



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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

JAN 22 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 Federal Operating Permit No. O17
City of Garland Power & Light, Ray Olinger Plant
Collin County, Texas

Dear Mr. Hyde:

We received the proposed renewal for the Federal Operating Permit (FOP) for the City of Garland Power & Light Ray Olinger Plant in our office on December 8, 2009. The EPA's 45-day review period will end on January 22, 2010. The renewal incorporates Prevention of Significant Deterioration (PSD) Permit No. PSD-TX-935, NSR Permit Nos. 40803, 807, and 45600 into the FOP.

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 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 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
City of Garland Power & Light

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-935, issued on March 12, 1999, 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-935 and fails to include emission limitations and standards as necessary to assure compliance with all applicable 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-935 necessary to ensure compliance with all applicable requirements. Alternatively, TCEQ could include a specific condition for each emissions unit to reference the exact provisions of PSD-TX-935 that contain the emission limitations and standards

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.

reflecting the applicable requirements for that unit and then physically attach a copy of PSD-TX-935 to the Title V permit. Thus, the Title V permit would contain all the emission limitations (including the MAERT) and standards of the PSD permits with a special condition for each emissions unit directing the reader to the specific location in the attached PSD permit containing the applicable requirements for that unit.

2. **Objection for Failure to Submit a Complete Application.** The Title V permit renewal application is incomplete. The permit application fails to include emission related information required by 40 CFR § 70.5(c)(3), including the emissions rate in tons per year (tpy), the identification and description of air pollution control equipment and compliance monitoring devices, the calculations for the basis of emissions, and other information required by the applicable requirements. The permit application also fails to include the pollution control requirements specified in 40 CFR § 70.5(c)(4), including the citation and description of all applicable requirements and description or reference to any applicable test method for determining compliance with each applicable requirement. Pursuant to 40 CFR § 70.8(c)(3), EPA objects to the issuance of this permit because the permit application submitted for EPA review was deficient as described above and lacks information necessary for an adequate review of the proposed permit. In response to this objection, the permit application must be revised to include all the information required by 40 CFR § 70.5(c), including the specific information found lacking above.
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 Applicable Requirements Summary for Failing to Identify Specific Compliance Option.** The proposed Title V permit lists 40 CFR Part 60, Subpart GG – Standards of Performance for Stationary Gas Turbines in the applicable requirements summary table for emission unit GE4. This subpart gives options for compliance with NO_x emission limits as well as the required monitoring based upon the compliance option selected. The *Applicable Requirements Summary* table in the proposed permit lists 40 CFR § 60.334(b) and indicates that all subordinate paragraphs and subparagraphs of the citation apply; however, depending on what option is chosen under 40 CFR § 60.334(b), a continuous emission monitoring system may or may not be required. Therefore, it is

unclear how the NO_x emissions will be monitored. The specific compliance option and associated monitoring selected by the City of Garland Power & Light must be stated in the Title V permit with the emission unit for which it applies. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because the *Applicable Requirements Summary* table fails to identify the specific emission limitations and standards, including those operational requirements that assure compliance with 40 CFR Part 60, Subpart GG, as required by 40 CFR § 70.6(a)(1). In response to this objection, the draft Title V permit must reference the specific compliance option and associated monitoring selected by the permit holder that will be used to ensure compliance with the emission limitations governing standards of performance for stationary gas turbines regulated under 40 CFR Part 60, Subpart GG.

5. **Objection to Special Condition 9 for Failing to Meet Compliance Certification Requirements.** Special Condition 9 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). Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because Special Condition 9 of the draft Title V permit does not meet the regulatory requirements. In response to this objection, TCEQ must amend Special Condition 9 to include the all the requirements for compliance certifications, as set forth in 40 CFR § 70.6(c)(5), including the identification of the methods or other means for determining the compliance status with each term and condition of the permit.
6. **Objection to the Permit Shield.** The draft Title V permit includes a “Permit Shield” attachment that covers many “grandfathered” facilities, and TCEQ’s statement of basis (SOB) includes statements that a specific facility was constructed before a certain date. EPA has previously objected to negative applicability determinations based on blanket statements on claiming a “grandfathered” status (*See, e.g.*, letter from Kerrigan G. Clough, Assistant Regional Administrator, EPA, Region 8 to the Colorado Department of Public Health and Environment, Re: EPA Review of Proposed Title V Operating Permit for TriGen-Colorado Energy Corporation, dated September 13, 2000 (“TriGen Objection”). Similar blanket statements such as those contained in the draft Title V permit and the accompanying SOB do not meet the permit shield requirements of 40 CFR § 70.6(f). Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because the permit shield provisions of the draft title V permit are only supported by a conclusory statement that does not meet the requirements of 40 CFR § 70.6(f), as described in the TriGen Objection referenced above. In response to this objection, the operating permit renewal application must include all of the potentially relevant facts supporting the “grandfathered” status of the facility or delete the permit shield requirements in the Title V permit.

Additional Concerns:

1. Permit Condition 7 – 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.
2. 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 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).
3. The *New Source Review Authorization References by Emissions Unit* table in the proposed permit shows Unit BW3 to be authorized by NSR Permit No. 807 and Unit GE4 authorized by NSR Permit No. 40803. However, a review of NSR Permit No. 807 shows that the Babcock and Wilcox boiler is designated as emission point no. S-3. Does S-3 correspond to BW3? Please clarify. Also, a review of NSR Permit No. 40803 shows that the combustion turbine generator is designated as S-5. Does S-5 correspond to GE4? Please clarify. It is important that all emission units incorporated into the Title V permit use the same emission unit designation as in the underlying permit. TCEQ must correct the discrepancy in emission unit designations.
4. In the Title V permit application, the City of Garland Power & Light states that they are no longer going to fire No. 2 fuel oil and have removed the tanks that had contained the fuel oil. However, NSR Permit No. 807 still shows that they are authorized to burn No. 2 fuel oil. It is recommended that the permit be updated to reflect the actual operation of the facility and to adjust the emission rates in the MAERT, as needed.

Also, NSR Permit No. 40803 was renewed on October 5, 2009, yet certain permit conditions do not appear to have been updated, as provided for by Special Condition 21 of the permit. Special Condition 21 states, "The holder of this permit shall forward to the staff of the TNRCC more detailed engineering data on the CTG and as it becomes available". It appears this information has been forwarded. Please update permit conditions to reflect.

5. The renewal incorporates Senate Bill 7 (SB 7) permit no. 45600 that was issued October 11, 2002. SB 7 permits are issued pursuant to 30 TAC Chapter 116, Subchapter I (Electric Generating Facility Permits) and 30 TAC Chapter 101 Subchapter H (Emissions Banking and Trading); 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, the terms and conditions of the SB 7 permit that originate from or are based upon the requirements of

30 TAC Chapter 116, Subchapter I and 30 TAC Chapter 101 Subchapter H must be identified as State-only terms and conditions, pursuant to 40 CFR § 70.6(b)(2). Also, EPA is concerned about whether the SB7 permit is practically enforceable as written. The permit does not have emission units listed or baseline data to determine compliance with required emission reduction limits.