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: O1284
INEOS USA LLC
Green Lake Complex
Port Lavaca, Calhoun County
Regulated Entity Number: RN100210038
Customer Reference Number: CN602817884
Account Number: CB-0034-B

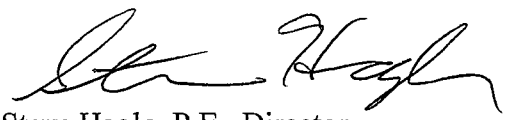
Dear Mr. Edlund:

On January 28, 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. Thank you for your cooperation in this matter. Please contact Ms. Lauren Pedroarena at (512) 239-5225 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/LP/bb

cc: Mr. E. J. Sockell, Deputy Site Director, INEOS USA LLC, Port Lavaca
Air Section Manager, Region 14 - Corpus Christi

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

Project Number: 13726

EXECUTIVE DIRECTOR'S RESPONSE TO EPA OBJECTION

Permit Number O1284

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 INEOS USA, LLC, Green Lake Complex, Permit No. O1284, Calhoun 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. INEOS USA LLC applied to the TCEQ for a renewal of the FOP for the Green Lake Complex located in Port Lavaca, Calhoun County on May 5, 2009, and notice was published on November 25, 2009 in *Port Lavaca Wave*. The public comment period ended on December 25, 2009. During the concurrent EPA review period, TCEQ received an objection to the permit from EPA on January 28, 2010.

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

Description of Site

INEOS USA, LLC owns and operates the Green Lake Complex, located at 13050 State Highway 185 N in Port Lavaca, Calhoun County, Texas 77979.

The Acrylonitrile (AN) Unit produces acrylonitrile by reacting raw materials together with air and then recovering and purifying the reaction product stream. Propylene is stored in three propylene spheres which are pressure tanks and are designed to operate without emissions. Solid catalyst for the AN reactors is unloaded, stored, and prepared for use within the catalyst unloading/handling system.

Raw materials are fed to three parallel AN reactor/absorber systems. Each of the three systems includes an air oxidation reactor and associated product recovery operations. Within each reactor, raw materials react together and are oxidized with the air-supplied oxygen in the presence of the catalyst. The reactor effluent passes through two recovery systems in series: a quench contactor and an absorber. A waste gas stream called "absorber off-gas" is generated by each of the three systems. The AN reaction produces varying mixtures of chemicals which are routed to the AN recovery/purification systems. Process units within this section include cooling systems, distillation columns, decanters, fractionator/reflux drums, condensers, and scrubbers.

AN rundown tanks receive AN products from the AN recovery system. Once the product meets product specifications, AN is transferred to the product tanks. Material from these tanks is transferred to the materials loading and unloading for distribution off-site. Off-spec AN is transferred to AN-Off spec tanks and returned to the AN manufacturing unit for refinement.

Process wastewater is sent directly to the quench water clarifier through the individual drain systems. The clarifier allows wastewater residuals to settle out of the wastewater and the residuals are directed to a centrifuge where water is removed from the sludge and returned to the clarifier. Two unfiltered wastewater tanks are used to store wastewater from the quench water clarifier. One filtered wastewater tank stores wastewater that has been further treated by filtering in a sand filtration system.

Raw materials in barges, rail cars and tank trucks are respectively loaded and unloaded at the Barge Dock, Railcar Rack and Truck Rack within the Green Lake Complex. Raw materials may also be transferred to the Green Lake Complex via pipeline and products may also be transferred from the facility via pipeline. The loading racks have sumps for collecting wash water, leaks, or spills. Liquids received by the sumps are generally recycled within the manufacturing processes.

Vapors from loading of acrylonitrile and acetone cyanohydrin from the Green Lake Complex into marine vessels are collected in a closed vent system and routed to a scrubber. Scrubber water is normally recycled within the process, or may be routed to wastewater treatment.

Three Absorber Off-Gas Incinerator/Boilers use natural gas for steam generation.

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

EPA OBJECTION: EPA objected to incorporation by reference of New Source Review (NSR) permit numbers 6289 and PSD-TX-76M8. The *New Source Review Authorization References* table of the draft Title V permit incorporates PSD-TX-76M8, issued on September 27, 2007, 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 are that 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. XI-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.* EPA notes that TCEQ's use of incorporation by reference for emission limitations from minor NSR permits and Permits by Rule is currently acceptable. *See* 66 Fed. Reg. 63318, 63324 (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 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. EPA noted the unique challenge faced 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 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 New Source Review permit PSD-TX-76M8; 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).

TCEQ RESPONSE: In response to EPA's objection, the ED has revised FOP No. O1284 to include, in a new Appendix B of the permit, a copy of NSR Permit No. 6289 and PSDTX76M8 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 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 (5th 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 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. O1284 to include, in a new Appendix B of the permit, a copy of NSR Permit No. 6289 and PSDTX76M8 and its 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 *New Source Review (NSR Authorization References* table in the draft Title V permit incorporates by reference Permit Number 18046. Available information indicates that on May 24, 2000, BP Chemical (now Ineos) forwarded a Form PI-E to TCEQ (Notification of Changes to Qualified Facilities). Based upon TCEQ's review of the information, TCEQ had no objection to the proposed change. This change affects Permit Number 18046, which is a minor NSR Permit, under the Texas Qualified Facilities Program. This program authorizes facilities to become "qualified" to net out of NSR State Implementation Plan (SIP) permitting requirements un Section 116.118 of Title 30 Texas Administrative Code (30 TAC § 116.118)(pre-change qualification). To date EPA has not approved the Texas Qualified Facilities Program revisions into the Texas SIP, pursuant to Section 110 of the federal CAA, 42 U.S.C. § 7410. Therefore, pursuant to 40 CFR § 70.8(c)(1), EPA must object to the issuance of this Title V permit because physical or operational changes made under the Texas Qualified Facilities Program cannot be determined to be in compliance with the applicable requirements of the 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 response to this objection, TCEQ must revise the draft permit to include a condition that specifically requires the source to prepare and submit to TCEQ a written analysis of any future change/modification to ensure that minor and/or major NSR requirements under the federally-approved Texas SIP have not been triggered. The source must comply with *both* the requirements of the approved SIP *and* with any requirements of the State.

TCEQ RESPONSE: As a preliminary matter, the resolution of EPA concerns regarding qualified facility changes is a common objective for both TCEQ and the EPA. The EPA concerns discussed below regarding the use of the Title V permitting process to challenge qualified facility changes on a case-by-case basis does not diminish the importance of reaching an expeditious resolution to this NSR issue. The ED recognizes that the Qualified Facility rules, located in 30 TAC Chapter 116, §§ 116.116(e), 116.117 and 116,118 and submitted to EPA initially in 1996 and after re-adoption in 1998, have not been approved into the Texas SIP, and were specifically disapproved by EPA effective May 14, 2010. *See* 75 Fed. Reg. 19468 (April 14, 2010).[1] The commission proposed rule changes to address concerns noted by EPA regarding the approvability of the Qualified Facilities program. See 35 Tex. Reg. 2978 (April 16, 2010). 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

1 The TCEQ has filed a Petition for Review of EPA's final action with the U.S. Court of Appeals for the 5th Circuit. As noted in the TCEQ's April 16, 2010 proposed rulemaking, "[t]he commission has always administered the qualified facility program as a minor NSR program and has not allowed its applicability for changes requiring major NSR. This is consistent with the requirements of the enabling statute in THSC, § 382.0512 which states that 'nothing in this section shall be construed to limit the application of otherwise enforceable state or federal requirements, nor shall this section be construed to limit the commission's powers of enforcement under this chapter.' The program does not, and has not, superseded or negated federal requirements." *See* 35 Tex. Reg. 2979, April 16, 2010.

30 Texas Administrative Code (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 authorization mechanism, Qualified Facility changes are applicable requirements, and shall be included in applications and Texas issued FOPs, in compliance with Texas' approved program. According to the EPA review procedures in 30 TAC § 122.350(c), EPA may only object to issuance of any proposed permit which is not in compliance with the applicable requirements or requirements of Chapter 122. 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 requirements, including Qualified Facility changes, 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 approved program elements.

EPA's objection notes that the Qualified Facility rules allow facilities to become "qualified" to net out of NSR SIP Permitting requirements under 30 TAC § 116.118 (pre-change qualification). However, any change made at a qualified facility must comply with PSD and nonattainment NSR, (§ 116.117(a)(4)), must be reported annually to the commission, (§ 116.117(b)), and may be incorporated into the minor NSR permit at amendment or renewal (§ 116.117(c)). The Qualified Facilities rules in Chapter 116 provide that changes may be made to existing facilities without triggering the statutory definition of modification of existing facility found in Texas Clean Air Act (TCAA), Texas Health and Safety Code (THSC), §382.003(9) if either of the following conditions are met: the facility has received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur, or regardless of whether the facility has received a preconstruction permit or permit amendment, uses control technology that is at least as effective as the BACT that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur. Facilities that meet these requirements are designated as "qualified facilities." The rules do not allow construction of a new facility, nor can the change result in a net increase in allowable emissions of any air contaminant, or allow the emissions of an air contaminant category that did not previously exist at the facility undergoing the change. The use of the terminology in the phrase "net increase in allowable emissions of any air contaminant" in §116.116(e), Changes to Qualified Facilities, should not be confused with federal terminology, where "net increase" has specific meaning as it relates to federal (major) NSR applicability involving comparison of actual emissions. The qualified facility program compares allowable emissions at one facility to allowable emissions of the same type at another facility at a single site. Prior to making this comparison, the owner or operator must determine if a project requires federal nonattainment (NA) or prevention of significant deterioration (PSD) review. This is accomplished by comparing a facility's baseline actual emission rate to the planned emission rate resulting from the change using either proposed actual emissions or the

facility's potential to emit (PTE), to a significance level for the pollutant involved. If the projected emissions increase equals or exceeds the significance level, the facility owner or operator must compute the result of all emissions increases and decreases at the facility according to the definition of contemporaneous period as defined in §116.12, Nonattainment and Prevention of Significant Deterioration Review Definitions, to determine the net emission increase. If this net increase equals or exceeds a major modification threshold, then federal major NSR is triggered, and the proposed change cannot be authorized using a qualified facility claim. The federal major NSR permitting program contemplates increases in both actual and allowable emissions through the approval of new permits. The qualified facilities program explicitly excludes the inclusion of new facilities or any increases in allowable emissions. Such changes must be accomplished through the use of another approved permitting program. The qualified facilities program is designed to allow minor changes at individual facilities within a single site by trading allowable emissions between facilities. A qualified facilities change results in no change to total allowable emissions that are authorized at a single site. Additionally, any change that moves emissions closer to a site boundary is carefully evaluated to ensure no adverse effects.

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 NSR permits and other supporting information. Additionally, the Qualified Facility rules, and subsequent authorizations, which may be incorporated into SIP approved minor NSR permits at amendment or renewal, pursuant to 30 TAC § 116.117(c) clearly do not allow sources to utilize the Qualified Facility 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, and reiterates that documentation must be kept for changes at Qualified Facilities that demonstrates that the change meets the requirements of Subchapter B, Divisions 5 and 6. The commission has made this position clear since proposing and adopting rules to implement the legislative changes resulting in the flexibility available to qualified facilities. *See* the adoption of the qualified facility rules, 21 Tex Reg. 1569, February 27, 1996; TNRCC Guidance Document "Modification of Existing Facilities Under Senate Bill 1126" dated April 1996, RG-223; and comments submitted by the TCEQ regarding EPA's proposed disapproval of the qualified facility rules, Docket ID No. EPA-R06-OAR-2005-TX-0025. EPA's delay in acting on the Qualified Facility 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 Qualified Facility changes, resulted in a very long period of detrimental reliance on this permit mechanism by regulated entities and TCEQ.

It is not appropriate, necessary or legally required under 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. Again, with regard to qualified facilities, the TCEQ will continue its dialogue with EPA to achieve the goal of a SIP-approved minor NSR program that includes the flexibility provided for qualified facilities by the Texas Legislature.

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. 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: 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. INEOS USA LLC 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: Pursuant to 40 CFR § 70.8(c)(1), EPA objected to the issuance of the Title V permit since recordkeeping requirements of NSR Permits Nos. 8533, 18046, and 19985 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 5(G) of NSR Permit No. 8533 (renewed September 5, 2000) and Special Condition 11(D) of NSR Permit No. 18046 (September 20, 2006), and Special Conditions 1, 6, and 9(D) of NSR Permit No. 19985 (renewed June 8, 2006) 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: 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.

As all terms and conditions of preconstruction authorizations issued under 30 TAC Chapter 106, Permits by Rule (PBR) and 30 TAC Chapter 116, New Source Review (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: Pursuant to 40 CFR § 70.8(c)(1), EPA objected 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 63, Subpart FFFF, as required by 40 CFR § 70.6(c)(1). The proposed Title V permit lists 40 CFR Part 63, Subpart FFFF - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing in the *Applicable Requirements Summary* table for emission unit FG-MON. Emission Unit FG-MON appears to cover fugitive emissions from multiple sources. Subpart FFFF provides options for compliance with emission limits and associated monitoring based on the process involved. While the *Applicable Requirements Summary* table lists emission unit FG-MON and lists Subpart FFFF as applicable to that units, the table does not identify the specific provisions of Subpart FFFF which are applicable to that unit. The compliance and associated monitoring requirements selected by Ineos must be stated in the Title V permit together with the emission units for which those requirements apply.

TCEQ RESPONSE: The TCEQ requested the company to provide the applicable requirements for 40 CFR Part 63, Subpart FFFF for emission unit FG-MON. The company provided the applicable standards, monitoring and testing, recordkeeping, and reporting requirements, including options selected, for emission unit FG-MON that is subject to 40 CFR Part 63, Subpart FFFF. TCEQ reviewed these requirements and included them in the Title V permit Unit Summary and Applicable Requirement Summary tables in the permit attachments.

EPA OBJECTION: Special Condition 22 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 22 of the draft Title V permit does not meet the regulatory requirements. In response to this objection, TCEQ must amend Special Condition 22 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 22 of the draft permit needs to be revised in order to meet regulatory requirements. Special Condition 22 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.

EPA OBJECTION: Special Condition 30 of the draft Title V permit references a "Permit Shield" attachment which identifies emission units, groups and processes TCEQ has determined are exempt from specifically identified potentially applicable requirements. The statement of basis (SOB) does not fully discuss the factual or legal basis for TCEQ's determinations. 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) and (3), EPA objected to the issuance of the Title V permit because the permit shield provisions in the draft Title V permit are only supported by conclusory statements in the SOB. The SOB fails to provide an adequate discussion of the legal and factual basis for the determination made under 40 CFR § 70.6(f) used to support the nonapplicability of those requirements identified in the "Permit Shield" attachment to 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 30 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 INEOS USA, LLC and certified by a responsible official was sufficient to grant the permit shield.

Furthermore, the permit shield as listed in FOP O1284 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 refers to the permit shield table that is now included in the SOB for information regarding the permit shield determinations. 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 INEOS USA LLC 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 for NSPS Db, NSPS K, NSPS Kb, NSPS NNN, NSPS RRR, NSPS IIII, and MACT IIII listed in the Permit Shield table of FOP O1284 are based on construction date.

ADDITIONAL CONCERNS: TCEQ acknowledges the additional concerns EPA has with the Green Lake Complex FOP and will address these issues as appropriate.