



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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

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. O3275  
Motiva Enterprises, LLC, Houston Terminal  
Harris County, Texas

Dear Mr. Hyde:

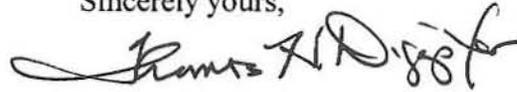
We received the proposed initial issuance for the Federal Operating Permit (FOP) for the Motiva Houston Terminal in our office on October 27, 2009. The EPA's 45-day review period will end on December 11, 2009. The proposed FOP incorporates Flexible Permit No. 26638.

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 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 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,

A handwritten signature in black ink, appearing to read "Carl E. Edlund". The signature is fluid and cursive, with a large initial "C" and "E".

Carl E. Edlund, P.E.

Director

Multimedia Planning and Permitting Division

Enclosure

cc: Manager, Environmental Affairs  
Motiva Enterprises LLC

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

## Enclosure

1. **Objection to the incorporation of Flexible Permit 26638 into the Title V permit.** The *New Source Review (NSR) Authorization References* table in the Title V permit incorporates by reference Flexible Permit No. 26638, most recently amended on February 16, 2006. 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 permits 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 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 12 of Flexible Permit No. 26638 only requires records be kept for one year. 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 Flexible Permit No. 26638 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
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.

#### Additional Comments

1. Table *New Source Review Authorization References* – The Title V permit incorporates by reference a Permit by Rule (PBR). EPA recognizes that TCEQ revises PBRs from time to time. Nonetheless, the most recent revision of the PBR (and the issuance date) must be stated in the table when incorporated by reference into the Title V permit so the public may properly comment on the Title V permit. In addition, TCEQ should confirm that the specific version of the PBR incorporated into the Title V permit is readily available in the permit record for public comment. Please see *In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02 at 5, issued on May 28, 2009.
2. Permit Condition 11 – 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.