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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 27, 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
Renewal
Permit Number: O2776
South Hampton Resources, Inc.
South Hampton Refining
Silsbee, Hardin County
Regulated Entity Number: RN101995611
Customer Reference Number: CN600129878

Dear Mr. Edlund:

On January 22, 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.

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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. Whitney Hill at (512) 239-1301 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/WH/aw

cc: Mr. Richard W. Fetterolf, Environmental Manager, South Hampton Resources, Inc., Silsbee
Air Section Manager, Region 10 - Beaumont

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

Project Number: 13856

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

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The Texas Commission on Environmental Quality (TCEQ) Executive Director (ED) provides this Response to EPA's Objection to the renewal of the Federal Operating Permit (FOP) for South Hampton Resources, Inc., South Hampton Refining, Permit No. O2776, Hardin County, Texas.

BACKGROUND

Procedural Background

The Texas Operating Permit Program requires that owners and operators of sites subject to 30 Tex. Admin. 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. South Hampton Resources, Inc., applied to the TCEQ for a renewal of the FOP for the South Hampton Refining located in Silsbee, Hardin County on June 22, 2009, and notice was published on November 25, 2009 date in *The Silsbee Bee*. The public comment period ended on December 25, 2009. During the concurrent EPA review period, TCEQ received an objection to the permit from EPA on January 25, 2010.

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

Description of Site

South Hampton Resources, Inc., has applied to the TCEQ for an FOP Renewal that would authorize the applicant to operate the Silsbee Plant. The facility is located at 7752 Farm-to-Market Road 418 in Silsbee, Hardin County, Texas 77656.

The site is a distillation and chemical toll processing facility that produces specialty hydrocarbons for the petrochemical industry. The plant is made up of the following units: the Penhex Unit, Reformer, Aromax Unit, Cyclo Unit, Paraffinic Solvents, Aromatic Solvents Unit and Tetrahydronaphthalene Unit. South Hampton receives natural gasoline by pipeline. Processing of the feed will generally consist of hydrotreating to remove sulfur followed by a number of distillation steps resulting in the removal of butane and the production of isopentane and normal pentane. Benzene in the natural gasoline feed is catalytically converted to cyclohexane before any C6 compounds are produced by further distillation. The various products are stored and later loaded into either trucks or drums for delivery to customers.

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

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EPA OBJECTION: 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.

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.

As a result of EPA's objection, TCEQ communicated with the applicant stating that although it is the agency's position that listing the individual vents subject to Chapter 111 is not required, the applicant can choose to list the units in the permit. South Hampton Resources, Inc. has provided the list of units and the draft Title V permit has been revised to include all stationary vents

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subject to the requirements of 30 TAC Chapter 111.111(a)(1)(A) in the Unit Summary Table. Furthermore, the legal and factual basis is included in the Statement of Basis for each stationary vent.

All other vents at the site are subject to 20% opacity, as noted in the revised Special Condition 3, 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

A determination of the legal and factual basis for Condition 3 was added to the Statement of Basis document for the draft Title V permit and is enclosed.

EPA OBJECTION: Objection to the Statement of Basis. TCEQ prepared a Statement of Basis (SOB) for the draft Title V permit which states that this is a renewal. The renewal incorporates minor NSR permit no 3295, that has been amended, and has an amendment pending. Records show that the amendments made to permit no. 3295 on March 4, 2008, have resulted in the addition of new emission units and has resulted in increases in emissions. The renewal also incorporates a Pollution Control Project Permit No. 79438 that was issued on July 28, 2006. The SOB fails to mention that this renewal is also a minor revision to the existing Title V permit. Pursuant to 40 CFR § 70.7(a)(5), the statement of basis must set forth the legal and factual basis for the draft permit conditions (including reference to the applicable statutory or regulatory provisions). As indicated in previously issued EPA orders in response to petitions to review Title V permits, the SOB serves to highlight elements that EPA and the public would find important to review (See, e.g., In the Matter of Bristol-Myers Squibb Co, Inc., Petition No. II-2002-09, February 18, 2005). Therefore, pursuant to 40 CFR § 70.8(c)(1), EPA must object to the issuance of this Title V permit because the SOB fails to meet the requirements of 40 CFR § 70.7(a)(5). In order to respond to this objection, the SOB must be revised to clarify the discussion of the process units that are covered by the Title V permit, the changes being made to FOP No. O2776 since its last revision or amendment, and the rationale for all monitoring for all the applicable requirements in the NSR permit, standard permits, and PBR authorizations. The SOB should also include a discussion of whether or not the changes trigger the significant modification procedures set forth in 40 CFR § 70.7(e)(4) and the EPA-approved Texas Title V operating permit program requirements.

TCEQ RESPONSE: The ED respectfully disagrees that EPA has the authority to object to a proposed draft permit based on the content of a statement of basis, which is not legally a part of the proposed draft permit. In accordance with 30 TAC § 122.350, EPA Review, the EPA may only object to a proposed *permit* that is not in compliance with the applicable requirements or the requirements of Chapter 122. This requirement reiterates the requirements of Federal Clean Air Act, § 505(b) and 40 C.F.R. § 70.8(c), which limits EPA's authority to object to the *proposed permit* by their specific language. Thus, this objection is not a valid objection under either Texas' EPA-approved Title V program, 40 C.F.R. Part 70 or the Federal Clean Air Act.

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However, the TCEQ agrees that the SOB should identify all process units, should identify other Title V permits at the site; and discuss changes from last revision; and therefore it has been updated accordingly.

EPA OBJECTION: Objection to Special Condition 11 for Failing to Identify Specific Compliance Option. The draft Title V permit incorporates by reference 40 CFR Part 61, Subpart FF - Nation Emission Standards for Benzene Waste Operations. Special Condition 11 of the draft permit lists section of 40 CFR Part 61 Subpart FF that the permit holder shall comply with that relate to test methods, procedures, compliance provisions, recordkeeping requirements, and reporting requirements. This subpart covers many different emission units which are covered by different standards. The only emission unit identified with Subpart FF as being applicable is TK-7, and this reference is found in the permit shield. Therefore, it is unclear what emission units, if any, must follow the requirements of 40 CFR Part 61, Subpart FF. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because Special Condition 11 fails to identify the specific emission limitations and standards, including those operational requirements that assure compliance with 40 CFR Part 61, Subpart FF, as required by 40 CFR § 70.6(a)(1). In response to this objection, the draft Title V permit must reference the specific provisions from 40 CFR Part 61, Subpart FF and the corresponding emissions units that must comply with those specific provisions of 40 CFR Part 61, Subpart FF.

TCEQ RESPONSE: Special Term and Condition 11, relating to 40 CFR Part 61, Subpart FF, covers site-wide conditions for benzene waste operations. These requirements do not apply to specific emission units and therefore 40 CFR Part 61, Subpart FF was listed as a generic requirement in accordance with the EPA's *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995.

EPA OBJECTION: Objection to Special Condition 16 for Failing to Meet Compliance Certification Requirements. Special Condition 16 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 16 of the draft Title V permit does not meet the regulatory requirements. In response to this objection, TCEQ must amend Special Condition 16 to include the 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.

TCEQ RESPONSE: Special Condition 16 now appears in the draft permit as Special Condition 17. The ED does not agree that Special Condition 17 of the draft permit needs to be revised in order to meet regulatory requirements. Special Condition 17 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

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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.

EPA OBJECTION: Objection to the Permit Shield. The draft Title V permit includes a "Permit Shield" attachment that covers many "grandfathered" facilities, and TCEQ's statement of basis (SOB) includes statements that a specific facility was constructed before a certain date. EPA has previously objected to negative applicability determinations based on blanket statements on 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), EPA objects to the issuance of the Title V permit because the permit shield provisions of the draft title V permit are only supported by a conclusory statement that does not meet the requirements of 40 CFR § 70.6(f), as described in the TriGen Objection referenced above. In response to this objection, the operating permit renewal application must include all of the potentially relevant facts supporting the "grandfathered" status of the facility or delete the permit shield requirements in the Title V permit.

TCEQ RESPONSE: The ED disagrees that the permit shield does not meet the requirements of 40 CFR § 70.6(f). Special Condition 26 was drafted in compliance with the requirements of the

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EPA approved federal operating permit program for the State of Texas, 30 TAC Chapter 122. 30 TAC §122.142(f), Permit Content Requirements, clearly allows the ED discretion to grant a permit shield for specific emission units at the request of an applicant. Additionally, § 122.148, Permit Shield, provides the requirements for the exercise of discretion by the ED, including that specific information be submitted by the applicant, in addition to other requirements. The ED determined that the application information submitted by South Hampton Resources, Inc. and certified by a responsible official was sufficient to grant the permit shield.

Furthermore, the permit shield as listed in FOP O2776 provides a “concise summary” of the negative applicability determination for each regulation that may potentially apply to emission units listed in the Permit Shield table as required by 40 CFR § 70.6(f)(1)(ii). This concise summary contains both the determination and the relevant facts upon which the determination was based, as supported by a certification by the responsible official as to the truth, accuracy and completeness of the facts for which the responsible official is liable both civilly and criminally. The SOB notes that a permit shield was requested and granted, and contains the complete table of permit shields from the permit. The ED has thus exercised his discretion, as allowed under the EPA approved operating permit program for the State of Texas, and the permit shield thus is not an unsupported or unenforceable “blanket statement”. The ED is aware of no provision in 40 CFR Part 70 stating that a permit shield cannot be granted based on certified representations regarding construction, modification, or reconstruction date information.

EPA's reliance on the TriGen-Colorado Energy Corporation objection to support an objection to the permit shield for South Hampton Resources, Inc.'s storage tanks is misplaced. In the TriGen objection, EPA Region 8 stated the state permitting authority must remove the permit shields for PSD and NSPS nonapplicability based on a statement of no modification subsequent to initial construction. However, EPA also concluded the permit authority “may retain the permit shield for original NSPS applicability based on the date of construction of the boilers.” The NSPS K and NNN negative applicability reasons at issue here for the storage tanks listed in the Permit Shield table of FOP O2776 are based on construction date.

ADDITIONAL CONCERNS: TCEQ acknowledges the additional concerns EPA has with the South Hampton Refining FOP and will address these issues as appropriate.