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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
*Protecting Texas by Reducing and Preventing Pollution*

March 9, 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  
Significant Revision  
Permit Number: O15  
Southwestern Public Service Company  
Harrington Station Power Plant  
Amarillo, Potter County  
Regulated Entity Number: RN100224849  
Customer Reference Number: CN601481336

Dear Mr. Edlund:

On December 11, 2009, 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 any, that have been made to the revised proposed permit and supporting statement of basis. The revised proposed permit and statement of basis are attached for your review. The permit will be re-noticed with updates as specified in the responses below.

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. Camilla Widenhofer at (512) 239-1028 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/CW/ssl

cc: Mr. Kevin L. Worley, Environmental Coordinator, Southwestern Public Service Company,  
Amarillo  
Mr. Ron Dutton, Manager, Air and Water Compliance, Southwestern Public Service  
Company, Amarillo  
Air Section Manager, Region 1 - Amarillo

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

Project Number: 13253

## EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

The Texas Commission on Environmental Quality (TCEQ) Executive Director provides this Response to EPA's Objection to a significant revision to a Federal Operating Permit (FOP) for Southwestern Public Service Company, Harrington Station Power Plant, Permit Nnumber O15, Potter County, Texas.

### BACKGROUND

#### Procedural Background

The Texas Operating Permit Program requires that owners and operators of sites subject to Title 30 Texas Administrative Code Chapter 122 (30 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 in compliance, the responsible party must have the appropriate New Source Review (NSR) 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. Southwestern Public Service Company applied to the TCEQ for a significant revision of the FOP for the Harrington Station Power Plant located in Amarillo, Potter County on February 3, 2009, and notice was published in English and Spanish on October 1, 2009, in the *Amarillo Globe-News* and *West Texas Hispanic News*. The public comment period ended on December 1, 2009. The TCEQ received an objection to the permit from EPA on December 11, 2009.

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

#### Description of Site

Harrington Station, located seven miles northeast of Amarillo on Lakeside Drive and two miles north of Highway 136, is an electric power production facility owned and operated by Southwestern Public Service Company (SIC Code 4911). All activities performed at this location support the operation and maintenance of equipment required to produce electric power. This permit application is for the three coal-fueled steam boilers which provide high pressure steam driving turbine-generator sets of nominal 350 megawatts capacity each, and the associated plant equipment.

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

**EPA OBJECTION:** EPA objected to incorporation by reference of NSR Permit Numbers 1388 and PSDTX631M1 and 5129 and PSDTX017M2. The *New Source Review Authorization References* table in the draft Title V permit incorporates NSR Permit Numbers 1388 and PSDTX631M1 pending amendment February 3, 2009, and NSR Permit Numbers 5129 and PSDTX017M2 issued October 2, 2008, by reference. The EPA addressed incorporation by reference in *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program* dated 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 of what requirements may be referenced and the necessary level of detail are guided by Sections 504(a) and (c) of the Act 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.* EPA notes that TCEQ's use of incorporation by reference for emissions limitations from minor NSR permits and permits by rule is acceptable. See 66 Fed. Reg. 63318, 63325 (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). 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 449, at 460-61. EPA's decision approving this use of incorporation by reference in Texas' program was limited to and specific to minor NSR permits and permits by rule in Texas. The EPA noted the unique challenge Texas faces 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 and 44574. The EPA has not approved 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 objected to the issuance of the Title V permit because it: 1) incorporates by reference the major NSR Permits Numbers 1388 and PSDTX631M1 and 5129 and PSDTX071M2; and 2) fails to include emission limitations and standards as necessary to assure compliance with all applicable requirements. See 40 CFR § 70.6(a)(1).

**RESPONSE:** The permit was revised to include, in new Appendix B of the permit, copies of Permit Numbers 1388 and PSDTX631M1, and 5129 and PSDTX017M2 and their corresponding emission limitations. This FOP will also be available for inspection in a public location, TCEQ headquarters, and the TCEQ Regional Office during the public comment period.

**EPA OBJECTION:** Pursuant to 40 CFR § 70.8(c)(1), EPA objected to the issuance of the Title V permit since recordkeeping requirements of NSR Permit Numbers 4802 and 19282 were not in compliance with the requirements of 40 CFR § 70.6(a)(3)(ii)(B). Under the *General Terms and Conditions* provision of the draft Title V permit, reference is made to 30 TAC § 122.144 of the Texas FOP program which requires records be kept for five years; however, Special Condition No. 9(N) of NSR Permit Number 4802 (amended December 29, 2008) only requires records be kept for three years. Also, Special Condition No. 6(C) of Permit Number 19282 (altered January 30, 2008) only requires records to be kept for two years. The EPA states these conditions are inconsistent with the five-year recordkeeping requirements of 40 CFR § 70.6(a)(3)(ii)(B) and cannot be carried forward into the Title V permit.

**RESPONSE:** NSR Permit Numbers 4802 and 19282 are issued to Rhodia, Inc., in Harris County, Texas, and are not associated with Southwestern Public Service Company.

The TCEQ requires five-year recordkeeping for all FOPs. Pursuant to 30 TAC § 122.144(1), all records of required monitoring data and other permit support information must be kept for a period of five years from the date of the monitoring report, sample, or application unless a longer data retention period is specified in an applicable requirement. This is consistent with the recordkeeping requirements of 40 CFR § 70.6(a)(3)(ii)(B). The requirements of 30 TAC § 122.144(1) have been and will continue to be incorporated for all FOPs through the general terms and conditions of the FOP, which specifically require "The permit holder shall comply with all terms and conditions contained in 30 TAC § 122.143 (General Terms and Conditions), 30 TAC § 122.144 (Recordkeeping Terms and Conditions), and 30 TAC § 122.146 (Compliance Certification Terms and Conditions)." These requirements were (and still are) also reiterated on the cover page of the FOP.

As all terms and conditions of preconstruction authorizations issued under 30 TAC Chapter 106, Permits by Rule, and 30 TAC Chapter 116, NSR are applicable requirements and enforceable under the FOP, the five-year record retention requirement of 30 TAC § 122.144(1) supersedes any less stringent data retention schedule that may be specified in a particular permit by rule or NSR permit. To further clarify the five-year recordkeeping retention schedule for the FOP, the following text will be added to the General Terms and Conditions of the FOP.

"In accordance with 30 TAC § 122.144(1), records of required monitoring data and support information required by this permit, or any applicable requirement codified in this permit, are required to be maintained for a period of five years from the date of the monitoring report, sample, or application unless a longer data retention period is specified in an applicable requirement. The five-year record retention period supersedes any less stringent retention requirement that may be specified in a condition of a permit identified in the NSR Authorization attachment."

**EPA OBJECTION:** EPA objected to the *Special Terms and Conditions* provisions of the draft Title V permit, Condition 3 requiring stationary vents with certain flow rates to comply with identified provisions of 30 TAC Chapter 111 (EPA-approved rules in Texas' SIP) without identification of the specific stationary vents that are subject to those requirements. As such, EPA objected to this condition as failing to meet the requirement of 40 CFR § 70.6(a)(1), since the condition lacks the specificity to ensure the compliance with the applicable requirements associated with those unidentified emission units. The EPA noted that 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 objected to the issuance of the Title V permit since Condition 3 was not in compliance with the requirements of 40 CFR § 70.8(c)(1) and § 70.7(a)(5).

**RESPONSE:** The objection refers to Special Term and Condition 3 for opacity standards for stationary vents that have a flow rate less than 100,000 actual cubic feet per minute 30 TAC §§ 111.111(a)(1)(A) and (B). The TCEQ designated the Chapter 111 visible emission requirements for these units as sitewide requirements - applying uniformly to the units or activities at the site. Because the applicant indicated in its application that only the Chapter 111 sitewide 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 do not appear in the applicable requirements summary table of the draft permit. The EPA has previously supported the practice of not listing emission units in the permit that only have sitewide or "generic" requirements. See *White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995. Stationary vents constructed on or before January 31, 1972, meet requirements of 30 TAC § 111.111(a)(1)(A) which states that opacity shall not exceed 30 percent averaged over a six-minute period. Stationary vents constructed after January 31, 1972, meet requirements of 30 TAC § 111.111(a)(1)(B) which states that opacity shall not exceed 20 percent averaged over a six-minute period. Subsection 111.111(b) merely states that any of the emission units subject to § 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. Southwestern Public Service Company has provided the list of units and the draft Title V permit has been revised to include all stationary vents subject to the requirements of 30 TAC Chapter 111 in the Unit Summary Table. Furthermore, the legal and factual basis is included in the Statement of Basis for each stationary vent.

**ADDITIONAL CONCERNS:** TCEQ acknowledges the additional concerns EPA has with the Harrington Station FOP and will address these issues as appropriate.