



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 06 2010

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. O2164
Chevron Phillips Chemical Company, Philtex Plant
Hutchinson County, Texas

Dear Mr. Hyde:

On June 22, 2010, we received the proposed minor revision of the Title V permit for the Chevron Phillips Chemical Company Philtex Plant referenced above. As such, EPA's 45-day review period will end on August 6, 2010. We have reviewed this permit and the minor revision incorporates an amendment to Flexible Permit No. 21918 into the draft Title V permit. One reason for our objection is its incorporation of a flexible permit. The EPA is willing to discuss potential options with TCEQ and Chevron Phillips Chemical Company about ways to deflex their NSR permit. As you are aware, we have been objecting to Title V permits that incorporate terms or conditions from your flexible permit program for over 9 months. Should EPA make a determination that TCEQ is not adequately administering or enforcing their 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 stand ready to discuss potential options with TCEQ about ways to avoid future Title V objections.

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 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 (e.g. Pollution Control Projects) 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, 2008, 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 Permit is consistent with the all applicable requirements, including the federally-approved Texas SIP and the Texas Title V air permitting 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
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. 21918, issued on October 17, 1997. 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). 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. 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 Special Condition 19 for Failing to Meet Compliance Certification Requirements.** Special Condition 19 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) and incorporated at 30 TAC § 122.146. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because Special Condition 19 of the draft Title V permit conflicts with the general terms and conditions reference to 30 TAC § 122.146. In response to this objection, TCEQ must amend Special Condition 19 to include all the requirements for compliance certifications, as set forth in 30 TAC § 122.146 including the identification of the methods or other means for determining the compliance status with each term and condition of the permit.

EPA requests that TCEQ revise Special Condition 19 to use the following language to resolve our objection on this special condition:

“The permit holder shall certify compliance in accordance with 30 TAC § 122.146. The permit holder shall comply with 30 TAC § 122.146 using at a minimum, but not limited to, the continuous or intermittent compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other credible evidence or information. The certification period may not exceed 12 months and the certification must be submitted within 30 days after the end of the period being certified.”

3. **Objection to Special 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 (or otherwise specifically identify) 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 Special Condition 5.** Special Condition 5 of the draft Title V permit states “For the bulk gasoline terminals specified in 40 CFR Part 60, Subpart XX, the permit holder shall comply with the following requirements:”. Special Condition 5.A. and 5.D. then list the Subpart XX citations related to the standard for VOC emissions from bulk gasoline terminals, recordkeeping, and reporting requirements. However, Special Condition 5 does not list the associated emission unit(s) to which it applies. Furthermore, the applicable requirements of Subpart XX are not listed in the *Applicable Requirements Summary* table for the emission units to which they apply. The only other mention in the draft Title V permit is within the permit shield. Failure to include the requirements of 40 CFR Part 60, Subpart XX in any unit-specific tables makes the compliance obligations of the facility unclear. This method of incorporation by reference without regard to the individual emission units that are subject to the regulation renders this aspect of the Title V permit unenforceable as a practical matter and incapable of meeting the Title V permit application and content requirements necessary to ensure compliance with all applicable requirements. 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) & (3). In response to this objection, the Title V permit must be revised to identify each emission unit covered by the draft Title V permit and identify the specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting requirements for each such unit, including those emission units covered by Special Condition 5 referenced above.

5. **Objection to Special Condition 7.** Special Condition 7 of the draft Title V permit states “For facilities where total annual benzene quantity from waste is less than 1 megagram per year and subject to emission standards in 40 CFR Part 61, Subpart FF, the permit holder shall comply with the following requirements:”. Special Condition 7.A. through 7.D. then

list the Subpart FF citations related to test methods, procedures, and compliance provisions, recordkeeping, and reporting requirements. Special Condition 7 does not list the associated emission unit(s) to which it applies. Furthermore, the applicable requirements of Subpart FF are not listed in the *Applicable Requirements Summary* table for the emission units to which they apply. Failure to include the requirements of 40 CFR Part 61, Subpart FF in any unit-specific tables makes the compliance obligations of the facility unclear. This method of incorporation by reference without regard to the individual emission units that are subject to the regulation renders this aspect of the Title V permit unenforceable as a practical matter and incapable of meeting the Title V permit application and content requirements necessary to ensure compliance with all applicable requirements. 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) & (3). In response to this objection, the draft Title V permit must be revised to identify each emission unit covered by the Title V permit and identify the specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting requirements for each such unit, including those emission units covered by Special Condition 7 referenced above.

6. **Objection to Failure to Identify Specific Compliance Option.** The *Applicable Requirements Summary* table repeatedly fails to list the sections of 40 CFR Part 63, Subpart FFFF that are applicable requirements for the emission units that must comply with Subpart FFFF. Failure to include the requirements of 40 CFR Part 63, Subpart FFFF in any unit-specific tables makes the compliance obligations of the facility unclear. This method of incorporation by reference without regard to the individual emission units that are subject to the regulation renders the Permit unenforceable as a practical matter and incapable of meeting the Title V permit application and content requirements necessary to ensure compliance with all applicable requirements. Given the complexity of the NESHAP and the permitted facility, it is impossible to determine how the regulation applies to the facility by referring to only the NESHAP subpart that is currently provided in the draft Title V permit. This ambiguity and the applicability questions it creates render this aspect of the permit unenforceable as a practical matter. In addition, the lack of detail detracts from the usefulness of the permit as a compliance tool for the facility. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit since it does not comport with the requirements of 40 CFR § 70.6(a)(1) & (3). In response to this objection, the draft Title V permit must be revised to identify each emission unit covered by the Title V permit and identify the specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting requirements for each such unit, including those emission units subject to 40 CFR Part 63, Subpart FFFF as referenced above.
7. **Objection to Failure to Include all Applicable Requirements.** The draft Title V permit fails to meet the requirements of 40 CFR 70.6(a)(1) which requires Title V permits include “emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit

issuance.” TCEQ defines “applicable requirement” at 30 TAC § 122.10(2). The definition includes, in part, the federal MACT, NSPS, and NESHAP regulations, and TCEQ permits issued under 30 TAC Chapter 116, any term or condition of any preconstruction permit, and 30 TAC Chapter 106, Subchapter A. The emission limitations and standards for minor NSR permits and any PBRs that require preconstruction authorization must be listed on the face of the Title V permit. In addition, emission units covered by a PBR shall list on the face of the Title V permit the emission limitations and standards that apply under a MACT, NSPS, or NESHAP. The draft Title V permit for Chevron Phillips Chemical Company does not contain enough information to clearly identify if all applicable requirements have been included in the Title V permit. The *New Source Review Authorization References* table lists the following PBR authorizations as applicable requirements: 106.261, 106.262, 106.263, 106.371, 106.418, 106.433, 106.452, 106.454, 106.472, 160.473, 106.478, 106.511, and 106.512. Only emission units TH-06 and TH-20, with an authorization for PBR 106.478, are shown to have applicable requirements listed in the *Applicable Requirements Summary* Table. Emission units SCC5 shows to be authorized by PBR 106.472 and Telinter authorized by 106.262. Both of these emission units are listed in the permit shield and have no applicable requirements listed in the *Applicable Requirements Summary* Table. The draft Title V permit does not list any emission units to be authorized under PBR 106.261, 106.263, 106.373, 106.418, 106.433, 106.452, 106.454, and 106.512. The Title V permit fails to identify the specific units that these PBRs apply. PBR 106.263, 106.373, 106.418, and 106.512 require registration. The TCEQ New Source Review database does not show a registration for these PBRs for RN102320850. The database shows multiple PBR registrations for PBRs 106.433, 106.452, and 106.454 when only one is listed for each PBR in the draft Title V permit. These PBRs require registration with TCEQ, some prior to construction, which makes them applicable requirements under TCEQ’s own definition. 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) & (3). In response to this objection, the Title V permit must be revised 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 those emission units subject to the PBRs referenced above.

Additional Concerns:

1. *New Source Review Authorization References* table - 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 14 – 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 permit 83292 is a Pollution Control Project (PCP) standard permit. TCEQ's creation of a PCP Standard Permit that can be used by sources was not included in our original approval of the TCEQ's standard permit program (See 68 Fed. Reg. 64548, November 14, 2003). Specifically, Chevron Phillips should provide an analysis of major PSD, Nonattainment New Source Review (NNSR) applicability, and/or minor New Source Review (NSR) case-by-case review for the activities covered by the PCP permit.