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Re: Docket ID No. EPA-R06-OAR-2005-TX-0031

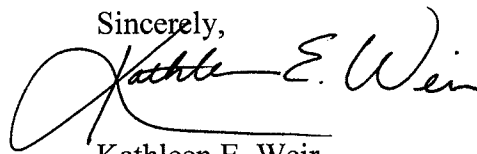
Dear Mr. Donaldson:

The Texas Industry Project ("TIP") appreciates the opportunity to provide comments on the Environmental Protection Agency's ("EPA") proposed partial approval and partial disapproval of Texas's state implementation plan ("SIP") revisions relating to Permitting of Grandfathered and Electing Electric Generating Facilities published in the *Federal Register* on October 19, 2010. TIP is comprised of 63 companies in the chemical, refining, oil and gas, electronics, forest products, terminal, electric utility, and transportation industries with operations in Texas. TIP members have been strong supporters of clean air improvements, and have made unprecedented investments in emission controls that have resulted in sustained, measured improvements in Texas air quality.

TIP strongly supports full approval of the SIP submittals on Texas's Permitting of Grandfathered and Electing Electric Generating Facilities, including 30 Texas Administrative Code § 116.911(a)(2). Our specific comments on the proposal are attached.

Please contact me if you have any questions.

Sincerely,



Kathleen E. Weir

Attachments

**TEXAS INDUSTRY PROJECT COMMENTS ON EPA PROPOSED APPROVAL/DISAPPROVAL OF  
TCEQ PERMITTING OF GRANDFATHERED AND ELECTING ELECTRIC GENERATING FACILITIES**

**Docket ID No. EPA-R06-OAR-2005-TX-0031**

**75 Fed. Reg. 64,235 (October 19, 2010)**

The Texas Industry Project ("TIP") submits the following comments in response to the proposed partial approval and partial disapproval of Texas's state implementation plan ("SIP") revisions relating to Permitting of Grandfathered and Electing Electric Generating Facilities by the U.S. Environmental Protection Agency ("EPA"), published in the *Federal Register* on October 19, 2010. TIP is comprised of 63 companies in the chemical, refining, oil and gas, electronics, forest products, terminal, electric utility, and transportation industries with operations in Texas.<sup>1</sup>

**I. Introduction**

TIP strongly supports the proposed approval of 30 Texas Administrative Code §§ 116.910, 116.911, 116.913, 116.917, 116.918, 116.921, 116.926, 116.928, 116.930.

TIP urges EPA to also approve § 116.911(a)(2). Under Section 116.912(a)(2), grandfathered electric generating facilities ("EGFs"), and electric generating facilities may install new control methods, so long as the EGFs comply with specified requirements of § 116.617, the Texas Pollution Control Project Standard Permit. The Pollution Control Project Standard Permit is a minor NSR authorization tool. Furthermore, EPA has expressly recognized that Texas standard permits cannot be used to circumvent major NSR requirements. Additionally, 116.912(a)(2) is part of a submittal that EPA recognizes has been used in a way that neither interferes with attainment or maintenance of the National Ambient Air Quality Standards ("NAAQS"), nor causes or contributes to increases in PSD increments.

Consequently, EPA should fully approve the entirety of these SIP submittals, including § 116.911(a)(2), as ones that strengthen the Texas SIP.

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<sup>1</sup> TIP members participating in these comments are: Albemarle Corporation, Arkema Inc., Ascend Performance Materials LLC, BASF Corporation, BP, Celanese Chemicals, Ltd., CenterPoint Energy Houston Electric, LLC, Chevron Corporation, Chevron Phillips Chemical Company LP, CITGO Petroleum Corporation, ConocoPhillips, DCP Midstream, LLC, Degussa Engineered Carbons, LP, Delek Refining Ltd., Dixie Chemical Company, Inc., Dow Chemical Company, The Dynegy Inc., Eagle Rock Energy, Eastman Chemical Company, E. I. Du Pont de Nemours & Company, Entergy Texas, Enterprise Products Operating LLC, Exelon Power Texas, ExxonMobil Chemical Company, Firestone Polymers, LLC, GB Biosciences Corporation, Halliburton Company, Huntsman Corporation, INEOS NOVA LLC, Intercontinental Terminals Company, International Paper Company, International Power, Kinder Morgan Liquids Terminals, LLC, LANXESS Corporation, LBC Houston, LP, Lyondell Chemical Company, Marathon Petroleum Company LLC, MeadWestvaco Corporation, Merisol USA, L.L.C., NRG Texas Power LLC, Odfjell Terminals (Houston) LP, Oiltanking Holding USA, Inc., Pasadena Refining System, Inc., PL Propylene, Praxair, Inc., Rohm and Haas Texas, Incorporated, Shell Oil Company, Shintech, Inc., Sterling Chemicals, Inc., Stolthaven Houston Inc., Suez Energy North America, TARGA, Temple-Inland Inc., Texas Instruments Incorporated, TPC Group, Total Petrochemicals USA, Inc., Union Pacific Railroad Company, Valero Energy Corporation, Vopak Logistics North America, Inc., Western Refining Co., L.P.

## II. Comments

### A. No NSR Circumvention

EPA identified the decision in *New York v. EPA*,<sup>2</sup> as a basis for its disapproval of § 116.911(a)(2). As EPA explains, however, the opinion in that case disapproved the use of pollution control projects for *major NSR requirements*. 75 Fed. Reg. 64,235, 64,238.

The Texas Pollution Control Project Standard Permit, however, is a minor NSR program. The Pollution Control Project Standard Permit is a Texas standard permit, as such it is subject to the general standard permit requirements articulated in 30 Texas Administrative Code § 116.610. EPA recognized in an earlier action on another Texas SIP submittal that the Texas Standard Permit SIP contains an express provision prohibiting new major sources or major modifications from using a standard permit. 75 Fed. Reg. 41,312, 41,318 (July 15, 2010). In that action, EPA recognized that “the Standard Permits and Permits by Rule NSR SIP rules explicitly require a Major NSR applicability determination at 30 TAC 116.610(b) and 30 TAC 106.4(a)(3).”

Section 116.610(b) is a part of the Standard Permit applicability provision and states:

Any project that constitutes a new major stationary source or major modification as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) is subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

Any new major source or major modification is therefore expressly prevented from authorizing construction or modification using any Texas standard permit, including the Pollution Control Project Standard Permit. Consequently, EPA’s assertions that it must disapprove § 116.911(a)(2) based on the decision in *New York v. EPA* lacks merit.

EPA states that it “believes” that two EGFs may have used the Pollution Control Project Standard permit to authorize collateral increases in carbon monoxide (“CO”) that are above the significance level for PSD review. The unsubstantiated belief of possible circumvention is not a basis for disapproving § 116.912(a)(2). As detailed above, the Texas rules clearly prohibit new major sources or major modifications from using the Pollution Control Project Standard Permit to circumvent major NSR requirements.

### B. No Interference with Attainment or Maintenance of the NAAQS

EPA expressly recognizes that EGFs’ uses of the Pollution Control Project Standard Permit “do not interfere with attainment or maintenance of the NAAQS for CO, *et al.*, nor cause or contribute to increase in PSD increments, much less a violation of any NAAQS.” 75 Fed. Reg. 64,238.

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<sup>2</sup> No. 02-1387 (D.C. Cir. June 24, 2005).

This conclusion underscores why EPA should fully approve these SIP submittals. The federal Clean Air Act requires EPA to disapprove SIP submittals only where they “would interfere with any applicable requirement concerning attainment and reasonable further progress” under the Act. 42 U.S.C. §7410(l). As EPA has concluded that EGFs’ uses of Pollution Control Project Standard Permits do not interfere with attainment or maintenance of the NAAQS, the agency should fully approve the SIP submittals.

### **III. Conclusion**

TIP strongly supports the proposed approval of 30 Texas Administrative Code §§ 116.910, 116.911, 116.913, 116.917, 116.918, 116.921, 116.926, 116.928, 116.930.

TIP urges EPA to also approve § 116.911(a)(2). The Pollution Control Project Standard Permit is a minor NSR authorization tool. Furthermore, EPA has expressly recognized that Texas standard permits cannot be used to circumvent major NSR requirements. Additionally, § 116.912(a)(2) is part of a submittal that EPA recognizes has been used in a way that neither interferes with attainment or maintenance of the NAAQS, nor causes or contributes to increases in PSD increments. Consequently, EPA should approve these SIP submittals in full.