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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  
Renewal  
Permit Number: O17  
City of Garland Power & Light  
Ray Olinger Plant  
Nevada, Collin County  
Regulated Entity Number: RN100219203  
Customer Reference Number: CN600130140  
Account Number: CP-0026-M

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.

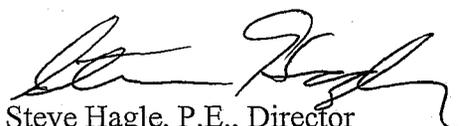
Mr. Carl E. Edlund, P.E.

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Consistent with 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. Thank you for your cooperation in this matter. Please contact Mr. Henry Opara at (512) 239-6359 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/HO/bb

cc: Mr. James Meriwether, Environmental Manager, City of Garland Power & Light, Nevada  
Air Section Manager, Region 4 - Fort Worth

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

Project Number: 13851

## EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

### Permit Number O17

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 City of Garland Power & Light, Ray Olinger Plant, Permit No. O17, Collin 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. City of Garland Power & Light applied to the TCEQ for a renewal of the FOP for the Ray Olinger Plant located in Nevada, Collin County on June 18, 2009, and notice was published on December 2, 2009 date in *Wylie News*. The public comment period ended on January 2, 2010. During the concurrent EPA review period, TCEQ received an objection to the permit from EPA on January 22, 2010.

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

#### Description of Site

City of Garland Power & Light owns and operates the Ray Olinger Plant, located at 13835 County Road 489, Nevada, Texas 75173.

City of Garland Power and Light/Ray Olinger Plant is an electric services facility. Significant emission sources at the site include boilers/steam generators, stationary vents and turbines. The boilers produce steam flows. Combustion air, which is supplied by forced draft fans, is mixed with fuel in a fuel burning equipment as it passes into the furnace. The gases in the furnace rise and leave the boiler through an air heater and out through stacks.

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

**EPA OBJECTION:** The *New Source Review Authorization References* table in the draft Title V permit incorporates PSDTX935, issued on March 12, 1999, by reference. EPA has discussed the issue of incorporation by reference in *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program* (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 Teso*

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*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 for the necessary level of detail are guided by Sections 504(a) and (c) of the CAA 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.* We note 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, 63324 (Dec. 6, 2001); *see also, Public Citizen v. EPA*, 343 F.3d 449, at 460-61 (5<sup>th</sup> 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 IBR in Texas' program was limited to and specific to minor NSR permits and Permits by Rule in Texas. 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, 44574. EPA did not approve (and does not approve of) 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 objects to the issuance of the Title V permit, because it incorporates by reference the major New Source Review permit PSDTX935 and fails to include emission limitations and standards as necessary to assure compliance with all applicable requirements. *See* 40 CFR § 70.6(a)(1). In response to this objection, TCEQ must include (as conditions of the Title V permit) all the emission limitations and standards of PSDTX935 necessary to ensure compliance with all applicable requirements. Alternatively, TCEQ could include a specific condition for each emissions unit to reference the exact provisions of PSDTX935 that contain the emission limitations and standards reflecting the applicable requirements for that unit and then physically attach a copy of the PSDTX935 to the Title V permit. Thus, the Title V permit would contain all the emission limitations (including the MAERT) and standards of the PSD permits with a special condition for each emissions unit directing the reader to the specific location in the attached PSD permit containing the applicable requirements for that unit.

**TCEQ RESPONSE:** In response to EPA's objection, the ED has revised FOP No. O17 to include, in a new Appendix B of the permit, a copy of NSR Permit No. 40803 and PSDTX935 and its corresponding terms and conditions, and emission limitations. With regard to IBR of major NSR, the ED respectfully disagrees with EPA's interpretation of its approval of Texas's operating permit program on this issue. The ED recognizes that respective agency staff are actively involved in continuing, extensive discussions on how to resolve this issue; namely, how much detail of the underlying major NSR authorization should be reiterated in the face of the Title V permit. The federally approved operating permit program for Texas has allowed for applicable requirements to be incorporated by reference into the FOP since 1996. *See* Final

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Interim Approval, 61 Fed. Reg. 32693, June 25, 1996; Final Full Approval, 66 Fed. Reg. 63318, December 6, 2001; and Final Approval of Resolution of Deficiency, 70 Fed. Reg. 16134, March 30, 2005. Title 30 TAC §122.142 states that the operating permit shall contain the specific regulatory citations in each applicable requirement identifying the emission limitations and standards. Additionally, EPA discussed the use of incorporation by reference in the preamble to the final Part 70 rule, discussing the requirements of § 70.6, Permit Content, stating:

Section 70.6(a)(1)(i) requires that the permit reference the authority for each term and condition of the permit. Including in the permit legal citations to provisions of the Act is critical in defining the scope of the permit shield, since the permit shield, if granted, extends to the provisions of the Act included in the permit. Including the legal citations in the permit will also ensure that the permittee, the permitting authority, EPA, and the public all have a common understanding of the applicable requirements included in the permit. *This requirement is satisfied by citation to the State regulations or statutes which make up the SIP or implement a delegated program. See 57 Fed. Reg. 32250, 32275 July 21, 1992, emphasis added.*

In comments on the proposed final interim approval of the operating permit program, in 1995, the commission (then-TNRCC) proposed to include a standardized permit provision that incorporated by reference all preconstruction authorizations, both major and minor, to resolve the EPA identified deficiency of Texas' failure to include minor NSR as an applicable requirement. In the June 25, 1996 Final Interim Approval, EPA directed, "the State must be quite clear in any standardized permit provision that all of its *major 'preconstruction authorizations* including permits, standard permits, flexible permit, special permits, or special exemptions' are incorporated by reference into the operating permit *as if fully set forth therein* and therefore enforceable under regulation XII (the Texas Operating Permit Regulation) as well as regulation VI (the Texas preconstruction permit regulation)." (61 Fed. Reg. at 32695, emphasis added.) Given this explicit direction in EPA's 1996 final interim approval of the Texas program, TCEQ understood that the standardized permit provision for preconstruction authorizations incorporated all NSR authorizations by reference, including major NSR.

As a result of Texas' initial exclusion of minor NSR as an applicable requirement of the Texas Operating Permit program, and EPA's final interim approval of a program that provided for a phase-in of minor NSR requirements using incorporation by reference, EPA was sued by various environmental groups. *See Public Citizen, Inc. v. U.S. E.P.A.*, 343 F.3d 449 (5<sup>th</sup> Cir. 2003). The petitioner's brief raised several issues, including the use of incorporation by reference of minor NSR, because the exclusion of minor NSR as an applicable requirement was a program deficiency identified by EPA. The petitioner's brief acknowledges that Texas' Operating Permit program incorporates all preconstruction authorizations by reference, through use of a table entitled "Preconstruction Authorization References". The Petitioner's brief includes an example

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of this table, which clearly contains sections for Prevention of Significant Deterioration (PSD), nonattainment (NA), 30 TAC Chapter 116 Permits, Special Permits and Other Authorizations, and Permits by Rule under 30 TAC Chapter 106. See Brief of Petitioners, p. 30. The brief goes on to discuss the sample permit, Permit No. O-00108, which documents "six different minor NSR authorizations and one PSD permit" requiring one to look at each of the underlying permits in addition to the Title V permit. The Department of Justice (DOJ), in its reply brief for EPA, responded to this allegation of improper use of IBR in the context of the specific allegation – whether "EPA reasonably determined that Texas corrected the interim deficiency related to minor new source review", answering unequivocally "yes". "Nothing in the statute or regulations prohibits incorporation of applicable requirements by reference. The Title V and Part 70 provisions addressing the content of Title V permits specify what Title V permits 'shall include,' but do not speak to how the enumerated items must be included." See, Brief of Respondents, pp. 25-26. The Court did not distinguish between minor and major NSR when concluding that IBR is permissible under both the CAA and Part 70.

Thus, it is the ED's position that incorporation by reference of both major and minor NSR permits is acceptable and was fully approved by EPA. However, given EPA's differing opinion, as reflected in the Premcor and CITGO orders, this objection, and the June 10, 2010 letter from EPA Region VI regarding this issue, the ED has revised FOP No. O17 to include, in a new Appendix B of the permit, a copy of NSR Permit No. 40803 and PSDTX935 and its/their corresponding terms and conditions, and emission limitations, which was initially suggested by EPA as adequate to resolve this objection. Inclusion of the major NSR permits as an appendix should address EPA's objection and ensure that the Title V permit is clear and meaningful to all affected parties. The ED will continue efforts with EPA on how to resolve IBR of major NSR on a broader, programmatic basis.

**EPA OBJECTION:** The Title V permit renewal application is incomplete. The permit application fails to include emission related information required by 40 CFR §70.5(c)(3), including the emissions rate in tons per year (tpy), the identification and description of air pollution control equipment and compliance monitoring devices, the calculations for the basis of emissions, and other information required by the applicable requirements. The permit application also fails to include the pollution control requirements specified in 40 CFR §70.5(c)(4), including citation and description of all applicable requirements and description or reference to any applicable test method for determining compliance with each applicable requirement. Pursuant to 40 CFR §70.8(c)(3), EPA objects to the issuance of this permit because the permit application submitted for EPA review was deficient as described above and lacks information necessary for an adequate review of the proposed permit. In response to this objection, the permit application must be revised to include all the information required by 40 CFR §70.5(c), including the specific information found lacking above.

**TCEQ RESPONSE:** The ED respectfully disagrees that EPA has the authority to object to draft permit based on the content of a permit application and does not agree that the Title V permit application was incomplete. In accordance with 30 TAC § 122.350, EPA Review, the EPA may

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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.

Whether or not an applicant submitted complete information as part of their application is a judgment reserved for the permitting authority, which is the TCEQ, not EPA, and is specifically provided for in 40 C.F.R. §70.4(b)(6) in addition to the companion provisions in 30 TAC § 122.133 and 122.134. In fact, 40 C.F.R. §70.4(b)(6) specifically provides that the permitting authority only has 60 days from the date of receipt of the permit application to determine whether an application is complete before an application is deemed complete by operation of law. As previously stated, the applicant was judged by the TCEQ, the federally authorized permitting authority, as having met their obligation to provide complete and timely application information pursuant to 30 TAC §§ 122.133 and 122.134. There is no provision in the Federal Clean Air, Act, 40 C.F.R. Part 70, or 30 TAC Chapter 122 that provides EPA an opportunity or right to overthrow a completeness determination. 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.

Furthermore, EPA approved the requirements of 30 TAC §122.132, Application Requirements, as part of Texas' Title V program. This section provides the required elements of an application. 30 TAC §122.132 specifically provides that the applicant must identify, for each emission unit, the applicable requirement citations that identify emission standards and limitations. There is no requirement in 30 TAC § 122.132 that emission limits be provided in the application in tons per year. For minor NSR permit requirements, EPA has approved the use of incorporation by reference and the applicant is only required to identify the permits that authorize emissions and activities in the covered area or site. As stated above, the major NSR (PSD) permits terms and conditions and MAERT are spelled out in the FOP in Appendix B.

**EPA OBJECTION:** Under the *Special Terms and Conditions* provisions of the draft Title V permit, Condition 3 requires stationary vents with certain flow rates to comply with identified provisions of 30 TAC Chapter 111 of the in 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.

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**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, based on EPA's 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. City of Garland Power & Light 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:** The proposed Title V permit lists 40 CFR 60, Subpart GG - Standards of Performance for Stationary Gas Turbines in the applicable requirements summary table for emission unit GE4. This subpart gives options for compliance with NOx emission limits as well as the required monitoring based upon the compliance option selected. The *Applicable Requirements Summary* table in the proposed permit list 40 CFR § 60.334(b) and indicates that all subordinate paragraphs and subparagraphs of the citation apply; however, depending on what option is chosen under 40 CFR §60.334(b), a continuous emission monitoring system may or may not be required. Therefore, it is unclear how the NOx emissions will be monitored. The specific compliance option and associated monitoring selected by the City of Garland

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Power & Light must be stated in the Title V permit with the emission unit for which it applies. Pursuant to 40 CFR §70.8(c)(1), EPA objects to the issuance of the Title V permit because the *Applicable Requirements Summary* table fails to identify the specific emission limitations and standards, including those operational requirements that assure compliance with 40 CFR Part 60, Subpart GG, as required by 40 CFR §70.6(a)(1). In response to this objection the draft Title V permit must reference the specific compliance option and associated monitoring selected by the permit holder that will be used to ensure compliance with the emission limitation governing standards of performance for stationary gas turbines regulated under 40 CFR Part 60, Subpart GG.

**TCEQ RESPONSE:** The ED respectfully notes that it appears that EPA misunderstood the requirements of 40 CFR Part 60, Subpart GG. The correct compliance option was included in the proposed draft permit. 40 CFR § 60.334(b) was included as an applicable requirement because the company indicated they are using a continuous *emission* monitoring system (CEMS). 40 CFR § 60.334(b) was grouped to include all the CEMS requirements listed in §60.334(b)(1)-(3). The language of 40 CFR Subpart GG is confusing, because it uses similar terminology for different options – “continuous emission monitoring system (CEMS)” vs. “continuous monitoring system.” If the company had chosen to use a *continuous monitoring system* or a previously approved alternative, the requirements in §60.334(a) or §60.334(c), respectively, would have been included in the permit.

**EPA OBJECTION:** Special Condition 9 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 9 of the draft Title V permit does not meet the regulatory requirements. In response to this objection, TCEQ must amend Special Condition 9 to include all the requirements for compliance certifications, as set forth in 40 CFR § 70.6(c)(5), including the identification of the methods or other means for determining the compliance status with each term and condition of the permit.

**TCEQ RESPONSE:** The ED does not agree that Special Condition that Special Condition 9 of the draft permit needs to be revised in order to meet regulatory requirements. Special Condition 9 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

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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:** 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 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 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 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

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determined that the application information submitted by City of Garland Power & Light and certified by a responsible official was sufficient to grant the permit shield.

Furthermore, the permit shield as listed in FOP O17 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 City of Garland Power & Light units 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 negative applicability reasons at issue here in the Permit Shield table of FOP O17 are based on construction date.

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