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

June 30, 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  
Initial Issuance  
Permit Number: O3031  
Chevron U.S.A. Inc.  
Chevron USA Galena Park Terminal  
Galena Park, Harris County  
Regulated Entity Number: RN100706811  
Customer Reference Number: CN600132484

Dear Mr. Edlund:

On January 15, 2010, the U.S. Environmental Protection Agency 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.

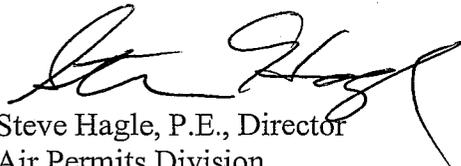
The TCEQ has completed the technical review of your objections and offers the enclosed responses to facilitate resolution of the objections. In addition, the attached responses to the objections describe the changes, if applicable, that have been made to the revised proposed permit and supporting statement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

Consistent with Title 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.

Mr. Carl E. Edlund, P.E.  
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Thank you for your cooperation in this matter. Please contact Ms. Carolyn Maus at (512) 239-6204 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/CM/pg

cc: Mr. Lodney Davis, Terminal EHS Specialist, Chevron U.S.A. Inc., Bellaire  
Mr. Charles Zukor, Managing Consultant, Trinity Consultants, Houston  
Director, Environmental Public Health Division, Harris County Public Health and  
Environmental Services, Pasadena  
Air Section Manager, Region 12 - Houston

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

Project Number: 11800

## EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

### Permit Number O3031

The Texas Commission on Environmental Quality (TCEQ) Executive Director (ED) provides this Response to EPA's Objection to the initial issuance of the Federal Operating Permit (FOP) for Chevron U.S.A. Inc., Chevron U.S.A. Galena Park Terminal, Permit Number O3031, Harris 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, 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 U.S.A. Inc. applied to the TCEQ for an initial issuance of the FOP for the Chevron U.S.A. Galena Park Terminal, located in Galena, Harris County on March 31, 2008, and notice was published on November 19, 2009, in *Houston Press*. The public comment period ended on December 21, 2009. TCEQ received an objection to the permit from EPA on January 15, 2010.

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

#### Description of Site

Chevron U.S.A. Inc, owns and operates the Chevron U.S.A. Galena Park Terminal, located at 12523 American Petroleum Road, in Galena Park, Harris County, Texas 77547. The Chevron U.S.A. Galena Park Terminal, is a petroleum products terminal facility which processes and stores various forms of gasoline, ethanol, diesel fuels, and distillates. These products are received at the site via pipeline, ship, and tanker truck. Finished products are loaded into trucks for transport off the site. The Chevron U.S.A. Galena Park Terminal, Title V Permit Number O3031, contains requirements for unit sources at the site, namely, the storage tanks, loading rack, flare, and vents. It also includes requirements for site wide degassing and cleaning of stationary VOC storage vessels and maintenance of chlorofluorocarbon equipment.

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

### **EPA OBJECTION 1:**

EPA objected to the *Special Terms and Conditions* provision 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 Title 40 Code of Federal Regulations § 70.6(a)(1) [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. In addition, 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 § 70.6(a)(1) and 70.7(a)(5).

### **TCEQ RESPONSE 1:**

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

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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, based on EPA guidance, that listing the individual vents subject to a generic Chapter 111 opacity limit is not required, the applicant can choose to list the units in the permit. Chevron U.S.A. Inc. 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 Applicable Requirements Summary Table. Special Condition 3 was revised to take out the site-wide requirements for vents. Furthermore, the legal and factual basis is included in the Statement of Basis for each stationary vent in the Determination of Applicable Requirements table.

### **EPA OBJECTION 2:**

Pursuant to 40 CFR § 70.8(c)(1), EPA objected to the issuance of the Title V permit since recordkeeping requirements of New Source Review (NSR) Permit Number 33373 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 5 years; however, Special Condition 19 of NSR Permit Number 33373 (revised November 19, 2007) only requires records be kept for two years. EPA states these conditions are inconsistent with the 5 year recordkeeping requirements of 40 CFR § 70.6(a)(3)(ii)(B) and cannot be carried forward into the Title V permit.

### **TCEQ RESPONSE 2:**

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 will continue to be reiterated on the cover page of the FOP.

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As all terms and conditions of preconstruction authorizations issued under 30 TAC Chapter 106, Permits by Rule (PBR) 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 PBR 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 New Source Review Authorization attachment.”

### **EPA OBJECTION 3:**

EPA objected to the *Special Terms and Conditions* provision of the draft Title V permit, Condition 11, which stated that the permit holder shall certify compliance with all term and conditions. EPA noted that 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 objected to the issuance of the Title V permit since Condition 11 of the draft Title V permit did not meet the regulatory requirements.

### **TCEQ RESPONSE 3:**

Special Condition 11 now appears in the draft permit as Special Condition 12. The ED does not agree that Special Condition 12 of the draft permit needs to be revised in order to meet regulatory requirements. Special Condition 12 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

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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 4:**

Pursuant to 40 CFR § 70.8(c)(1), EPA objected to the issuance of the Title V permit because the permit shield provisions of the draft Title V permit are not supported by an adequate determination that meets the requirements of 40 CFR § 70.6(f). 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 conclusory statements on "grandfathered" units claiming that no modifications have occurred that triggered PSD, NSR or a modification subject to NSPS applicability (*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 conclusory 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). EPA noted that Special Condition 10 in Permit Number 33373 has requirements for FLARE1 to comply with 40 CFR § 60.18, yet the proposed Title V permit applies a permit shield to FLARE1 for 40 CFR Part 60, Subpart A. Also, Special Condition 20 of NSR Permit Number 33373 states "These facilities shall comply with all applicable

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requirements of the EPA regulations on Standards of Performance for New Stationary Sources promulgated for Storage Tanks in 40 CFR Part 60, Subparts A and Ka, Kb." Many of the tanks listed in Permit Number 33373 have a permit shields from these regulations.

### **TCEQ RESPONSE 4:**

The ED disagrees that the permit shield does not meet the requirements of 40 CFR § 70.6(f). Special Condition 17 was drafted in compliance with the requirements of the 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 Chevron U.S.A. Inc. and certified by a responsible official was sufficient to grant the permit shield.

Furthermore, the permit shield as listed in FOP O3031 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 Chevron U.S.A. 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 negative applicability reasons at issue here for the storage tanks listed in the Permit Shield table of FOP O3031 are based on

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construction date. There is also an NSPS Kb negative applicability reason for a storage tank listed in the Permit Shield table of FOP O3031 based on construction date. The remaining NSPS Kb negative applicability reasons are based on capacity and/or vapor pressure of the product stored. In regards to NSR Permit Number 33373 Special Condition 20, the reference to 40 CFR Part 60, Subpart Ka is an error. The company confirmed based on the vapor pressure of product stored there are no tanks subject to 40 CFR Part 60, Subpart Ka. The company will submit an NSR alteration request to correct this error. There is one tank, T109, which is applicable to 40 CFR Part 60, Subpart Kb. Special Condition 20 is a general permit term that captures the federal NSPS requirements that may be applicable to storage tanks covered under NSR Permit Number 33373. However, it does not negate the permit shields identified in FOP O3031.

After further review it was determined that the permit shield previously granted for FLARE1 for 40 CFR Part 60, Subpart A was not valid. The permit shield determination for 40 CFR Part 60, Subpart A has been deleted from the Title V permit.

**ADDITIONAL CONCERNS:**

TCEQ acknowledges the additional concerns EPA has with the Chevron U.S.A. Galena Park Terminal FOP and will address these issues as appropriate.