



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

March 15, 2023

Mr. Cory Chism, Director
Office of Air
Texas Commission on Environmental Quality (MC 122)
Post Office Box 13087
Austin, Texas 78711-3087

Re: Objection to Title V Permit No. O1602
Phelps Dodge Refining Corporation, El Paso Refinery and Rod Mill
El Paso County, Texas

Dear Mr. Chism:

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 the Phelps Dodge Refining Corporation permit referenced above. The United States Environmental Protection Agency has a 45-day review period which began on January 31, 2023 and ends on March 17, 2023. 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 Supervisor 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: Phelps Dodge Refining Corporation

ENCLOSURE

EPA Objections to TCEQ Title V Permit O1602

EPA views monitoring, recordkeeping, and reporting adequacy in New Source Review (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 Permit by Rule (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 Include Adequate Monitoring for PBRs. EPA finds that the permit lacks sufficient monitoring to assure compliance with emission limitations and operational limits. More detailed monitoring information is needed in the PBR Supplemental Table for this permit. The goal of this supplemental table is to explicitly incorporate monitoring/recordkeeping requirements and reduce ambiguity with respect to how emissions are calculated and how compliance is determined. This is especially important in the Phelps Dodge permit where 23 PBRs are “claimed” and only one PBR is registered. In addition, the title V permit lists 16 standard exemptions for which Phelps Dodge has not included in the PBR supplemental table. These standard exemptions are considered permits by rule and as such, must be included on the PBR Supplemental tables. The standard exemptions that are missing include:

- SE 5 – 01/08/1980
- SE 6 – 09/23/1982
- SE 7 – 01/08/1980
- SE 7 – 09/23/1982
- SE 7 – 07/20/1992
- SE 8 – 01/08/1980
- SE 8 – 08/30/1988
- SE 8 – 06/07/1996
- SE 14 – 10/04/1995
- SE 41 – 05/12/1981
- SE 41 – 05/04/1994
- SE 46 – 01/08/1981
- SE 51 – 11/05/1986
- SE 56 – 01/08/1980

- SE 106 – 08/30/1988

When TCEQ relies on Table D to incorporate additional monitoring requirements, the monitoring and recordkeeping terms must be sufficient to assure compliance with emission limitations and operational requirements. When records are identified as being maintained, it would be practical and necessary to include a frequency for the recordkeeping. Table D for Phelps Dodge contains references to “good combustion practices” without specifying what exactly is being monitored, at what frequency, and how that information is used to determine the emissions. Some entries specify “perform periodic maintenance” without specifying in sufficient detail how this would be considered sufficient monitoring to enable and assure compliance with an emission limitation. The table should be updated to how the monitoring is to be performed, the frequency for performing any monitoring, and specify what emission factors are being used (if applicable) and the calculation methodology for determining the emissions. TCEQ must require Phelps Dodge to revise the PBR Supplemental table to include information adequate to assure compliance with emission limits and operational limits that are imposed by the PBRs.

2. **Objection for Failure to Properly Identify All Emission Units.** The title V permit appears to be missing emission units from the Applicable Requirements Summary Table and the NSR Authorization References by Emissions Unit table¹.

The title V permit also does not appear to include the following emission points:

- NCPSILOFUG authorized by PBR 106.261 registration No. 72016
- RM ACSCRB authorized by PBR 106.375
- RMEP05 authorized by PBR 106.183
- RM EP06 authorized by PBR 106.472
- RM CLTWRS authorized by PBR 106.371
- RMEP20 authorized by PBR 106.262
- RMEP21 authorized by PBR 106.262
- RMEP22 authorized by PBR 106.262
- RMEP24 authorized by PBR 106.183
- RMEP25 authorized by PBR 106.183
- CCR-31 authorized by PBR 106.472
- RTT authorized by PBR 106.472
- UOT authorized by PBR 106.472
- RFLF01 authorized by PBR 106.311
- GRPFL authorized by PBR 106.473
- RMGRPMSS authorized by PBR 106.263

The proposed title V permit fails to meet the requirements of CAA § 504(a) requiring that “(e)ach 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 of this chapter, including the requirements of the applicable implementation plan.” TCEQ’s definition of

¹ See *supra* note 1

“applicable requirement” (found at 30 TAC § 122.10(2)) includes an extensive list of federal and state provisions. Minor NSR permits, including standard permits and permits by rule (PBRs) are included in TCEQ’s definition of applicable requirement and are applicable requirements as defined under 40 CFR § 70.2. EPA appreciates that Phelps Dodge has provided a PBR Supplemental Table that includes claimed PBRs, and monitoring for claimed PBRs. TCEQ should verify if the PBRs listed above need to be added to the title V permit or if the PBRs have been consolidated by incorporation into an NSR permit and update the title V permit as necessary.

3. Objection for Failure to Include all Applicable Requirements. EPA reviewed the PBR Supplemental Table that was included with the title V permit application. The NSR Authorization References by Emissions Unit table fails to include registration numbers next to emission units authorized by registered PBRs as required by 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. Phelps Dodge only holds one registered PBR and its registration and associated emission unit is missing from the title V permit. In addition, EPA reviewed the PBR Supplemental Table that identified all claimed PBRs, several claimed PBRs appear to be omitted from title V permit O1602 (identified below by PBR rule number and emission unit):

- Claimed PBRs absent from the title V permit :
 - 106.183 for RMB01
 - 106.183 for RMEP03
 - 106.183 for RMSF01
 - 106.183 for RMSF02
 - 106.183 for RMEP01
 - 106.183 for RMEP02

It is not clear that the Phelps Dodge title V 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 Phelps Dodge title V permit since it is not in compliance with the requirements of CAA § 504(a) and 40 CFR § 70.6(a)(1) & (3).

Additional Comments Outside of EPA’s Objections

EPA Region 6 has conducted an analysis using EPA's EJScreen to assess key demographic and environmental indicators within a five-kilometer radius of the Phelps Dodge El Paso Refinery and Rod Mill. This analysis shows a total population of approximately 103,000 residents within a five-kilometer radius of the facility, of which approximately 54% are low income, 26% are limited English speaking households, and 27% have less than a high school education. The air toxics cancer risk (lifetime risk per million) is 53, whereas the state risk is on average 31. In addition, the EPA reviewed the EJScreen EJ Indices, which combine certain demographic indicators with 12 environmental indicators. The results show that 9 of the 12 EJ Indices in this five-kilometer radius

area exceed the 70th percentile in the State of Texas, with 7 of the 12 EJ Indices exceeding the 80th percentile, and 3 of the 12 EJ indices exceeding the 90th percentile.

Tools to address EJ concerns have been and continue to be developed by EPA to assist states and stakeholders in evaluating environmental justice². In order to fully assess equity considerations for overburdened communities during the permitting process, EPA believes that an EJ analysis should include input received from the community, an evaluation of existing environmental data, use of known demographic information, and other relevant information as much as possible. We encourage TCEQ to screen permitting actions for EJ concerns and to consider potential compliance issues related to civil rights of the communities potentially impacted early in the permitting process by utilizing EJScreen and knowledge of the impacted area. This screening will indicate whether a permitting decision has the potential to contribute to significant public health or environmental impacts, if the community may be particularly vulnerable to impacts from the proposed permit, and whether the community is already disproportionately impacted either by public health or environmental burdens. A sound screening practice will also provide important information as to whether there are residents of the affected community who could be disproportionately subjected to adverse health, environmental and/or quality of life impacts on the basis of race, color, or national origin (including LEP status). TCEQ should take into consideration other permitted facilities in the area, including whether these facilities are major or minor sources of pollution and contribute to community risk. An area with an above average number of sources, especially if those sources are large or in close proximity to residents, is a sign of concern.

Finally, the EPA notes that civil rights regulations prohibit state, local, or other entities that receive federal financial assistance, either directly or indirectly from EPA (recipients) from taking actions that are intentionally discriminatory as well as practices that have an unjustified discriminatory effect, including on the bases of race, color, or national origin. EJ and civil rights compliance are complementary. Integrating environmental justice in decision making and ensuring compliance with civil rights laws can, together, address the strong correlation between the distribution of environmental burdens and benefits and the racial and ethnic composition, as well as income level of communities. EPA is committed to advancing environmental justice and incorporating equity considerations into all aspects of our work. The title v process can allow public participation to serve as a motivating factor for applying closer scrutiny to a title v source's compliance with applicable CAA requirements. Communities can use the title v process to help ensure that each title v permit contains all of a source's applicable requirements, and other conditions necessary to assure the source's compliance with those requirements. When TCEQ responds to this EPA objection, please consider utilizing some form of enhanced public outreach to notify the public of the Executive Director's response to comments and opportunity to petition the EPA to object to the proposed permit.

² EPA Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions found at: <https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant.pdf> See also EPA Legal Tools to Advance Environmental Justice found at: <https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>