



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

DEC 11 2009

Mr. Richard A Hyde, P.E., Deputy Director
Office of Permitting and Registration
Texas Commission on Environmental Quality (MC 105)
P.O. Box 13087
Austin, TX 78711-3087

Re: Objection to Federal Operating Permit No. O2208
Dow Chemical Company, Epoxy Products 2
Brazoria County, Texas

Dear Mr. Hyde:

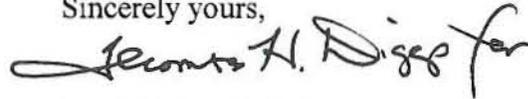
We received the proposed renewal for the Federal Operating Permit (FOP) for the Dow Chemical Company Epoxy Products 2 in our office on October 27, 2009. The EPA's 45-day review period will end on December 11, 2009. The proposed FOP incorporates Flexible Permit No. 20432.

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) 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 a 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,

A handwritten signature in black ink, appearing to read "Carl E. Edlund". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Carl E. Edlund, P.E.

Director

Multimedia Planning and Permitting Division

Enclosure

cc: Manager, Environmental Affairs
Dow 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 20432 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. 20432, most recently revised on October 13, 2009. 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 permits 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). In order to respond to this objection, additional information must be provided by the applicant showing how the emissions authorized by the flexible permits 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 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 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.

Additional Comments

1. Table *New Source Review Authorization References* – The draft Title V permit incorporates by reference two minor NSR permits, nos. 16774 and 2471. Both of these permits have been void since their incorporation into Flexible Permit No. 20432 upon the approval of amendments on January 9, 1998. 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 *In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02 at 5, issued on 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.