company in our office on September 28, 2009. The EPA's 45-day review period will end on November 13, 2009. The proposed permit incorporates New Source Review (NSR) permits into the FOP.

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 that other concerns related to the adequacy of permitting associated with incorporation by reference of Permits by Rule not meeting State Implementation Plan (SIP) requirements have been raised in the *Citizen Petition for Action Pursuant to the Clean Air Act Regarding Inadequacies of the Texas State Implementation Plan and Federal Operating Permit Program and Failure to Enforce the Plan and State Permitting Programs*, dated August 28, 2008; and the *First Supplement to Citizen Petition for Action Pursuant to the Clean Air Act Regarding Inadequacies of the Texas State Implementation Plan and Federal Operating Permit Program and Failure to Enforce the Plan and State Permitting Programs*, dated January 5, 2009. Should the Title V permit be issued without resolving these concerns, 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,



Carl E. Edlund, P.E.

Director

Multimedia Planning and Permitting Division

Enclosure

cc: Manager, Environmental Affairs  
The Dow Chemical Company

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

## Enclosure

1. **Objection to Special Permit Condition 3.** Page 4 - 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 § 70.8(c)(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.

### Additional Concerns:

1. Page 1 - 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. The EPA is concerned that the NSR permits that are incorporated by reference may only require records be kept for two years. If any of these permits contain this condition, it would be 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. Please confirm in the record that there are no conflicting recordkeeping requirements expressed in the NSR permits that are incorporated.
2. Page 10, Permit Condition 7 – In accordance with 40 CFR Section 70.6(a)(1)(i), permit conditions must define and provide regulatory citations referencing proper authority allowing TCEQ to grant special exemptions.
3. Page 24, 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. Please see page 5, Section IV.A.2. of the EPA Administrator's decision regarding requirements per the Premcor Title V Petition responses issued on May 28, 2009.