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Texas Commission on Environmental Quality
Protecting Texas by Reducing and Preventing Pollution

November 4, 2010

MR CARL E EDLUND PE
DIRECTOR MULTIMEDIA PLANNING AND PERMITTING DIVISION
US ENVIRONMENTAL PROTECTION AGENCY REGION 6
1445 ROSS AVE STE 1200
DALLAS TX 75202-5766

Re: Executive Director's Response to EPA Objection
Minor Revision
Permit Number: O2164
Chevron Phillips Chemical Company, LP
Chevron Phillips Chemical Borger Plant
Borger, Hutchinson County
Regulated Entity Number: RN102320850
Customer Reference Number: CN600303614

Dear Mr. Edlund:

On August 6, 2010, the U.S. Environmental Protection Agency (EPA) Region 6 Office signed a letter identifying objections to the issuance of the proposed federal operating permit for the above referenced site. In accordance with Title 30 Texas Administrative Code § 122.350 (30 TAC § 122.350), the Texas Commission on Environmental Quality (TCEQ) may not issue the permit until the objections are resolved. In addition, the letter identifies certain additional concerns. The TCEQ understands that the additional concerns are provided for information only, and do not need to be resolved in order to issue the permit.

The TCEQ has completed the technical review of your objections and offers the enclosed responses to facilitate resolution of the objections. In addition, the attached responses to the objections describe the changes, if applicable, that have been made to the revised proposed permit and supporting statement of basis (SOB). The revised proposed permit and SOB are attached for your review.

Mr. Carl E. Edlund, P.E.

Page 2

November 4, 2010

Consistent with 30 TAC § 122.350, please provide an indication of your acceptance or assessment of the responses and resolutions to the objections as soon as possible. After receipt of your acceptance to the responses and resolutions to the objections, TCEQ will issue the proposed permit. Thank you for your cooperation in this matter. Please contact Ms. Julie Guthrie at (512) 239-1517 if you have any questions concerning this matter.

Sincerely,



Steve Hagle, P.E., Director
Air Permits Division
Office of Permitting and Registration
Texas Commission on Environmental Quality

SH/JG/dw

cc: Mr. Bill Sheldon, Environmental Representative, Chevron Phillips Chemical Company, LP,
Borger
Mr. Douglas Digman, Plant Manager, Chevron Phillips Chemical Company, LP, Borger
Air Section Manager, Region 1 - Amarillo

Enclosures: TCEQ Executive Director's Response to EPA Objection
Proposed Permit
Statement of Basis

Project Number: 14895

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

Permit Number O2164

The Texas Commission on Environmental Quality (TCEQ) Executive Director (ED) provides this Response to EPA's Objection to the minor revision of the Federal Operating Permit (FOP) for Chevron Phillips Chemical Company, LP, Chevron Phillips Chemical Borger Plant, Permit No. O2164, Hutchinson County, Texas.

BACKGROUND

Procedural Background

The Texas Operating Permit Program requires that owners and operators of sites subject to 30 Texas Administrative Code (TAC) Chapter 122 obtain a FOP that contains all applicable requirements to facilitate compliance and improve enforcement. The FOP does not authorize construction or modifications to facilities, and it does not authorize emission increases. To construct or modify a facility, the responsible party must have the appropriate new source review authorization. If the site is subject to 30 TAC Chapter 122, the owner or operator must submit a timely FOP application for the site and ultimately must obtain the FOP to operate. Chevron Phillips Chemical Company, LP applied to the TCEQ for a minor revision of the FOP for the Chevron Phillips Chemical Borger Plant located in Borger, Hutchinson County on March 11, 2010. Public announcement began on June 22, 2010 and ended on July 22, 2010. During the concurrent EPA review period, TCEQ received an objection to the permit from EPA on August 6, 2010.

In accordance with state and federal rules, the permit minor revision may not be issued until TCEQ resolves EPA's objections.

Description of Site

Chevron Phillips Chemical Company, LP owns and operates the Chevron Phillips Chemical Borger Plant, located approximately 2 miles northeast of the city of Borger, on State Highway Spur 119 in Borger, Hutchinson County, Texas 79007.

The Chevron Phillips Chemical Borger Plant produces polyphenylene sulfide (proprietary trade name "Ryton") by combining p-dichlorobenzene (p-DCB, DCB) with sodium hydrosulfide (NaSH) in a series of reactions also involving caustic (NaOH) and N-methyl pyrrolidone (NMP). Salt (NaCl) is a byproduct of the reaction. This is washed from the polymer and disposed via deep well injection with "Rytbrine" equipment (tanks, filters, pumps). The washed polymer is dried and sent to further processing and/or boxing. Collectively, the synthesis equipment is lumped under the Title V process name "PRORYTSYN".

After the final polymerization step (but before washing and drying), unreacted feedstocks are flashed to recovery equipment, collectively referred to as "PRORYTREC". Here, NMP and DCB are recovered and returned to storage for reuse.

Heat for the synthesis and recovery processes is provided by two small natural gas-fired furnaces using heat transfer oil. Ryton also has a dedicated cooling tower.

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

Permit Number O2164

Page 2

The Ryton product can be further processed by curing and/or pelletizing. Final product, in the form of powder or pellets, is placed in boxes or similar packaging for shipment to customers.

The following responses follow the references used in EPA's objection letter.

EPA OBJECTION NO. 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. 21918, issued on October 17, 1997. Flexible permits are issued pursuant to 30 TAC Chapter 116, Subchapter G; however, those provisions were disapproved by EPA on June 30, 2010, pursuant to Section 110 of the federal Clean Air Act (CAA), 42 U.S.C. § 7410, *See* 75 Fed. Reg. 41312 (July 15, 2010), and are not 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 permit meet the air permitting requirements of the federally-approved provisions of the Texas SIP. Also, 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).

TCEQ RESPONSE: As a preliminary matter, the ED believes that resolution of EPA concerns regarding flexible permits is a common objective for both TCEQ and the EPA. The concerns discussed below regarding the use of the Title V permitting process to challenge independent flexible permits on a case-by-case basis does not diminish the importance of reaching an expeditious resolution to the NSR flexible permit issue. The ED recognizes the flexible permit rules, located in 30 TAC Chapter 116, Subchapter G, and submitted to EPA in 1994, have been disapproved by EPA effective August 16, 2010. However, the Texas federal operating permit (FOP) program is EPA-approved. TCEQ reviews applications and issues FOPs according to EPA-approved program rules found in Title 30 Texas Administrative Code (TAC), Chapter 122. The Texas Operating Permit Program was granted full approval on December 6, 2001 (66 FR 63318), and subsequent rule changes were approved on March 30, 2005 (70 FR 161634). The application procedures, found in 30 TAC § 122.132(a) require an applicant to provide any information required by the ED to determine applicability of, or to codify any "applicable requirement." In order for the ED to issue an FOP, the permit must contain all applicable requirements for each emission unit (30 TAC § 122.142). "Applicable requirement" is specifically defined in 30 TAC § 122.10(2)(h) to include all requirements of 30 TAC Chapter 116 and any term and condition of any preconstruction permit. As a Chapter 116 preconstruction authorization, flexible permits are applicable requirements, and shall be included in applications and Texas issued FOPs, in compliance with Texas's approved program. According to the EPA review procedures of Chapter 122, EPA may only object to issuance of any proposed permit which is not in compliance with the applicable requirements or

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

Permit Number O2164

Page 3

requirements of this chapter. Therefore, this objection is not valid under the program EPA has approved in Texas because the applicant provided information as to the applicable Chapter 116 requirements, including flexible permits, and the ED has included these requirements in the draft FOP. EPA objections to individual permits issued under an EPA approved operating permit program are not appropriate for concerns that relate to programmatic elements.

The ED disagrees with the allegation that the failure of the applicant to have submitted information necessary to make a determination of whether they were in compliance with the SIP constitutes an additional basis for this objection, pursuant to 40 CFR § 70.8(c)(3)(ii). Section 70.8(c)(3)(ii) is premised on the *permitting authority* not "submitting any information necessary [for EPA] to review adequately the proposed permit." The ED has provided all information requested by EPA, when asked, including NSR permits and other supporting information. The flexible permit applications, technical reviews, and flexible permits clearly do not allow sources to utilize the flexible permit authorization mechanism to circumvent major NSR permitting requirements. Specifically, 30 TAC Chapter 116 requires that all new major sources or major modifications be authorized through nonattainment or PSD permitting under Subchapter B, Divisions 5 and 6.

The ED also disagrees that 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. The flexible permit application, technical review, and flexible permit documentation demonstrates that the emissions authorized by the flexible permits meet the air permitting requirements of the federally approved provisions of the SIP regarding requirements for impacts review, emission measurement, BACT, NSPS, NESHAP, MACT, performance demonstration, modeling or ambient monitoring if required, MECT applicability, and nonattainment or PSD permitting if applicable. Texas submitted the initial flexible permit rule for EPA review and action in 1994. EPA's delay in acting on the flexible permit rules, the approval of the state's federal operating permit program and confusion regarding whether the approved federal operating permit program provided federal enforceability for flexible permits, resulted in a very long period of detrimental reliance on this permit mechanism by regulated entities and TCEQ.

Notwithstanding the final disapproval of the flexible permit rules in 30 TAC Chapter 116, Subchapter G, the flexible permit review requirements are parallel to the SIP-approved 30 TAC Chapter 116, Subchapter B permit review and no substantive differences in significant permit elements exist. Indeed, the technical review of the flexible permit No. 21918 application provides information regarding how Subchapter B requirements in § 116.111 are met, including: compliance with the SIP approved Subchapter B rules and review requirements, unit-specific limits based on BACT review at the time of the permit issuance, demonstrations that each emission unit and the facility covered by Permit No. 21918 meets all applicable NSPS, NESHAP requirements, and air dispersion modeling conducted by applicant. The flexible permit and technical review are enclosed with this response. Chevron Phillips Chemical Company, LP may separately submit to EPA additional information showing compliance with the Subchapter B requirements. Additionally, the ED does not agree that it is appropriate, necessary or legally

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

Permit Number O2164

Page 4

required under either 40 CFR Part 70 or the EPA approved federal operating permit program in Texas to require a condition in the operating permit to require a source to prepare and submit a written analysis of any future change/modification to ensure that minor and/or major NSR requirements under the SIP have not been triggered. The federally approved SIP already requires this analysis as part of any future NSR review. See 30 TAC Chapter 116, Subchapter B, Divisions 5 and 6. Minor NSR applicability requirements are adequately specified in the permit and commission rules governing NSR permits; thus, the applicant is currently subject to the requirements to demonstrate, upon any future change, when minor or major NSR requirements will apply.

However, the ED recognizes that some companies are in negotiations with EPA to include a special term and condition in the draft FOP requiring that they submit an application to reissue a permit, through the SIP-approved amendment, alteration, or renewal process, with a deadline for application submittal, and specific information to EPA and TCEQ for review prior to public notice. If Chevron Phillips Chemical Company, LP agrees to such a process, the TCEQ will work with Chevron Phillips Chemical Company, LP to change the draft permit appropriately.

Finally, the flexible permit terms and conditions are not appropriate to be identified as state-only in the FOP. The EPA approved definition of a "state-only requirement" in 30 TAC § 122.10(28) is "any requirement governing the emission of air pollutants from stationary sources that may be codified in the permit at the discretion of the ED. State-only requirements shall not include any requirement required under the Federal Clean Air Act or under any applicable requirement." Therefore, the EPA approved program provides the ED with discretion to determine which requirements must be identified as "state-only" and explicitly prohibits anything defined as an "applicable requirement" from being "state-only." Since flexible permits issued in 30 TAC Chapter 116 are "applicable requirements," they may not be included as "state-only" requirements. Instead, they are applicable requirements which are subject to public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping requirements, compliance demonstration and certification requirements, and appropriate periodic or compliance assurance monitoring requirements. "State-only" requirements are specifically not required to meet requirements that are specific to 40 CFR Part 70. See 122.143(18). As stated previously, the flexible permit terms and conditions comply with SIP approved permit rules and assure compliance with future applicable NSR requirements. Again, with regard to flexible permits, the TCEQ will continue its dialogue with EPA to achieve the mutual goal of NSR permits issued under SIP approved rules.

EPA OBJECTION NO. 2: Objection to Special Condition 19 for Failing to Meet Compliance Certification Requirements. Special Condition 19 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) and incorporated at 30 TAC § 122.146. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because Special Condition 19 of the draft Title V permit conflicts with the general terms and conditions reference to 30 TAC § 122.146. In response to this objection, TCEQ must amend Special Condition 19 to include all the requirements for compliance

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

Permit Number O2164

Page 5

certifications, as set forth in 30 TAC § 122.146 including the identification of the methods or other means for determining the compliance status with each term and condition of the permit.

EPA requests that TCEQ revise Special Condition 19 to use the following language to resolve our objection on this special condition:

“The permit holder shall certify compliance in accordance with 30 TAC § 122.146. The permit holder shall comply with 30 TAC § 122.146 using at a minimum, but not limited to, the continuous or intermittent compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other credible evidence or information. The certification period may not exceed 12 months and the certification must be submitted within 30 days after the end of the period being certified.”

TCEQ RESPONSE: The ED does not agree that Special Condition 19 of the draft permit needs to be revised. Special Condition 19 of the draft permit is in compliance with the specific requirements of the EPA approved Federal Operating Permit program, as found in 30 TAC Chapter 122. Specifically, § 122.146(5), requires the annual compliance certification to include or reference the specified elements, including: the identification of each term or condition of the permit for which the permit holder is certifying compliance, the method used for determining the compliance status of each emission unit, and whether such method provides continuous or intermittent data; for emission units addressed in the permit for which no deviations have occurred over the certification period, a statement that the emission units were in continuous compliance over the certification period; for any emission unit addressed in the permit for which one or more deviations occurred over the certification period, specific information indicating the potentially intermittent compliance status of the emission unit; and the identification of all other terms and conditions of the permit for which compliance was not achieved. All permit holders are required to comply with the requirements of 30 TAC § 122.146, as well as all other rules and requirements of the commission.

In addition, in 2006, EPA's Title V Task Force endorsed the 'short-form' approach used by TCEQ, as an option for compliance certification. (See Title V Task Force, Final Report to the Clean Air Act Advisory Committee, page 108 (April 2006)).

However, in order to help clarify any confusion, the term has been revised to read as follows:

The permit holder shall certify compliance in accordance with 30 TAC § 122.146. The permit holder shall comply with 30 TAC § 122.146 using at a minimum, but not limited to, the continuous or intermittent compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other credible evidence or information. The certification period may not exceed 12 months and the certification must be submitted within 30 days after the end of the period being certified.

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

Permit Number O2164

Page 6

EPA OBJECTION NO. 3: Objection to Special 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 (or otherwise specifically identify) 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.

TCEQ RESPONSE: The EPA has supported the practice of not listing emission units in the permit that only have site-wide or "generic" requirements. See *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995. The ED documented in the draft FOP that the Chapter 111 visible emission requirements for stationary vents were site-wide requirements - applying uniformly to the units or activities at the site. Because the applicant indicated in its application that only the Chapter 111 site-wide requirements apply to these stationary vents and other sources, the applicant is not required to list these smaller units individually in the unit summary, and therefore, these emission units did not appear in the applicable requirements summary table in the draft FOP.

With regard to stationary vents, there are three basic opacity requirements in 30 TAC § 111.111 that may apply, depending upon specific applicability criteria. Stationary vents constructed on or before January 31, 1972 must meet the requirements of 30 TAC § 111.111(a)(1)(A), which states that opacity shall not exceed 30% averaged over a six-minute period. Stationary vents constructed after January 31, 1972 must meet the requirements of 30 TAC § 111.111(a)(1)(B), which states that opacity shall not exceed 20% averaged over a six-minute period. Lastly, stationary vents where a total flow rate is greater than or equal to 100,000 actual cubic feet per minute (acfm) may not exceed 15% opacity averaged over a six minute period, unless that source has an installed optical instrument capable of measuring opacity that meets specified requirements, specified in 30 TAC § 111.111(a)(1)(C). Subsection 111.111(b) merely states that any of the emission units subject to section 111.111 (for this permit area, this would include all stationary vents and gas flares) shall not include contributions from uncombined water in determining compliance with this section.

However, the ED does agree that the FOP could be revised to more clearly group stationary vents according to which opacity limit applies. The site has vents that are subject to 3 different opacity limits. Vents with a flow rate greater than or equal to 100,000 acfm are subject to 15% opacity and are identified in the Applicable Requirements Summary. Vents subject to 30 TAC § 111.111(a)(1)(A) have a 30% opacity limit. The permit has been revised to include these vents

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

Permit Number O2164

Page 7

in the Applicable Requirements Summary. All other vents at the site are subject to 20% opacity, as noted in the revised Special Condition 3.B., which is a site-wide term and condition, as allowed in the *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995.

The TCEQ disagrees that the Statement of Basis (SOB) document for the draft Title V permit does not include a determination of the legal and factual basis for Condition 3 (See Section of the SOB Sources subject to 30 TAC Chapter 111, Subchapter A, Division 1: Visible Emissions), however, because the permit has been revised to include the vents subject to § 111.111(a)(1)(A) in the Applicable Requirements Summary table, the SOB has been revised. The legal and factual basis for these vents is included in the Determination of Applicable Requirements table and was removed from the Section of the SOB Sources subject to 30 TAC Chapter 111, Subchapter A, Division 1: Visible Emissions).

EPA OBJECTION NO. 4: Objection to Special Condition 5. Special Condition 5 of the draft Title V permit states "For the bulk gasoline terminals specified in 40 CFR Part 60, Subpart XX, the permit holder shall comply with the following requirements:". Special Condition 5.A. and 5.D. then list the Subpart XX citations related to the standard for VOC emissions from bulk gasoline terminals, recordkeeping, and reporting requirements. However, Special Condition 5 does not list the associated emission unit(s) to which it applies. Furthermore, the applicable requirements of Subpart XX are not listed in the *Applicable Requirements Summary* table for the emission units to which they apply. The only other mention in the draft Title V permit is within the permit shield. Failure to include the requirements of 40 CFR Part 60, Subpart XX in any unit-specific tables makes the compliance obligations of the facility unclear. This method of incorporation by reference without regard to the individual emission units that are subject to the regulation renders this aspect of the Title V permit unenforceable as a practical matter and incapable of meeting the Title V permit application and content requirements necessary to ensure compliance with all applicable requirements. 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 draft Title V permit and identify the specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting requirements for each such unit, including those emission units covered by Special Condition 5 referenced above.

TCEQ RESPONSE: Special Term and Condition 5, relating to 40 CFR Part 60, Subpart XX, covers site-wide conditions for loading operations at bulk gasoline terminals. The requirements identified in Special Condition 5 are "generic" and applied identically to all tank trucks when loading liquid product into gasoline tank trucks, therefore 40 CFR Part 60, Subpart XX is listed as a generic requirement in the draft permit in accordance with the EPA's *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995. The TCEQ Title V Permit is designed such that if emission units are not listed in the Applicable Requirement Summary table identifying 40 CFR Part 60, Subpart XX requirements, then there are no unit specific requirements within Subpart XX that apply to any individual units at the site. If an emission unit is identified in the

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

Permit Number O2164

Page 8

Permit Shield attachment and references Subpart XX in the Regulation column, it has been determined that 40 CFR Part 60, Subpart XX does not apply for the reason given in the Basis of Determination column.

Unit ID SP5B10-VC has potential applicability to 40 CFR Part 60, Subpart XX, however, it is listed in the Permit Shield attachment for the regulation 40 CFR Part 60, Subpart XX. The basis of the negative applicability determination, supported by § 63.420(g), states that Unit ID SP5B10-VC is complying with 40 CFR Part 63, Subpart R, which is more stringent than 40 CFR Part 60, Subpart XX. The 40 CFR Part 63, Subpart R applicable requirements for Unit ID SP5B10-VC are listed in the Applicable Requirements Summary Attachment.

EPA OBJECTION NO. 5: Objection to Special Condition 7. Special Condition 7 of the draft Title V permit states "For facilities where total annual benzene quantity from waste is less than 1 megagram per year and subject to emission standards in 40 CFR Part 61, Subpart FF, the permit holder shall comply with the following requirements:". Special Condition 7.A. through 7.D. then list the Subpart FF citations related to test methods, procedures, and compliance provisions, recordkeeping, and reporting requirements. Special Condition 7 does not list the associated emission unit(s) to which it applies. Furthermore, the applicable requirements of Subpart FF are not listed in the *Applicable Requirements Summary* table for the emission units to which they apply. Failure to include the requirements of 40 CFR Part 61, Subpart FF in any unit specific tables makes the compliance obligations of the facility unclear. This method of incorporation by reference without regard to the individual emission units that are subject to the regulation renders this aspect of the Title V permit unenforceable as a practical matter and incapable of meeting the Title V permit application and content requirements necessary to ensure compliance with all applicable requirements. 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 draft Title V permit must be revised to identify each emission unit covered by the Title V permit and identify the specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting requirements for each such unit, including those emission units covered by Special Condition 7 referenced above.

TCEQ RESPONSE: The EPA has supported the practice of not listing emission units in the permit that have only site-wide or "generic" requirements. See *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995. The 40 CFR Part 61, Subpart FF requirements in Special Condition 7 apply to facilities in which the total annual quantity of benzene from waste at the site is less than 1 megagram per year. Special Term and Condition 7.A are calculation procedures for determining total annual benzene quantity from facility waste. Special Term and Condition 7.B and 7.C are recordkeeping requirements that apply to facilities in which the total annual benzene quantity from waste has been calculated to be less than 1 megagram per year. Special Term and Condition 7.D are reporting requirements for facilities in which the total annual quantity of benzene from waste at the site has been calculated to be less than 1 megagram per year. These requirements do not apply to specific emission units, therefore 40 CFR Part 61, Subpart FF

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

Permit Number O2164

Page 9

requirements are listed as site-wide requirements in the draft permit in accordance with the EPA's *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995.

EPA OBJECTION NO. 6: Objection to Failure to Identify Specific Compliance Option.

The *Applicable Requirements Summary* table repeatedly fails to list the sections of 40 CFR Part 63, Subpart FFFF that are applicable requirements for the emission units that must comply with Subpart FFFF. Failure to include the requirements of 40 CFR Part 63, Subpart FFFF in any unit-specific tables makes the compliance obligations of the facility unclear. This method of incorporation by reference without regard to the individual emission units that are subject to the regulation renders the Permit unenforceable as a practical matter and incapable of meeting the Title V permit application and content requirements necessary to ensure compliance with all applicable requirements. Given the complexity of the NESHAP and the permitted facility, it is impossible to determine how the regulation applies to the facility by referring to only the NESHAP subpart that is currently provided in the draft Title V permit. This ambiguity and the applicability questions it creates render this aspect of the permit unenforceable as a practical matter. In addition, the lack of detail detracts from the usefulness of the permit as a compliance tool for the facility. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit since it does not comport with the requirements of 40 CFR § 70.6(a)(1) & (3). In response to this objection, the draft Title V permit must be revised to identify each emission unit covered by the Title V permit and identify the specific emission limitations, standards, applicable monitoring and testing, recordkeeping, and reporting requirements for each such unit, including those emission units subject to 40 CFR Part 63, Subpart FFFF as referenced above.

TCEQ RESPONSE: The draft permit has been revised to identify specific compliance options and monitoring, recordkeeping, and reporting citations for all emission units with 40 CFR Part 63, Subpart FFFF applicable requirements.

EPA OBJECTION NO. 7: Objection to Failure to Include all Applicable Requirements.

The draft Title V permit fails to meet the requirements of 40 CFR 70.6(a)(1) which requires Title V permits include "emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." TCEQ defines "applicable requirement" at 30 TAC § 122.10(2). The definition includes, in part, the federal MACT, NSPS, and NESHAP regulations, and TCEQ permits issued under 30 TAC Chapter 116, any term or condition of any preconstruction permit, and 30 TAC Chapter 106, Subchapter A. The emission limitations and standards for minor NSR permits and any PBRs that require preconstruction authorization must be listed on the face of the Title V permit. In addition, emission units covered by a PBR shall list on the face of the Title V permit the emission limitations and standards that apply under a MACT, NSPS, or NESHAP. The draft Title V permit for Chevron Phillips Chemical Company does not contain enough information to clearly identify if all applicable requirements have been included in the Title V permit. The *New Source Review Authorization References* table lists the following PBR authorizations as applicable requirements: 106.261, 106.262, 106.263, 106.371, 106.418, 106.433, 106.452, 106.454, 106.472, 160.473, 106.478, 106.511, and 106.512. Only emission units TH-06 and TH-20, with an authorization for PBR 106.478, are shown to have applicable

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

Permit Number O2164

Page 10

requirements listed in the *Applicable Requirements Summary* Table. Emission units SCC5 shows to be authorized by PBR 106.472 and Telinter authorized by 106.262. Both of these emission units are listed in the permit shield and have no applicable requirements listed in the *Applicable Requirements Summary* Table. The draft Title V permit does not list any emission units to be authorized under PBR 106.261, 106.263, 106.373, 106.418, 106.433, 106.452, 106.454, and 106.512. The Title V permit fails to identify the specific units that these PBRs apply. PBR 106.263, 106.373, 106.418, and 106.512 require registration. The TCEQ New Source Review database does not show a registration for these PBRs for RN102320850. The database shows multiple PBR registrations for PBRs 106.433, 106.452, and 106.454 when only one is listed for each PBR in the draft Title V permit. These PBRs require registration with TCEQ, some prior to construction, which makes them applicable requirements under TCEQ's own definition. 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 subject to the PBRs referenced above.

TCEQ RESPONSE: As an initial matter, the ED strongly disagrees with EPA's assertion that "*The emission limitations and standards for minor NSR permits and any PBRs that require preconstruction authorization must be listed on the face of the Title V permit.*" The ED reminds EPA of its frequent and clear statements that Texas's incorporation by reference of minor NSR is acceptable and meets both Part 70 and more importantly Texas' EPA-approved implementing rules. This Objection is in conflict with the Administrator's statements regarding acceptance of minor NSR IBR in the Orders regarding *Premcor* and *Citgo*. Based on EPA's still-current position and guidance as further explained below, this objection is without merit on this issue.

Texas' general PBR rules are approved as part of the SIP. In addition, Chapter 106, Subchapter A is a defined applicable requirement under Chapter 122 and the EPA-approved Texas operating permit program.¹ Subchapter A includes applicability, requirements for permitting by rule, registration of emissions, recordkeeping and references to standard exemptions and exemptions from permitting. Additionally, PBR authorizations can apply to distinct, insignificant sources of emissions (i.e. engine, production process, etc.) at a Title V site. As such PBRs do not violate the SIP, EPA policy or prior SIP decisions. The New Source Review (NSR) Authorization References table in the draft Title V permit incorporates the requirements of NSR Permits, including Permits by Rule (PBR), by reference. All "emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance" are specified in the PBR incorporated by reference or cited in the draft Title V permit. When the emission limitation or standard is not

¹ Texas Health & Safety Code (THSC) § 382.05196 and implementing rules in 30 TAC chapter 106, relating to PBRs, prohibit an owner or operator of a facility from using a PBR to authorize a major stationary source or major modification. This does not preclude the use of a PBR for non-major changes at a major stationary source, as that term is defined in federal law.

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

Permit Number O2164

Page 11

specified in the referenced PBR, then the emissions authorized under permit by rule from the facility are specified in §106.4(a)(1). Additional requirements for PBRs are found in the Special Terms and Conditions under New Source Review Authorization Requirements. In the Chevron Phillips Chemical Company draft Title V permit, these requirements are found in Special Terms and Conditions 14 through 16, relating to PBRs. The ED does not agree that the emission limitations and standards for PBRs should be listed on the face of the Title V permit, as the EPA has supported the practice of incorporation by reference for the purpose of streamlining the content of the Part 70 permit. See *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995 and *White Paper 2 for Improved Implementation of the Part 70 Operating Permits Program*

The EPA has also supported the practice of not listing insignificant emission units for which "generic" requirements apply. See *White Paper 2 for Improved Implementation of the Part 70 Operating Permits Program*. The New Source Review Authorization (NSR) References table identifies preconstruction authorizations at the site that are required to be listed in the draft permit. The NSR Authorizations are applicable requirements and incorporated by reference. Those NSR Authorizations that are identified in the NSR Authorization References table and not found in NSR Authorization References by Emission Unit table (PBRs 106.261, 106.263, 106.373, 106.418, 106.433, 106.452, 106.454, and 106.512) are the only applicable requirement for an emission unit and the NSR Authorization is a "generic" applicable requirement and is applied identically to all subject emission units.

Permits by Rule 106.263, 106.373, 106.418, and 106.512 are listed in the NSR Authorization Reference table, and, as noted in the objection, have not been registered with the TCEQ. However, EPA's statement that these PBR claims must be registered is incorrect. These PBRs only require registration when specific conditions apply as specified in the rule text for each of the PBRs. PBR 106.263 requires registration only if the PBR authorizes temporary maintenance and more than 180 consecutive days is required to complete the project. PBR 106.373 requires registration only if the refrigeration system authorized uses anhydrous ammonia. PBR 106.418 requires registration only when facilities release more than 10 TPY or more of VOC emissions from all printing operations. PBR 106.512 requires registration only when the engine is rated at 240 horsepower or greater.

The NSR database shows multiple registrations for PBRs 106.433, 106.452, and 106.454. PBR 106.433 was issued on 3/6/2001, 12/18/2000 and 9/13/2000, all under version date 9/4/2000, therefore PBR 106.433 is listed only once in the NSR Authorization Reference table. PBR 106.452 was issued 10/6/2000 and 1/12/1999 under version date 9/4/2000 and 3/14/1997, respectively. PBR 106.452 version 3/14/1997 has been added to the draft permit. PBR 106.454 was issued 3/15/2004, 11/7/2003, and 11/21/2002, all under version date 9/4/2000, therefore PBR 106.454 is listed only once in the NSR Authorization Reference table. All emission sources authorized by a PBR or standard permit have been added to the New Source Review Authorization Reference by Emission Unit table in the permit.

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

Permit Number O2164

Page 12

ADDITIONAL CONCERNS: TCEQ acknowledges the additional concerns EPA has with the Chevron Phillips Chemical Borger Plant FOP and will address these issues as appropriate.