



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAR 05 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. O2715
ExxonMobil Oil Corporation, Colonial Storage Facility
Jefferson County, Texas

Dear Mr. Hyde:

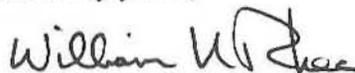
On January 19, 2010, we received the proposed renewal of the Title V permit for the ExxonMobil Colonial Storage Facility referenced above. As such, EPA's 45-day review period will end on March 5, 2010. This renewal action incorporates Flexible Permit No. 49131 into the draft Title V permit.

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) 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,



 Carl E. Edlund, P.E.
Director
Multimedia Planning and Permitting Division

Enclosure

cc: Manager, Environmental Affairs
ExxonMobil Oil Corporation

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. 49131, issued on June 15, 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 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 Special Condition 11 for Failing to Meet Compliance Certification Requirements.** Special Condition 11 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 11 of the draft Title V permit does not meet the regulatory requirements. In response to this objection, TCEQ must amend Special Condition 11 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.
- 3. Objection to the Permit Shield.** Special Condition 16 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 16 and the “Permit Shield” attachment must be deleted from the Title V permit.

4. **Objection to Monitoring Requirements.** The draft Title V Permit fails to identify the applicable monitoring requirements for the storage tanks covered by the Title V permit, as required by 40 CFR § 70.6(a)(3). Notwithstanding Objection 1 above, Special Conditions 5, 6, and 7 of the incorporated Permit No. 49131 identifies the monitoring requirements for the storage tanks; however, the requirements are not clear as to which tanks they apply. All applicable monitoring requirements must be contained in the Title V permit to ensure compliance. 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)(3). Furthermore, the *Applicable Requirements Summary* table does not list any applicable requirements for monitoring and testing, recordkeeping, and reporting requirements for Tanks 68TFX#3003, 68TFX#3004, and 68TFX#3005. These tanks are also missing from the *Unit Summary* table as well. In response to this objection, the Title V permit must be revised to identify each storage tank covered by the Title V permit and to list the applicable monitoring and testing, recordkeeping and reporting requirements for each such tank.

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 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.

3. Special Condition 1.D. of the draft Title V permit states that 40 CFR Part 63, Subpart BBBBBB shall apply to 7 tanks no later than January 10, 2011. Flexible Permit No. 49131 covers 10 tanks. Special Condition 2 of Flexible Permit No. 49131 states “These facilities shall comply with the applicable requirements contained in Title 40 Code of Federal Regulations Part 63, Subpart BBBBBB”. The Flexible Permit does not state that any of the tanks are not covered by BBBBBB, or that they have until January 10, 2011 to comply. Therefore, it is unclear which of the 10 tanks Subpart BBBBBB applies to and if they are already in compliance.
4. *New Source Review Authorization References by Emissions Unit* table – This table lists emission unit 68SEW#001 for the Colonial Sewer as being authorized under Flexible Permit No. 49131. The flexible permit does not show the Colonial Sewer to be an authorized emissions unit, as only the storage tanks and fugitives are listed on the MAERT.
5. *New Source Review Authorization References by Emissions Unit* table - Every emissions unit listed in the table shows to be authorized by Flexible Permit 49131. The *New Source Review Authorization References* table shows a PBR authorization for § 106.478 Storage Tank and Change of Service. It is unclear which tanks, if any, are authorized under this PBR.