



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

MAR 26 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.O1272  
Flint Hills Resources, L.P., Corpus Christi West Refinery  
Nueces County, Texas

Dear Mr. Hyde:

On February 9, 2010, we received the proposed minor revision of the Title V permit for the Flint Hills Resources Corpus Christi West Refinery referenced above. As such, EPA's 45-day review period will end on March 26, 2010. This minor revision incorporates Flexible Permit No. 8803A, Prevention of Significant Deterioration (PSD) Permit No.PSDTX413M9, and a Qualified Facility authorization into the draft Title V permit.

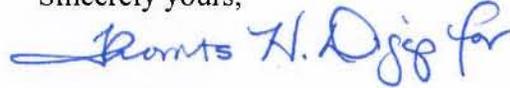
In accordance with 40 CFR § 70.8(c), EPA is objecting to the proposed permitting action. Section 505(b)(1) of the federal Clean Air Act (Act) and 40 CFR § 70.8(c) require EPA to object in writing to the issuance of a proposed Title V permit within 45 days of receipt of the proposed permit (and all necessary 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. We also note concerns related to the adequacy of permitting associated with the incorporation by reference of Permits by Rule (PBR) and Standard Permits (e.g. Pollution Control Projects) 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, 2008, 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 Title V air permitting 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 blue ink that reads "Carl E. Edlund".

Carl E. Edlund, P.E.

Director

Multimedia Planning and Permitting Division

Enclosure

cc: Manager, Environmental Affairs  
Flint Hills Resources, L.P.

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. 8803A, issued on March 23, 1999, with a renewal pending. 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 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 permit 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 Permit.** The *New Source Review Authorization References* table of the draft Title V permit incorporates PSDTX413M9, amended on July 24, 2008, 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).<sup>1</sup> 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 PSDTX413M9 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 PSDTX413M9 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 PSDTX413M9 that contain the emission limitations and standards reflecting the applicable requirements for that unit and then physically attach a copy of PSDTX413M9 to the Title V permit. Thus, the Title V permit would contain all the emission limitations (including the MAERT) and standards of the PSD permit 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.

3. **Objection to the Incorporation of Permit No. 6819A into the Title V permit.** The *New Source Review (NSR) Authorization References* table in the draft Title V permit incorporates by reference Permit No. 6819A. Available information indicates that Flint Hills Resources 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 and approved the request on April 23, 1998. This change affects Permit No. 6819A<sup>2</sup>, which is a minor NSR Permit, under the Texas Qualified Facilities Program. This program authorizes facilities to become "qualified" to net out of NSR SIP permitting requirements under 30 TAC § 116.118 (pre-change qualification).<sup>3</sup> To date EPA has not approved the Texas Qualified Facilities Program revisions into the Texas SIP, pursuant to Section 110 of the federal Clean Air Act (CAA), 42 U.S.C. § 7410.<sup>4</sup> Therefore, pursuant to

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<sup>1</sup> 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.

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

<sup>3</sup> See also 30 TAC §§ 116.10; 116.116(e); and § 116.117.

<sup>4</sup> The currently approved SIP regulation is 30 TAC 116.160 adopted by the Texas Natural Resource Conservation

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 new source review requirements under the federally-approved Texas SIP have not been triggered.

4. **Objection to Special Condition 31 for Failing to Meet Compliance Certification Requirements.** Special Condition 31 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 31 of the draft Title V permit does not meet the regulatory requirements. In response to this objection, TCEQ must amend Special Condition 31 to include 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.
5. **Objection to the Permit Shield.** Special Condition 38 of the draft Title V permit references a "Permit Shield" attachment which identifies emission units, groups and processes TCEQ has determined are exempt from specifically identified potentially applicable requirements. The statement of basis (SOB) does not fully discuss the factual or legal basis for TCEQ's determinations. EPA has previously objected to negative applicability determinations based on blanket statements 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) and (3), EPA objects to the issuance of the Title V permit because the permit shield provisions in draft Title V permit are only supported by conclusory statements in the SOB. The SOB fails to provide an adequate discussion of the legal and factual basis for the determinations made under 40 CFR § 70.6(f) used to support the nonapplicability of those requirements identified in the "Permit Shield" attachment to the Title V permit. In response to this objection, the Title V permit renewal application must be revised to include all potentially relevant facts supporting a request for a determination of nonapplicability, and the SOB must be revised to provide an adequate discussion TCEQ's legal and factual basis for all determinations of nonapplicability for those requirements identified in the "Permit Shield"

attachment to the Title V permit. Alternatively, Special Condition 38 and the "Permit Shield" attachment must be deleted from the Title V permit.

6. **Objection to Special Condition 1(D), 1(E), 1(F), 10, and 23.** The draft Title V permit list several special conditions with a statement that the permit holder shall comply with the applicable requirements of 40 CFR Part 63, Subparts EEEE, DDDDD, UUU, GGGGG, DD, and Part 61, Subpart M. However, these special conditions do not list the specific requirements of the referenced subpart(s) and the associated emission unit(s) to which they apply. Furthermore, the applicable requirements of the referenced subparts are not listed in the *Applicable Requirements Summary* table for the emission units to which they apply. Even if the emission units were identified in the special conditions, the failure to also include them in the *Applicable Requirements Summary* table is confusing and misleading. 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). In response to this objection, the Title V permit must be revised 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 covered by the special conditions referenced above.
  
7. **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 Concerns:

1. *New Source Review Authorization References* table - 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).

2. Permit Condition 27 – 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.
  3. *Applicable Requirements Summary* table – Unit ID number GRPWPU3 on the table shows in the textual description column “Except as provided in paragraphs (b)(4) and (c) of this section, the provisions of subparts F, G, and H apply to chemical manufacturing process units that meet the criteria”. Please clarify which provisions of subparts F, G, and H apply to unit GRPWPU3.
  4. *New Source Review Authorization References by Emissions Unit* – For Unit number 01BF102 New Source Review Authorization 76646 is shown. This appears to be a typo. Please verify that the correct permit number is listed.
  5. Monitoring requirements need to be specific. The Periodic Monitoring Summary refers repeatedly to manufacturer’s specifications or other written procedures. The manufacturer’s specification or other written procedures must be written out if they are to dictate monitoring requirements. This ensures that the permit terms and conditions are practically enforceable.
  6. PBR 106.263, 106.433 and 106.452 require registration. The TCEQ New Source Review database does not show a registration for 106.263, and shows that registrations for 106.433 and 106.152 are void for RN100825363. Please ensure that the permits included in the Title V permit are valid permits.
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