



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

August 17, 2022

Ms. Tonya Baer, Deputy Director
Office of Air Texas Commission on
Texas Commission on Environmental Quality (MC 122)
Post Office Box 13087
Austin, Texas 78711-3087

Re: Objection to Title V Permit No. O1077
TXI Operations, LP, Midlothian Cement Plants
Ellis County, Texas

Dear Ms. Baer:

This letter is in response to the Texas Commission on Environmental Quality submittal to our office containing the proposed renewal of the Title V permit for TXI Operations Midlothian Cement Plant referenced above. The United States Environmental Protection Agency has a 45-day review period which began on July 12, 2022, and ends on August 26, 2022. We have reviewed the TCEQ's proposed Title V permit action and Statement of Basis. In accordance with 40 CFR § 70.8(c) and 42 U.S.C. § 7661d(b)(1), EPA is objecting to the proposed permitting action. Section 505(b)(1) of the federal Clean Air Act requires EPA to object to the issuance of a proposed Title V permit during its 45-day review period if EPA determines that the permit is not in compliance with applicable requirements of the Act or requirements under 40 CFR Part 70. The Enclosure to this letter provides the specific reasons for each objection and a description of the terms and conditions that the permit must include to respond to the objections.

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 address the objections, then EPA will issue or deny the permit in accordance with the requirements of 40 CFR Part 71. Because the State must respond to our objection within 90 days, we suggest that the revised permit be submitted with sufficient advance notice so that any outstanding objection issues may be resolved prior to the expiration of the 90-day period.

We are committed to working with the TCEQ to ensure that the final Title V permit is consistent with all applicable Title V permitting requirements and the EPA approved Texas Title V air permitting program.

If you have questions or wish to discuss this further, please contact Cynthia Kaleri, Air Permits Section Chief at (214) 665-6772, or Aimee Wilson, Texas Permit Coordinator at (214) 665-7596. Thank you for your cooperation.

Sincerely,

David F. Garcia, P.E.
Director
Air & Radiation Division

Enclosure

cc: TXI Operations Midlothian Cement Plant Site Managerss

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

ENCLOSURE

EPA Objections to TCEQ Title V Permit O1077

EPA views monitoring, recordkeeping, and reporting adequacy in NSR permits that are incorporated by reference into a title V permit to be part of the title V permitting process and will therefore review whether a title V permit contains adequate monitoring, recordkeeping, and reporting provisions sufficient to assure compliance with the terms and conditions established in the preconstruction permit. The statutory obligations to ensure that each title V permit contains “enforceable emission limitations and standards” supported by “monitoring . . . requirements to assure compliance with the permit terms and conditions,” 42 U.S.C. § 7661c(a), (c), apply independently from and in addition to the underlying regulations and permit actions that give rise to the emission limits and standards that are included in a title V permit.” See South Louisiana Methanol Order at 10; Yuhuang II Order at 7-8; PacifiCorp-Hunter Order at 16, 17, 18, 18 n.33, 19; Big River Steel Order at 17, 17 n.30, 19 n.32, 20. Therefore, regardless of the monitoring, recordkeeping, and reporting initially associated with a minor NSR permit or PBR, TCEQ has a statutory obligation independent of the process of issuing those permits to evaluate monitoring, recordkeeping, and reporting in the title V permitting process to ensure that these terms are sufficient to assure compliance with all applicable requirements and title V permit terms. Sierra Club v. EPA, 536 F.3d 673 (D.C. Cir. 2008); see Motiva Order at 25-26.

- 1. Objection for Failure to Identify Specific Applicable Requirements under 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAP).** The Applicable Requirements Summary table shows that the Midlothian Cement Plant is subject to emission limitations/standards or equipment specification requirements of NESHAP Subpart LLL. However, the Applicable Requirements Summary table gives only a high-level citation to the applicable NESHAP. The Applicable Requirements table does not list any requirements for the emission units identified for monitoring and testing, recordkeeping, or reporting requirements. Therefore, pursuant to 40 CFR § 70.8(c)(1), the United States Environmental Protection Agency (EPA) objects to the issuance of the Title V permit because the Title V permit fails to identify the specific emission limitations and standards, including those operational requirements that assure compliance with 40 CFR Part 63 Subpart LLL, as required by 40 CFR 70.6(a)(1). The Title V permit should contain references that are detailed enough that the manner in which the referenced requirements apply to the facility is clear and is not reasonably subject to misinterpretation. See *In the Matter of Tesoro Refining, Order on Petition No. IX-2004-06* (March 15, 2005) at 8; see also White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program, 34-38 (March 5, 1996). In the case of the Midlothian Cement Plant permit, the permit does not contain enough information or detailed enough citations to determine how the specific requirements of the NESHAP requirements apply to the facility.

As an example, we note that Subpart LLL contains an emission limitation on mercury and provides two methods for compliance. The NSR permit does not identify any monitoring for mercury and since the title V permit only includes high level citations, it is unclear which method may be used by TXI. Subpart LLL states that compliance with the mercury limits can be demonstrated by operating a mercury CEMS or a sorbent trap based CEMS. In cases where there are multiple options, and it is

feasible for the source to utilize more than one option, both options need to be identified with enough specificity to ensure compliance.

In responding to this objection, TCEQ should revise the Midlothian Cement Plant Title V permit to include the specific emission limitations and standards applicable to each emission unit subject to 40 CFR Part 63 Subpart LLL. TCEQ should also include the specific monitoring and testing, recordkeeping, and reporting requirements applicable to the affected units along with a reference to the compliance method that will be used to ensure compliance with all applicable requirements in the Title V permit.

2. Objection for Failure to Properly Incorporate by Reference the PBR Supplemental Tables.

EPA understands that TCEQ is now requiring title V applicants to fill out the PBR Supplemental Table, which TCEQ will then incorporate into the title V permit through a general condition in the title V permit itself. EPA notes that Special Condition 11 of the proposed title V permit reads as follows:

Permit holder shall comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including permits, permits by rule (*including the permits by rule identified in the PBR Supplemental Tables in the application*), standard permits, flexible permits, special permits, permits for existing facilities including ...” (emphasis added)

To the extent that TCEQ is relying on the PBR Supplemental Tables to incorporate additional requirements such as monitoring, the proposed Permit must ensure that the terms identified in the PBR Supplemental Table are adequately incorporated into the title V Permit. EPA suggests that Special Condition 11 include the clarifying language as agreed upon in the Sandy Creek petition Order response. This additional language would read as follows:

Permit holder shall comply with the requirements of New Source Review authorizations issued or claimed by the permit holder for the permitted area, including permits, permits by rule (*including the terms, conditions, monitoring, recordkeeping, and reporting identified in registered PBR and permits by rule identified in the PBR Supplemental Tables dated July 7, 2021 in the application for project 32397*), standard permits, flexible permits, special permits, permits for existing facilities including ...” (emphasis added)

In order to satisfy the requirement in title V for the Permit to set forth, include, or contain the applicable requirements, the special condition incorporating this table needs to include, at minimum, the date of the application and project number. The addition of the application date, project number, and clarifying monitoring language in the general condition adequately incorporates the PBR supplemental table and clarifies that not only do the requirements of the PBR (rule itself) apply but the modified/expanded monitoring terms in the PBR Supplemental Table also apply.

3. Objection for Failure to Include Sufficient Monitoring for PBRs Incorporated by Reference.

The PBR Supplemental Table provided in the title V permit application indicates that for multiple units subject to PBR 106.478 for Storage Tank and Change of Service “no routine monitoring” under the monitoring requirement. TCEQ should verify what monitoring the facility is conducting to ensure they are meeting the PBR. The PBR references broadly that emissions are to be calculated

using AP-42 Section 4.3, however it is unclear what calculation methodology in the referenced AP-42 Chapter. Can TCEQ please clarify for the record what monitoring is being performed?

4. **Objection for Failure to Identify all Applicable Requirements.** TCEQ fails to identify specific applicable requirements under SIP-approved rules found at 30 TAC Chapter 117, Cement Kilns for unit E2-22. The Applicable Requirements Summary table shows that the Midlothian Cement Plant is subject to emission limitations/standards or equipment specification requirements of 30 TAC Chapter 117, Cement Kilns, but only provides a generic statement on the Applicable Requirements Summary Table on page 31 for Unit E2-22 for monitoring and testing, recordkeeping, and reporting requirements. EPA objects as the title V permit does not include the “applicable requirements” as they apply to the source and TCEQ has not followed the requirements of title V by including the monitoring, recordkeeping, and reporting to assure compliance with the SIP-approved Chapter 117 requirements. See 42 U.S.C. § 7661c(a), 7661c(c); 40 C.F.R. § 70.6(a)(3), 70.6(c)(1). In the case of preconstruction permitting requirements derived under title I of the Act, the EPA’s oversight role under title V is to ensure that the terms and conditions derived under title I are properly included in the title V permit as “applicable requirements,” and that the title V permit contains monitoring and testing, recordkeeping, and reporting sufficient to assure compliance with those permit terms and conditions. The task of TCEQ in issuing or modifying the title V permit is to incorporate the terms and conditions of the underlying title I permit and to ensure there are adequate monitoring and testing, recordkeeping, and reporting requirements to assure compliance with those terms and conditions. *See Big River Steel Order* at 8–9, 14–20. In responding to this objection, TCEQ should revise the Midlothian Cement Plant Title V permit to include the specific requirements from Chapter 117 that are applicable for the monitoring and testing, recordkeeping, and reporting for unit E2-22.

Additional Comments Outside of EPA’s Objections

During EPA’s review of the incorporated PSD permit PSDTX632M2 and 1360A, we noticed an incorrect reference in Special Condition 8 to Special Condition 18.M. It appears that Special Condition 8, should be referencing Special Condition 20.M. as Special Condition 18 does not have an M and Special Condition 20.M. appears to be referencing the Kiln 5 stack information that is subject to Special Condition 8. It is advisable that TCEQ make any needed corrections to the NSR permit at the next opportunity.

We understand that during MSS that the emission limits in Special Condition 3.A do apply as defined in Special Condition 20. EPA notes that Special Condition 20.L.(3) of permit 1306A and PSDTX632M2 reads as follows:

As an indicator of compliance with the VOC emission limit in the MAERT and Special Condition No. 3, if the THC CEMS records emissions equivalent to 0.06 lb/ton clinker or greater on a 30 day rolling average, the permit holder shall use site specific VOC stack test results to determine a representative VOC fraction of THC to establish compliance with the VOC lb/hr and lb/ton clinker limit.

This Special Condition is vague and does not provide enough information on how this condition assures compliance with the permitted VOC emission limit for Kiln No. 5. Does TCEQ have any data from stack testing or other data to show the correlation between THC CEMS data and VOC emissions documenting why this is the appropriate mechanism to determine compliance with the

VOC limit? Please clarify for the record if any additional monitoring is utilized to determine compliance with the VOC emission limit for Kiln No. 5.