



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

JAN 22 2010

Mr. Richard A Hyde, P.E., Deputy Director
Office of Permitting and Registration
Texas Commission on Environmental Quality (MC 122)
P.O. Box 13087
Austin, TX 78711-3087

Re: Objection to Federal Part Operating Permit No. O2776
South Hampton Resources, Inc, Silsbee Plant
Hardin County, Texas

Dear Mr. Hyde:

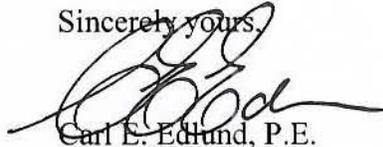
We received the proposed renewal for the Federal Operating Permit (FOP) for the South Hampton Resources Silsbee Chemical Plant in our office on December 8, 2009. The EPA's 45-day review period will end on January 22, 2010. The renewal incorporates minor NSR Permit No. 3295 and Pollution Control Project Permit No. 79438 into the FOP.

In accordance with 40 CFR § 70.8(c), EPA is objecting to the proposed permit action. Section 505(b)(1) of the federal Clean Air Act (Act) and 40 CFR § 70.8(c) require EPA to object in writing to the issuance of a proposed Title V permit within 45 days of receipt of the proposed permit (and all necessary supporting information) if EPA determines that the permit is not in compliance with applicable requirements of the Act or requirements under 40 CFR Part 70. Specific reasons for each objection and a description of the terms and conditions that the permit must include to respond to the objections are enclosed.

Section 505(c) of the Act and 40 CFR § 70.8(c)(4) provide that if the permitting authority fails, within 90 days of the date of the objection, to submit a permit revised to meet the objections, then EPA will issue or deny the permit in accordance with the requirements of 40 CFR Part 71. Because the objection issues must be fully addressed within 90 days, we suggest that the revised permit be submitted with sufficient advance notice so that any outstanding issues may be resolved prior to the expiration of the 90-day period. We also note concerns related to the adequacy of permitting associated with the incorporation by reference of Permits by Rule (PBR) and Standard Permits (e.g., Pollution Control Project permits) that may not meet the requirements of the federally-approved Texas State Implementation Plan (Texas SIP) have been raised in two citizen petitions filed with EPA, dated August 28, 2009, and January 5, 2009. Should the Title V permit be issued without resolving these concerns and EPA determines these concerns have merit, EPA may reopen the Title V permit for cause, pursuant to 40 CFR § 70.7(f) and (g).

We are committed to working with the TCEQ to ensure that the final Permit is consistent with the all applicable requirements, including the federally-approved Texas SIP and the Texas FOP program. If you have questions or wish to discuss this further, please contact Jeff Robinson, Chief, Air Permits Section at 214-665-6435, or Stephanie Kordzi, Texas Permit Coordinator at (214) 665-7520. Thank you for your cooperation.

Sincerely yours,



Carl E. Edlund, P.E.

Director

Multimedia Planning and Permitting Division

Enclosure

cc: Manager, Environmental Affairs
South Hampton Resources

Mr. Steve Hagle, Director
Air Permits Division
Texas Commission on Environmental Quality (MC-163)

Enclosure

- 1. 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 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.
- 2. Objection to the Statement of Basis.** TCEQ prepared a Statement of Basis (SOB) for the draft Title V permit which states that this is a renewal. The renewal incorporates minor NSR permit no. 3295, that has been amended, and has an amendment pending. Records show that the amendments made to permit no. 3295 on March 4, 2008 have resulted in the addition of new emission units and has resulted in increases in emissions. The renewal also incorporates a Pollution Control Project permit no. 79438 that was issued on July 28, 2006. The SOB fails to mention that this renewal is also a minor revision to the existing Title V permit. 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 No. O2776 since its last revision or amendment, and the rationale for all monitoring for all the applicable requirements in the NSR 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.
- 3. Objection to Special Condition 11 for Failing to Identify Specific Compliance Option.** The draft Title V permit incorporates by reference 40 CFR Part 61, Subpart FF – National Emission Standards for Benzene Waste Operations. Special Condition 11 of the draft permit lists sections of 40 CFR Part 61 Subpart FF that the permit holder shall comply with

that relate to test methods, procedures, compliance provisions, recordkeeping requirements, and reporting requirements. This subpart covers many different emission units which are covered by different standards. The only emission unit identified with Subpart FF as being applicable is TK-7, and this reference is found in the permit shield. Therefore, it is unclear what emission units, if any, must follow the requirements of 40 CFR Part 61, Subpart FF. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit because Special Condition 11 fails to identify the specific emission limitations and standards, including those operational requirements that assure compliance with 40 CFR Part 61, Subpart FF, as required by 40 CFR §70.6(a)(1). In response to this objection, the draft Title V permit must reference the specific provisions from 40 CFR Part 61, Subpart FF and the corresponding emission units that must comply with those specific provisions of 40 CFR Part 61, Subpart FF.

4. **Objection to Special Condition 16 for Failing to Meet Compliance Certification Requirements.** Special Condition 16 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 16 of the draft Title V permit does not meet the regulatory requirements. In response to this objection, TCEQ must amend Special Condition 16 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.
5. **Objection to the Permit Shield.** 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 on 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 of the potentially relevant facts supporting the "grandfathered" status of the facility or delete the permit shield requirements in the Title V permit.

Additional Concerns:

1. *Table New Source Review Authorization References* - Some of the permits that are incorporated by reference may actually be old or outdated underlying permits. EPA recognizes that underlying permits are revised from time to time. Nonetheless, the most recent revision of the underlying permit (and the issuance date) must be stated in the table when incorporated by reference in the Title V permit so the public may properly comment on the Title V permit. TCEQ must confirm that the version of the underlying permit that is incorporated into the Title V permit is readily available in the public records. *See, In the Matter of Premcor Refining Group, Inc.*, Petition No. VI-2007-02 at 5 (May 28, 2009).
2. Permit Condition 13 – In accordance with 40 CFR § 70.6(a)(1)(i), permit conditions must define and provide regulatory citations referencing proper authority allowing TCEQ to grant special exemptions.
3. *Table New Source Review Authorization References* – The table lists PSD Permit No. 3295. There is not a PSD permit with this number. This number is also listed in the table for a minor NSR permit. It is important for TCEQ to ensure that all information in the permit be accurate.