



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 6**

**1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270**

August 12, 2022

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

Re: Objection to Title V Permit No. O2030  
Union Carbide Corporation, UCC Seadrift Operations  
Calhoun County, Texas

Dear Ms. Baer:

This letter is in response to the Texas Commission on Environmental Quality (TCEQ) submittal to our office containing the proposed renewal of the Title V permit for the Union Carbide Corporation, UCC Seadrift Operations facility referenced above. The United States Environmental Protection Agency (EPA) has a 45-day review period which began on June 28, 2022 and ends on August 12, 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 (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: UCC Seadrift Plant Site Manager

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

**ENCLOSURE**  
**EPA Objections to TCEQ Title V Permit O2030**

*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 to Improperly Incorporating Confidential Operational Limits and Emission**

**Calculations.** The proposed title V permit incorporates by reference NSR permits 22321 and 48653. EPA looked at the permit files TCEQ has available in the Central File Room Online and found that both of these permits rely on emission calculations that are claimed as confidential. The application file for permit 22321 on page 2 of the PI-1R section II.A. indicates that confidential information was submitted with the renewal application (file content ID 555075). The permit file for permit 48653 (file content ID 51288), has multiple references to “confidential calculations” for EPN SD108A. Can TCEQ verify if the confidential calculations are still in use and if they are still considered confidential? It is unclear if the confidential information that is referenced in NSR permits 22321 and 48653 and subsequently incorporated into the proposed title V permit establishes how emissions are to be calculated to demonstrate compliance with emission limits or any other binding requirements that govern plant operations.

The Clean Air Act (“CAA”) limits the types of information that may be treated as confidential in a title V permit, and therefore withheld from the public. In this instance, NSR applications containing confidential information have been incorporated into corresponding NSR permits and, in turn, are now incorporated by reference into the proposed title V permit as a term of that permit. As a general matter, some information may be protected as a trade secret under section 114(c) of the CAA. 42 U.S.C. § 7414(c). However, the CAA specifically limits this protection: “The contents of a [title V] permit shall not be entitled to [confidential] protection under section [114(c)].” 42 U.S.C. § 7661b(e). Regarding the contents of a title V permit, the CAA further requires that “Each permit issued under this subchapter shall include enforceable emission limitations and standards, . . . and such other conditions as are necessary to assure compliance with applicable requirements . . .” 42 U.S.C. § 7661c(a). EPA regulations further require that the contents of a title V permit include “emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.” 40 C.F.R. §70.6(a)(1). Further, “terms and conditions in a part 70 permit . . . are enforceable by the

Administrator and citizens under the Act.” 40 C.F.R. §70.6(b)(1). Additionally, information which is considered emission data, as well as standards or limitations, are also not entitled to confidential treatment. *See* CAA § 114(c) (“other than emissions data”); 40 C.F.R. §2.301(f).

The EPA has previously evaluated the use of confidential requirements in permits issued by TCEQ. *See In the Matter of ExxonMobil Corporation, Baytown Refinery*, Order on Petition No. VI-2016-14 (April 2, 2018) (Baytown Order). In granting that petition, the EPA acknowledged that a potential conflict exists between TCEQ’s regulatory scheme and the CAA mandate that does not afford confidential protections to the contents of a permit.

The title V permit application PBR Supplemental table only identified one PBR registration for PBRs 106.261 and 106.262 with the registration number 141801. The TCEQ technical review document for this PBR registration indicates that confidential information was included in the application and it pertained to tank emissions calculations and detailed speciation information. The PBR application was registered with a PI-7 Cert establishing federally enforceable emission limits, and thus incorporated by reference into the title V permit. The emissions calculations in the PBR registration are emissions data required under CAA 114(c) and 40 C.F.R. § 2.301(a)(2)(i)(B) and should not be treated as confidential. TCEQ should evaluate if the emission calculations that support the enforceable limits established in the PBR registration are emissions data. Can TCEQ clarify for the record if the confidential information establishes or is needed to establish federally enforceable limitations on emissions or operations?

TCEQ should reevaluate and ensure that the claimed confidential information in the title V permit and the claimed confidential emissions calculations or calculation methodologies are neither part of the title V permit, establishing binding, enforceable permit terms, nor considered emissions data for purposes of CAA 503(e) and 40 C.F.R. § 2.301(a)(2)(i)(B). If TCEQ can establish that the claimed confidential information is not part of the title V permit operational limit or emissions data, TCEQ needs to document in the permit record the basis for why this information is not necessary to enforce any term or condition of the title V permit.

2. **Objection for Failure to Include all Applicable Requirements.** EPA appreciates that UCC Seadrift Operations has provided a Permit By Rule (PBR) Supplemental Table that includes registration numbers for all registered PBRs and claimed PBRs. The New Source Review (NSR) Authorization References by Emissions Unit table including registration numbers next to emission units authorized by registered PBRs conforms with TCEQ's EPA-approved regulations, 30 TAC § 122.142(2)(B)(i), as well as the agreements underpinning the EPA's approval of the Incorporation By Reference (IBR) of PBRs - namely that "PBRs will be cited to the lowest level of citation necessary to make clear what requirements apply to the facility." 66 Fed. Reg. at 63322 n.4. However, we note that Table D: Monitoring Requirements for claimed (not registered) PBRs for the Application Area has not been filled out by the applicant. We also note that Table B: Claimed (not registered) Permits by Rule (30 TAC Chapter 106) for the Application Area identifies Units ID No. SD108A as having claimed PBR 106.263, but this authorization is not included on the New Source Review Authorization Reference by Emissions Unit table in the title V permit on page 42. Because the Title V permit omits direct reference to certain source-specific requirements (e.g., certified emission limits) derived from registered PBRs, it is not clear that the UCC Seadrift Operations permit currently includes or incorporates all applicable requirements for the facility, as required by the CAA, the EPA's regulations, TCEQ's regulations, the agreements underlying the EPA’s approval

of IBR in Texas, and the EPA's longstanding position concerning IBR. Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the USS Seadrift Operations Title V permit since it is not in compliance with the requirements of CAA § 504(a) and 40 CFR § 70.6(a)(1) & (3). TCEQ should request that UCC Seadrift fill out the PBR Supplemental Table D completely to include the monitoring for all claimed PBRs. We acknowledge that TCEQ has revised the PBR Supplemental Table D to include monitoring for claimed and registered PBR authorizations, however the use of the revised form was not required for application submitted prior to August 1, 2022.

**3. 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 15 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 8 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 December 16, 2021 in the application for project 33336*), 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.

**4. Objection for Failure to Include all Applicable Requirements.** NSR permit 48653 identifies 40 CFR Part 60 Subpart Kb *Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984* as an applicable requirement. However, there are no emission units identified in the title V permit as having this standard listed as an applicable requirement. Can TCEQ confirm and identify for the record which emission units are subject to the

New Source Performance Standard (NSPS) Kb? If the title V permit is found to be lacking the necessary applicable requirements, TCEQ should identify the emissions units that are subject and provide the necessary citation in the title V permit.

- 5. Objection for Failure to Include Adequate Monitoring Requirements to Assure Compliance with Permitted Emission Limits.** The title V permit incorporates by reference minor NSR permits 48653 which was renewed on February 19, 2013, and 22321 which was amended and renewed on January 28, 2015. EPA reviewed both minor NSR permits and found instances where the NSR permit does not contain adequate monitoring to assure compliance with the terms and conditions of the permit and provides specific examples below where additional monitoring is needed.
- a. NSR permit 48653 contains requirements related to the flares which includes monitoring for the Small Flare Tip (EPN SD108A) and the Large Flare Tip (EPN SD108) in Special Condition 7. Can TCEQ clarify for the record how compliance is determined? The permit includes a requirement for monitoring the flow of vent gas, and that the flared gas net heating value and actual exit velocity are monitored, but the permit doesn't indicate within what range the Large Flare Tip is operated at.
  - b. Special Condition 8.B. of Permit 48653 states "Each flare shall achieve at least 99 percent control of the acetylene, acrolein, ethanol, ethylene, ethylene oxide, and methanol in the waste gas directed to it and 98 percent control of the remaining hydrocarbons directed to it". Does UCC Seadrift have a vendor guarantee or performance testing for the represented destruction efficiencies? What monitoring methodology is utilized to ensure compliance with the permitted destruction efficiencies?
  - c. Special Condition 9 of permit 48653 indicates that the BOU and IGT system shall be retested at least once each year or as required by the TCEQ or EPA per Special Condition 12. Can TCEQ confirm that stack sampling and testing should be performed at a minimum of once per year to demonstrate ongoing compliance with the 98% VOC control efficiency as specified in Special Condition 12.C?
  - d. Special Condition 10 of permit 48653 indicates that annual sampling of wastewater streams occurs and that the concentrations of Ethylene Oxide, 1, 4, Dioxane, and Acetaldehyde are measured and compared to the information input into software to estimate wastewater emissions. Can TCEQ identify what the software input values are and what procedures are in place if the measured concentrations exceed those in the software program?
  - e. Special Condition 3.F. of permit 22321 for flares states "Hourly mass emission rates shall be determined and recorded using the above readings and the emission factors used in the permit amendment PI-1 dated October 19, 2011". EPA was unable to find the referenced application on the TCEQ's Central File Room Online. Can TCEQ provide the content ID for the application and ensure that the emission factors referenced are publicly available?

In responding to this objection, TCEQ should amend the title V permit and permit record as necessary to satisfy the requirements of 40 CFR 70.6(a)(3)(i) – (iii) to specify monitoring, recordkeeping, and reporting requirements that assure compliance with the emission limits and operational requirements in underlying applicable requirements from NSR permits 48653 and 22321. If the title V permit, the underlying NSR permits, or the enforceable representations in the application already contain adequate terms to assure compliance with the NSR permit, then TCEQ should amend the permit and/or permit record to identify such terms and explain how these requirements assure compliance with these emission limits and operational requirements for an individual emission unit, process area, or site-wide where such permit applies site-wide.