



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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

OCT 30 2009

Office of the Chief Clerk (MC 105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

RE: Objection to Federal Part 70 Operating Permit – Formosa Plastics Corporation, Texas
(TCEQ Permit Number O-1957), Calhoun County, Texas

Office of the Chief Clerk:

We received the proposed revision for the Federal Operating Permit (FOP) for the Formosa Plastics Corporation, Texas in our office on September 14, 2009. The U.S. Environmental Protection Agency's (EPA) 45-day review period will end on October 30, 2009. The revision incorporates Prevention of Significant Deterioration (PSD) Permit Number PSD-TX-760M8 into the FOP.

In accordance with 40 Code of Federal Regulations (CFR) 70.8(c)(3)(ii), EPA is objecting to the proposed permit action. Section 505(b)(1) of the Act and 40 CFR 70.8(c) require EPA to object to the issuance of a proposed permit amendment in writing 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 the applicable requirements under the Act or 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 on the permit are enclosed.

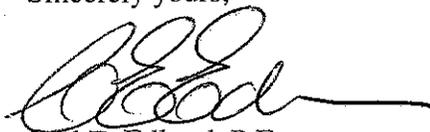
Section 505(c) of the Act and 40 CFR 70.8(c)(4) provide that if the permitting authority fails to revise and resubmit a proposed permit amendment within 90 days to satisfy the objection, the authority to issue or deny the permit amendment defaults to EPA, and EPA will act accordingly. Because the objection 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.

The EPA was unable to confirm whether the underlying permits were made available to the public. Did TCEQ make available the underlying permits and other documents incorporated by reference to the public in accordance with 40 CFR 70.7(h)(2)? Please forward a copy of all the

permits incorporated by reference into the FOP to the EPA. These permits include PSD Permit Number PSD-TX-760M8, and Authorization Numbers 19201, 20203, and 40157. Although we can access the permit by rules (PBR) on-line, we request that TCEQ forward any information associated with the PBRs for which EPA cannot access.

We are committed to working with TCEQ to ensure that the final Permit is consistent with the requirements of the Texas PSD 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 Stanley M. Spruiell at (214) 665-7212. Thank you for your cooperation.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'C. Edlund', with a long horizontal flourish extending to the right.

Carl E. Edlund, P.E.

Director
Multimedia Planning and
Permitting Division

Enclosure

cc: Manager, Environmental Affairs
Formosa Plastics Corporation, Texas

Enclosure

Below are EPA's objections to this permit, which include the specific reasons for each objection and a description of the terms and conditions that the permit must include to respond to the objections on the permit.

- 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-760M8, most recently amended on April 17, 2008, by reference. The 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 Number 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 Clean Air Act (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 new source review (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 incorporation by reference in Texas' program was limited to, and specific to, minor NSR permits and Permits by Rule in Texas. The 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. The 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 Number VI-2007-02 at 5 and *In the Matter of CITGO Refining and Chemicals Co.*, Petition Number 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-760M8 and fails to include emission limitations and standards as

¹ Please note that *In the Matter of Premcor Refining Group, Inc.*, Petition Number VI-2007-02 at 6, fn 3 (May 28, 2009) and *In the Matter of CITGO Refining and Chemicals Co.*, Petition Number 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.

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-760M8 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-760M8 necessary to ensure such compliance with all applicable requirements and physically attach a copy of PSD-TX-760M8 to the Title V permit.

2. **Objection to the Incorporation of Changes under the Qualified Facilities Program into the Title V permit.** The *New Source Review (NSR) Authorization References* table in the draft Title V permit incorporates by reference Permit Number 20203 and PSD-TX-760M8. Available information indicates that on January 31, 2007, Formosa forwarded a Form PI-E to TCEQ (Notification of Changes to Qualified Facilities) concerning the proposed increase in annual polymer production from 595 to 630 million pounds. Based upon TCEQ's review of the information, TCEQ had no objection to the proposed change. This change affects Permit Number 20203 and PSD-TX-760M8² under Texas Qualified Facilities Program. This program authorizes facilities to become "qualified" to net out of NSR State Implementation Plan (SIP) permitting requirements under 30 Texas Administrative Code § 116.118 (pre-change qualification).³ To date EPA has not approved the Texas Qualified Facilities Program revisions into the Texas SIP, pursuant to Section 110 of the federal CAA, 42 U.S.C. § 7410. Therefore, pursuant to 40 CFR § 70.8(c)(1), EPA must object to the issuance of this Title V permit because physical or operational changes made under the Qualified Facility rule 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 response to this objection, TCEQ must revise the draft Title V permit to include a condition that specifically requires the source to prepare and submit to TCEQ a written analysis of any future change/modification to ensure that minor and/or major NSR requirements under the federally-approved Texas SIP have not been triggered. This source must comply with *both* the requirements of the approved SIP *and* with any requirements of the State.

3. **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 30 of Flexible Permit Number 39142 and PSD-TX-760M8 (issued April 17, 2008) only requires records be kept for two years. This condition is 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

² See information on this Qualified Facility at <https://webmail.tceq.state.tx.us/gw/webpub>.

³ See also 30 TAC §§ 116.10; 116.116(e); and § 116.117.

the issuance of the Title V permit since the recordkeeping requirements of PSD-TX-760M8 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.

4. **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 § 70.8(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 Concern

Table New Source Review Authorization References - Some of the permits that are incorporated by reference may actually be old or outdated underlying permits. The 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. The 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.