



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

DEC 04 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
Rhodia, Inc., Houston Plant (TCEQ Permit No. O3049)
Calhoun County, Texas

Dear Mr. Hyde:

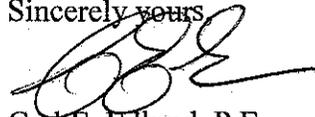
We received the proposed initial issuance for the Federal Operating Permit (FOP) for the Rhodia, Inc., Houston Plant in our office on October 19, 2009. The EPA's 45-day review period will end on December 4, 2009. The FOP incorporates Prevention of Significant Deterioration (PSD) Permit No. PSD-TX-1081 and Pollution Control Project (PCP) permit No. 81025. The FOP also incorporates two minor NSR permits that are affected by consent decree 2:07CV134WL.

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) and Standard 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, 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 all the 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
Rhodia

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

Enclosure

- 1. 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-1081, issued on August 1, 2007, 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.* 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 permit PSD-TX-1081 and fails to include emission limitations and standards as necessary to assure compliance with all applicability 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-1081 necessary to ensure compliance with all applicable requirements. Alternatively, TCEQ could add conditions to the Title V permit that specify those provisions of PSD-TX-1081 necessary to ensure such compliance with all applicable requirements and physically attach a copy of PSD-TX-1081 to the Title V permit.

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.

2. **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 that states that records of monitoring data and supporting information must be maintained for a minimum of five years from the date of monitoring, not withstanding the requirements of any other permit conditions or applicable requirements.

3. **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.

4. **Objection to the Adequacy of the Compliance Schedule in the Title V permit.** On April 26, 2007, a Consent Decree was lodged in federal court resolving alleged violations of the federal Clean Air Act at several of its plants, including the Houston Plant. See *United States v. Rhodia, Inc.*, Civ. 2:07CV134WL (N.D. Indiana). The Consent Decree requires Rhodia 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 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 Compliance Schedule in the draft

Title V permit is deficient because it fails to reference any of the requirements of the Consent Decree for actions and dates that extend into the future. 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 (*See* Item 3 in Additional Concerns, *infra*).

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 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.
2. Permit Condition 15 – 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. NSR Permit No. 19282, as altered on January 30, 2008 does not appear to contain all the emission limits and standards that the Consent Decree (CD) referenced in Objection 4 above required to be incorporated into operating permits, including Title V permits. The requirements of Paragraph 17(c) of the CD are not clearly stated in the NSR permit. The initial determination of compliance in Section 5(A) and (B) of Permit No. 19282 is not consistent with Paragraph 14(b) and (c) of the CD. Also the reporting requirements of Section 5(F) of Permit No.19282 states that reports will be forwarded to the TCEQ within 60 days, but the Paragraph 14(d) of the CD states the timeframe should not exceed 45 days. These inconsistencies should be addressed and resolved prior to issuance of the Title V permit.