



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 105)
P.O. Box 13087
Austin, TX 78711-3087

Re: Objection to Federal Operating Permit No. O2327
Ineos USA LLC, Chocolate Bayou Plant (Olefins Business Unit)
Brazoria County, Texas

Dear Mr. Hyde:

We received the proposed renewal for the Federal Operating Permit (FOP) for the Ineos Chocolate Bayou Plant in our office on October 19, 2009. The EPA's 45-day review period will end on December 4, 2009. The renewal incorporates Prevention of Significant Deterioration (PSD) Permits No. PSD-TX-854M2, Flexible Permit and Qualified Facility Permit No. 95, and Pollution Control Project Permit Nos. 71820, 76401, 76394, and 76826 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 and Standard Permits (e.g., PCP 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 a 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
Ineos USA LLC

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

Enclosure

1. **Objection to the incorporation of Flexible Permit No. 95 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. 95, most recently amended on June 30, 2009. Flexible permits are issued pursuant to 30 TAC Chapter 116, Subchapter G; 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, 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 permits meet the air permitting requirements of the federally-approved provisions of the Texas SIP. Furthermore, the Title V permit must include an additional condition specifically requiring the source to prepare and submit to TCEQ a written analysis of any future change/modification to ensure that minor and/or major new source review requirements under the federally-approved Texas SIP have not been triggered. Finally, 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 Permits.** The *New Source Review Authorization References* table of the draft Title V permit incorporates PSD-TX-854M2, amended on June 30, 2009, by reference. EPA has discussed the issue of incorporation by reference (IBR) 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*, IBR may be useful in many instances, though it is important to exercise care to balance the use of IBR 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 IBR 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 IBR for emissions limitations from minor

NSR permits and Permits by Rule).¹ In approving Texas' limited use of IBR of emissions limitations from minor NSR permits and Permits by Rule (PBR), EPA balanced the streamlining benefits of IBR against the value of a more detailed Title V permit and found Texas' approach for minor NSR permits and PBR 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 IBR 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-854M2 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-854M2 necessary to ensure compliance with all applicable requirements. Alternatively, TCEQ could add conditions to the Title V permit that specify those provisions of the PSD permit necessary to ensure such compliance with all applicable requirements and physically attach a copy of the PSD permit to the Title V permit.

3. The *New Source Review (NSR) Authorization References* table in the draft Title V permit incorporates by reference Permit Number 95 and PSD-TX-854M2. Available information indicates that on January 18, 2005, Ineos forwarded a Form PI-E to TCEQ (Notification of Changes to Qualified Facilities). Based upon TCEQ's review of the information, TCEQ had no objection to the proposed change. This change affects Permit Number 95 and PSD-TX-854M2² under the Texas Qualified Facilities Program. This program authorizes facilities to become "qualified" to net out of NSR State Implementation Plan (SIP) permitting requirements under Section 116.118 of Title 30 of Texas Administrative Code (30 TAC § 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 Texas Qualified Facilities Program 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

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 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.

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.

4. **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 Title V permit program which requires records be kept for 5 years; however, Special Condition 45 and 48 of Flexible Permit No. 95 and PSD-TX-854M2 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 the issuance of the Title V permit since the recordkeeping requirements of PSD-TX-854M2 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, notwithstanding the requirements of any other permit conditions or applicable requirements

5. **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.

Additional Comments

1. The *New Source Review (NSR) Authorization References* table in the draft Title V permit incorporates by reference Permit Nos. 71820, 76401, 76394, and 76826. Available information indicates that these permits were issued between 2004 and 2005. TCEQ issued these permits under the provisions of 30 TAC 116.617, Pollution Control Project (PCP) permit. TCEQ's creation of a PCP Standard Permit that can be used by sources may not fit within the scope or intent of our original approval of the TCEQ's standard permit

program (see 68 Fed. Reg. 64548, November 14, 2003). Specifically Ineos should provide an analysis of major PSD, Non-attainment New Source Review (NNSR) applicability, or a minor New Source Review (NSR) case-by-case review for the proposed activities. Furthermore, a Title V permit should include an additional condition specifically requiring the source to prepare and submit to TCEQ a written analysis of any future change/modification to ensure that minor and/or major new source review requirements under the federally-approved Texas SIP have not been triggered.

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 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 *In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02, issued on May 28, 2009.
3. Permit Condition 19 – 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.
4. We have concerns regarding TCEQ's past reliance on the PM₁₀ surrogate policy which appears to be represented in the most recent NSR Flexible Permit No. 95 and PSD-TX-854M2 permit amendment dated June 30, 2009, (*see Emission Sources – Emission Caps and Individual Emission Limitations* section, which contains a PM₁₀ emission limitation only). Both of these permits were incorporated by reference. It is now necessary to provide a demonstration to support the use of PM₁₀ as a surrogate for PM_{2.5}. The applicant should submit a revised application or demonstration addressing PM_{2.5} emissions. *See, In re Louisville Gas and Electric*, Petition No. IV-2008-3 (Order on Petition). The additional information should either address PM_{2.5} emissions directly or show how compliance with the PSD requirements for PM₁₀ will serve as an adequate surrogate for meeting the PSD requirements for PM_{2.5} in this case, after considering and identifying any remaining technical difficulties with conducting an analysis of PM_{2.5} directly.
5. The Statement of Basis should provide the legal and factual basis for the conditions and terms in the operating permit, 40 CFR 70.7(a)(5). The Statement of Basis (SOB) references one other operating permit at this site, without providing specifics on the operating area or units that are covered by this permit. Please specify in the SOB whether this draft permit now authorizes emission units which were authorized under Permit No. O1353.

As indicated in several orders in response to petitions that are available at: <http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb.htm>, the SOB serves to highlight elements that EPA and the public would find important to review. In

this case, the elements of the SOB must include a discussion of the process and determination of having several Title V permits for this major stationary source that will ensure that all the emission units are included in these Title V permits. Since there appears to be changes to several operating permits for this major source, the SOB should provide clarity and transparency about the applicable requirements of this major stationary source and identify units that are being moved into this permit. It is not sufficient to list the other operating permits, but additional information must be included on the current status and the operating area/units included in the Title V permits. The SOB shows that this is a permit renewal. The PSD Permit and the Flexible permit that are incorporated have had amendments and renewal since the last revision to the Title V permit. The SOB should outline how the conditions of the incorporated permits have changed since the last revision to the Title V permit. TCEQ should ensure that the SOB provides all necessary information on the changes that are being made at the time of permit renewal and if these changes are a significant modification.