



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

September 25, 2007

Re: Flexible Permit Number

Dear :

The Environmental Protection Agency, Region 6 (EPA) and the Texas Commission on Environmental Quality (TCEQ) have been working together to address the complex issues related to air quality in the State of Texas. One of the areas that we have been focusing on is the development of a federally-approvable flexible permit rule. Although TCEQ has state-approved flexible permit rules in Title 30 of the Texas Administrative Code, Chapter 116, Subchapter G (30 TAC 116.710 et seq.), EPA has not approved these rules into the implementation plan for the State of Texas (Texas SIP). Consequently, permits issued under these flexible permit rules reflect Texas state requirements and not necessarily the federally-applicable requirements.

The purpose of this letter is to clarify that you, as owner or operator of sources included in a TCEQ flexible permit, are obligated to comply with the federal requirements applicable to your plant, in addition to any particular requirements of your flexible permit.

_____ was issued Flexible Permit Number 39142, under 30 TAC 116.710 et seq. We recognize that the flexible permit is the State permitting vehicle for certain operational requirements at your plant. However, unless and until such time as the Texas flexible permitting rules become part of the Texas SIP, you must continue to comply with applicable federal requirements, including those in the Texas SIP. This includes all terms and conditions of permits approved under the Texas SIP. An example of what is meant by the reference to "federal requirements" is the emission control limitations (e.g., lbs/MMBtu) and destruction efficiencies together with the associated monitoring and recordkeeping provisions contained in state or federal permits issued under SIP-approved rules.

Enclosed is a list of Frequently Asked Questions regarding this letter and the federal and state permitting programs. Should you have further questions or inquiries, please contact Raymond Magyar of my staff at (214) 665-7288, or Rick Bartley in the Office of Regional Counsel at (214) 665-8046.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "John Blevins", is written over the typed name.

John Blevins
Director
Compliance Assurance and
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Enclosure

cc: Steve Hagle, Assistant Director, Air Permits Division
Texas Commission on Environmental Quality

We promote compliance with Federal environmental regulations in partnership with our States and Tribes
Internet Address (URL) • <http://www.epa.gov/region6/enforcement>

Frequently Asked Questions
EPA's Fair Notice Letter regarding TCEQ's Flexible Permits

Q1: Purpose of Letter: What is the purpose of the letter?

Response: The purpose of the letter is to remind owners and operators of sources of their obligation to comply with all federal and state air permitting requirements. Both EPA and TCEQ expect sources to operate in compliance with all federal and state air permitting requirements. EPA may enforce the provisions of any permit issued to a source under a SIP-approved process, and it is not bound by changes made to those permits by non-SIP approved mechanisms, such as the current Texas flexible permit provisions. EPA also understands that some emission units covered by flexible permits may no longer be operating in the same manner as they had under previous SIP permits or that new emission units may be covered by a flexible permit that have not previously been permitted under any SIP-approved permitting program. Owners and operators must continue to meet their obligations under the federal Clean Air Act, including the requirement to comply with all federal programs such as the NSPS, NESHAP, PSD, non-attainment NSR, and SIP-approved permits. In particular, the letter reminds the recipient that EPA has not approved the Texas flexible permit rules and, consequently, Texas issued flexible permits are not federally-approved and are not federally-enforceable. More precisely, changes to SIP-approved permits may only be accomplished through SIP-approved procedures, and the flexible permit mechanism is not yet a SIP-approved process to effect changes to a SIP permit.

Q2: Timing of Letter - Why the Sudden Interest? I've had my flexible permit for over 10 years now, why is EPA suddenly concerned about my flexible permit?

Response: TCEQ and EPA both agree that it is now time to focus resources on ensuring that all major sources with the State of Texas have federally-enforceable, SIP-approved permits. The two agencies are working together to develop a flexible permit rule that can be approved as part of the Texas SIP. Both TCEQ and EPA have been aware of issues related to the flexible permit rule and have worked over the last several years to address various permitting issues as part of EPA program revisions, including permit streamlining within the context of Title V, the federal PAL program and NSR reform. Because TCEQ is committed to ensuring the continuing success of its efforts to maintain and improve the air quality of Texas, EPA is providing its assistance to ensure that sources are also meeting their federal obligations under the Clean Air Act. One way for EPA to assist Texas in its efforts is to ensure that there are no adverse air quality impacts associated with the implementation of the flexible permitting rules prior to EPA action on the program.

Q3: Compliance with “legacy permits”: EPA’s letter states that it expects our facility to comply with the SIP-approved permit conditions and terms that existed prior to issuance of our flexible permit. What does that mean for my facility?

Response: EPA maintains that SIP permits issued to a source remain effective until amended, modified, or revoked in accordance with the SIP-approved methods for effecting such permit changes. This means that all SIP permit conditions and terms, including any representations upon which the SIP permit was issued, are not, and have not been, superceded, voided, or replaced by the terms, conditions, or permit application representations associated with a flexible permit. Owners and operators of sources included in a TCEQ flexible permit should review their previously issued SIP permits (“legacy permits”) to ensure that they are complying with those terms, conditions, and representations. To the extent that such conditions, terms and representations were rolled over into the flexible permit, then there should be no issue associated with compliance obligations and the source should simply continue to comply with those requirements. However, EPA understands that there may be some instances where specific terms, conditions, or representations made in the legacy permits have been “modified” or “changed” by the flexible permit. Therefore, in accordance with EPA’s policy entitled “Revised Guidance on Enforcement During Pending SIP Revisions,” (<http://www.epa.gov/compliance/resources/policies/civil/caa/stationary/enf-siprev-rpt.pdf>) dated March 1, 1991, EPA will assess its enforcement options on a case-by-case basis.

Q4: New Units Not Covered by a SIP Permit: I was issued a flexible permit for a new source (site) or a new or amended flexible permit for a change to a source (site) that involves construction of a new unit. Is the source operating in violation of federal requirements since it obtained authorization for those emissions in a non SIP-approved permit?

Response: To the extent that the modification followed the federally-approved review requirements *but for* the inclusion of those requirements in a SIP-approved permit, EPA will look to the 1991 guidance referenced above in determining whether or not to bring an enforcement action for failure to effect changes to the source in accordance with approved SIP procedures. As previously mentioned in response to Q2, EPA’s focus will be to ensure that the source is not creating any adverse air quality impacts as a result of its operations under the flexible permit. In addition, if there is a need for changes to the monitoring, record-keeping, or reporting requirements to ensure no adverse air quality impacts, then an EPA enforcement action to effect those changes may be appropriate under the circumstances.



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