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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
Minor Revision
Permit Number: O1227
The Goodyear Tire & Rubber Company
Houston Chemical Plant
Houston, Harris County
Regulated Entity Number: RN100870898
Customer Reference Number: CN600616049

Dear Mr. Edlund:

On January 8, 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.

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
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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/pg

cc: Mr. James G. Kovach, Manager Environmental Control, The Goodyear Tire & Rubber Company, Houston
Bureau Chief of Air Quality Control, Health and Human Services Department, City of Houston, 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
Flexible Permit Number 6618
Technical Review for Flexible Permit Number 6618

Project Number: 14320

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

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The Texas Commission on Environmental Quality (TCEQ) Executive Director provides this Response to U.S. Environmental Protection Agency (EPA's) Objection to the minor revision of the Federal Operating Permit (FOP) for The Goodyear Tire & Rubber Company, Houston Chemical Plant, Permit Number O1227, Houston, Harris County, Texas.

BACKGROUND

Procedural Background

The Texas Operating Permit Program requires that owners and operators of sites subject to 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. The Goodyear Tire & Rubber Company applied to the TCEQ for a minor revision of the FOP for the Houston Chemical Plant located in Houston, Harris County on October 13, 2009. Public announcement began on November 24, 2009, and ended on December 24, 2009. During the concurrent EPA review period, TCEQ received an objection to the permit from EPA on January 11, 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

The Goodyear Tire & Rubber Company owns and operates the Houston Chemical Plant, located at 2000 Goodyear Drive in Houston, Harris County, Texas 77017. The Houston Chemical Plant manufactures styrene butadiene (SBR) latex, a synthetic rubber. Butadiene is received by pipeline and stored in tanks prior to use. Other raw materials stored in tanks prior to use are recycled styrene and blend styrene. The synthetic rubber is produce using both cold and hot reaction processes. Wastewater is treated and recovered reagents are recycled back into the process. The finished SBR latex is stored in tanks and blended with additives to form crumbled rubber. The crumbled rubber is washed and dried and then compressed into bales and wrapped in plastic. The product is shipped by railcar to customers. Other emission sources at the site include loading/unloading operations, engines, degreasing operations, and surface coating operations.

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

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EPA OBJECTION: 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 Number 6618, most recently revised on January 20, 2009. Flexible permits are issued pursuant to 30 TAC Chapter 116, Subchapter G; however, those provisions have not been approved, pursuant to Section 110 of the federal Clean Air Act (CAA), 42 U.S.C. § 7410, as part of the applicable implementation plan for the State of Texas (Texas SIP). Therefore, pursuant to Title 40 Code of Federal Regulations § 70.8(c)(1) [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 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. Furthermore, the Title V permit must include an additional condition specifically requiring the source to prepare and submit to TCEQ a written analysis of any future change/modification to ensure that minor and/or major new source review requirements under the federally-approved Texas SIP have not been triggered. Finally, 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 not been approved into the Texas SIP. 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 30 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 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

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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 new source review 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 pending 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 Number 6618 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 Flexible Permit Number 6618 meets all applicable NSPS, NESHAP requirements, and air dispersion modeling conducted by applicant. The flexible permit and technical review are enclosed with this response. The Goodyear Tire & Rubber Company 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 required under

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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 The Goodyear Tire & Rubber Company agrees to such a process, the TCEQ will work with The Goodyear Tire & Rubber Company 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: 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

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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 No. 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 SOB for the legal and factual basis for Condition No. 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 the 30% opacity requirement of 30 TAC § 111.111(a)(1)(A) and are identified by emission point identification number (EPN) in Special Condition 3.A. 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. 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.

A determination of the legal and factual basis for Condition No. 3 was added to the SOB document for the draft Title V permit and is enclosed.

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EPA OBJECTION: Objection to the Statement of Basis. TCEQ prepared a SOB for the draft Title V permit which states that this is a minor revision. The SOB shows 2 items listed under *Description of Revision Project*. In essence, the first statement indicates that emission units F410E and F410F are deleted from the permit, and then the second statement claims to add Emission Units F410E, F410F, and F430D. Therefore, it is unclear whether Emission Units F410E and F410F are covered by the draft permit. We note that Emission Units F410E and F410F are listed in the Title V permit, but the SOB calls this into question. 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 Number 01227 since its last revision or amendment, and the rationale for all monitoring for all the applicable requirements in the flexible 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.

However, the ED does agree that the SOB could be revised to clarify the inclusion of Units F410E and F410F. The SOB has been revised to include the following statement in the "Description of Revision Project" section:

Please note that Unit IDs, F410E and F410F, previously used to identify the atmospheric vented vessels being demolished were reused to identify two of the three new closed pressure vessels.

With this addition to the Description of Revision Project, the SOB clearly states the changes made to the FOP since its last revision on September 8, 2009. Additionally, the SOB has been revised to include all emission sources identified in the Title V permit and the basis for the

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applicable requirement citations and to include the rationale for periodic monitoring in the Title V permit. In accordance with 40 CFR § 70.7(a)(5), the SOB sets forth the legal and factual basis for the draft permit conditions. There is no requirement under the CAA or 40 CFR Part 70 that the SOB include a discussion of monitoring rationale for all applicable requirements, or that the SOB include a discussion of the kind of revision procedure required by any permit change.

EPA OBJECTION: Objection to Special Condition No. 1.D. for Failing to Identify Specific Compliance Option. The draft Title V permit incorporates by reference 40 CFR Part 63, Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines. The *Applicable Requirements Summary* table shows that Unit ID No. F1-GEN is subject to the emission limitation/standard or equipment specification requirements of Subpart ZZZZ. The table then gives the citation § 63.6590(c). This citation states, in essence, that the affected source must meet the requirements of this part by meeting the requirements of 40 CFR Part 60, Subpart IIII, for compression ignition engines, or 40 CFR Part 60, Subpart JJJJ, for spark ignition engines. It is unknown whether F1-GEN is a spark or compression ignition engine. The table does not list any requirements for this unit for monitoring and testing, recordkeeping, or reporting requirements. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because Special Condition No. 1.D. fails to identify the specific emission limitations and standards, including those operational requirements that assure compliance with 40 CFR Part 63, Subpart ZZZZ, as required by 40 CFR § 70.6(a)(1). In response to this objection, the draft Title V permit must reference the specific Subpart provisions from 40 CFR Part 60 Subpart IIII or Subpart JJJJ that emission unit F1-GEN must comply with as specified under 40 CFR Part 63, Subpart ZZZZ.

TCEQ RESPONSE: The Goodyear Tire & Rubber Company owns a spark ignited stationary internal combustion engine, Unit ID No. F1-GEN. The engine was constructed after June 12, 2006; was manufactured on December 1, 2008; is for emergency use only; has a horsepower rating of 45; is lean burn, and fires liquid petroleum gas. On May 29, 2009, The Goodyear Tire & Rubber Company submitted a minor revision application (TCEQ Project 13763) to add the engine requirements to the FOP. The engine is subject to 40 CFR Part 63, Subpart ZZZZ and § 63.6590(c) is the only applicable requirement. The citation states that the engine ".....must meet the requirements of this part by meeting the requirements of 40 CFR Part 60, Subpart IIII for compression ignition engines or 40 CFR Part 60, Subpart JJJJ, for spark ignition engines." Because the engine is a spark ignited engine, it is potentially subject to requirements of 40 CFR Part 60, Subpart JJJJ, however, pursuant to § 60.4230(a)(4)(iv) the engine is not subject the 40 CFR Part 60, Subpart JJJJ. The engine was manufactured prior to January 1, 2009. The engine has no requirements under 40 CFR Part 60, Subpart JJJJ and therefore has no requirements under 40 CFR Part 63, Subpart ZZZZ. The 40 CFR Part 63, Subpart ZZZZ applicable requirements for Unit ID No. F1-GEN have been removed from the Applicable Requirement Summary Attachment.

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EPA OBJECTION: Objection to Special Condition No. 15 for Failing to Meet Compliance Certification Requirements. Special Condition No. 15 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 No. 15 of the draft Title V permit does not meet the regulatory requirements. In response to this objection, TCEQ must amend Special Condition 15 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: Addition of Special Term and Condition 13 has resulted in renumbering subsequent to Special Condition 13. Special Condition No. 15 has been renumbered and is referred to as Special Condition No. 16 in this version of the proposed draft permit. The ED does not agree that Special Condition No. 16 of the draft permit needs to be revised. Special Condition 16 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.

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EPA OBJECTION: Objection to the Permit Shield. The draft Title V permit includes a "Permit Shield" attachment that covers many "grandfather" 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 "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 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 not supported by an adequate determination that meets the requirements of 40 CFR § 70.6(f), as further explained in the TriGen Objection referenced above. In response to this objection, TCEQ must provide an adequate demonstration consistent with the requirements described above 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 25 was drafted in compliance with the requirements of the EPA approved federal operating permit program for the State of Texas, 30 TAC Chapter 122. Section 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 The Goodyear Tire & Rubber Company and certified by a responsible official was sufficient to grant the permit shield.

Furthermore, the permit shield as listed in FOP O1227 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 unsupportable 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 The Goodyear Tire & Rubber Company's storage tanks is misplaced. In the

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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, Ka, and Kb negative applicability reasons for the storage tanks listed in the Permit Shield table of FOP O1227 have been modified to remove the unit modification date and specify the construction date for the Basis of Determination.

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