



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

AUG 20 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. O2269
ExxonMobil Corporation, Baytown Chemical Plant
Harris County, Texas

Dear Mr. Hyde:

On July 7, 2010, we received the proposed renewal of the Title V permit for the ExxonMobil Baytown Chemical Plant referenced above. As such, EPA's 45-day review period will end on August 20, 2010. 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 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.

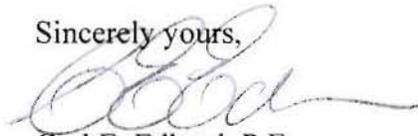
One of our objections is the incorporation of a flexible permit into the Title V Permit. As you are aware, we have been objecting to Title V permits that incorporate terms or conditions from the Texas flexible permit program for over 9 months. EPA is willing to discuss potential options with TCEQ and ExxonMobil Corporation about ways to deflex the NSR permit.

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 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
ExxonMobil Corporation

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. 20211, renewed on December 21, 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 PSDTX996 issued on June 1, 2001, by reference. EPA also notes that a more recent version of the PDS Permit PSDTX996M1 was issued on June 10, 2005 and that this version should be the one referenced. 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 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.

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 PSDTX996M1 and fails to include emission limitations and standards as necessary to assure compliance with all applicable requirements. *See* 40 CFR § 70.6(a) (1). To resolve this objection, TCEQ must restate the emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements, from PSDTX996M1 into the body of the draft Title V permit.

3. **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. To resolve 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.”

4. **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). To resolve 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.

5. **Objection to Special Condition 25.** Special Condition 25 of the draft Title V permit applies to “containers using controls specified in 40 CFR Part 63, Subpart PP,”. Special Condition 25 lists the Subpart PP standards for containers, level 1 and level 2 controls, test methods and procedures, and inspection and monitoring requirements. Special Condition 25 does not list the emission unit(s) to which it applies. Further, the applicable requirements of Subpart PP 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 63, Subpart PP in any unit-specific tables makes the compliance obligations of the facility unclear. Finally, his 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). To resolve this objection, TCEQ must revise the Title V permit 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 25.

6. **Objection to Failure to Identify Specific Compliance Option.** The *Applicable Requirements Summary* table fails to list the sections of three subparts of the federal regulations that apply to compliance options for certain emission units. Specifically, the table fails to list the sections of:
 - a. 40 CFR Part 63, Subpart EEEE that are applicable requirements for emission unit BPBD311;

 - b. 40 CFR Part 63, Subpart FFFF that are applicable requirements for the emission units that must comply with Subpart FFFF; and

c. 40 CFR Part 63, Subpart GGGGG that are applicable requirements for emission units BTCPFUG and D3000.

Failure to include these requirements in any unit-specific tables makes the compliance obligations of the facility unclear. The lack of specific monitoring and testing requirements creates ambiguity, raises applicability concerns, and renders 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) and (3). To resolve this objection, TCEQ must revise the draft Title V permit 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 the requirements referenced above.

7. **Objection to Failure to Identify Applicable Requirements.** The *Applicable Requirements Summary* table fails to list the sections of 40 CFR Part 60, Subpart NNN and Part 61, Subpart FF that are applicable requirements for emission units FS09-VENT, FS23-VENT, and FS24-VENT. Additionally, the *Applicable Requirements Summary* table fails to list the sections of 40 CFR Part 61, Subpart FF that are applicable requirements for emission unit FS12-VENT. The *Applicable Requirements Summary* table lists only a high level general citation for these subparts and then notes “** See CAM Summary” in the “Monitoring and Testing Requirements” column. The CAM Summary fails to give sufficient level of detail to determine acceptable monitoring for the referenced subparts. The CAM summary also repeatedly gives reference to “manufacturer’s recommendations”, “manufacturer’s specifications”, and “other written procedures”. The lack of specific monitoring and testing requirements creates ambiguity, raises applicability concerns, and renders 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). To resolve this objection, TCEQ must revise the draft Title V permit to identify the specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting requirements for each such unit, including the emission units subject to 40 CFR Part 60, Subpart NNN and 40 CFR Part 61, Subpart FF as referenced above. TCEQ must also indicate clearly what the manufacturer’s recommendations or specifications are if they are to dictate monitoring requirements.
8. **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) 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.” TCEQ’s definition of “applicable requirement” (found at 30 TAC § 122.10(2)) includes an extensive list of federal and state provisions. Minor NSR permits and Permits by Rule (PBRs) are included in TCEQ’s definition of applicable requirement. Therefore, 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 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: 106.124, 106.183, 106.261, 106.262, 106.263, 106.264, 106.371, 106.373, 106.472, 106.473, 106.478, 106.511, 106.512, 106.532, 106.533, and numerous old standard exemptions. Only emission unit D3000, with an authorization for PBR 106.533, is shown to have 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 106.124, 106.183, 106.261, 106.262, 106.263, 106.264, 106.371, 106.373, 106.472, 106.473, 106.478, 106.511, 106.512, or 106.532. The Title V permit fails to identify the specific units that these PBRs apply.

PBRs 106.261, 106.262, 106.263, 106.373, 106.478, 106.512, and 106.533 require registration. The database shows over 50 PBR registrations each for PBRs 106.261 and 106.262 when only three are listed for each of these PBRs in the draft Title V permit. The database also shows multiple PBR registrations for PBRs 106.478 and 106.533 when only two are listed for PBR 106.478 and one for PBR 106.533 in the draft Title V permit. 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). 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 those emission units subject to the PBRs referenced above.