



BILL WHITE  
MAYOR

OFFICE OF THE MAYOR  
CITY OF HOUSTON  
TEXAS

November 5, 2009

Lawrence E. Starfield  
Acting Regional Administrator-Region 6  
U.S. Environmental Protection Agency  
Mail Code: 6RAD  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Via Email: [spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov); [starfield.lawrence@epa.gov](mailto:starfield.lawrence@epa.gov) and  
Overnight mail

Re: Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP): Flexible Permits: Docket No. ID: EPA-R06-OAR-2005-TX-0032; Prevention of Significant Deterioration (PSD), Nonattainment NSR (NNSR) for the 1997 8-Hour Ozone Standard, NSR Reform, and a Standard Permit: Docket No. ID: EPA-R06-OAR-2006-0133; Modification of Existing Qualified Facilities Program and General Definitions: Docket No. ID: EPA-R06-OAR-2005-TX-0025

**Comments on Proposed Disapproval**

Dear Acting Administrator Starfield:

The City of Houston supports USEPA's decisions to disapprove parts of the SIP for the reasons cited below.

**Proposed Disapproval of Flexible Permits**

The City has long opposed the use of flexible permits as implemented in the SIP. As noted in the City's comments on the proposed renewal of the flexible permit issued to LyondellBassell's Houston Refinery, permit # 2167, "[t]he permit terms violate federal law and are not federally enforceable. Houston Refining (and

others) could have sought other, SIP-approved permitting.” The City also noted that the structure of the flexible permit program fails to assure compliance with Major NSR requirements and that these permits are essentially unenforceable. For the reasons previously stated by the City and for the same reasons cited in Houston strongly supports the USEPA’s decision to seek the changes necessary in the flexible permit program to make it federally enforceable, consistent with the federal Clean Air Act and to ensure that emissions are controlled and reduced from the state’s largest sources of pollutants.

### **Proposed Disapproval of New Source Review Submittals**

Texas submitted these changes to its SIP on June 10, 2005 and February 1, 2006. Many of these changes affected the review of sources of air pollution in nonattainment areas like Houston, and made it easier to get air permits or made it more difficult to enforce permits because the requirements in the permits were not clear or as stringent as those required by the federal Clean Air Act. One of the most egregious changes made in the SIP was to change the definition of “Best Available Control Technology” or BACT. The definition of BACT goes to the heart of permit review and determines what technology will be required to ensure that emissions are reduced as much as is technological feasible. As noted by USEPA, “[n]ot only is BACT a defined statutory and regulatory term, but it also constitutes a central requirement of the Act.”

Also of significant importance to Houstonians is that the SIP did not include continuous emissions monitoring systems (CEMS) and other similar monitoring systems in its definitions. As pointed out by USEPA, “All of these definitions concerning the monitoring systems ...are essential for the enforceability of and providing the means of determining compliance with the PALs [plantwide applicability limitation] program.”

### **Proposed Disapproval of Modifications of Existing Qualified Facilities**

USEPA is proposing disapproval of this program because, “[i]t has no regulatory provisions clearly prohibiting the use of this Program from circumventing the Major NSR SIP requirements thereby allowing changes at existing facilities to avoid the requirement to obtain preconstruction permit authorizations...” That means that large, major sources of emissions are making major modifications to their facilities without going through the permitting process. This is a fatal flaw in the program, it is inconsistent with the federal Clean Air Act and should never have been included in the SIP.

## Conclusion

Houston applauds the USEPA for taking action on many of the proposed SIP revisions in Texas so that the State must develop a more robust permitting program for major sources of pollutants. This will ensure that the citizens of the State and in the Houston area are exposed to fewer pollutants. The City encourages USEPA to act promptly and to resolve the problems caused by the fact that many of these proposals have been implemented in the state, thus resulting in permits that are either federally unenforceable, do not meet the requirements of the federal Clean Air Act or in situations where permits were not sought when they were required.

Thank you for the opportunity to comment on these proposals.

Sincerely,

A handwritten signature in black ink that reads "Bill White". The signature is written in a cursive, flowing style.

Bill White  
Mayor

cc:

Stanley M. Spruiell  
Air Permits Section (6PD-R)  
U.S. Environmental Protection Agency  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
[spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov)

Suzanne B. Murray  
Regional Counsel-Region 6  
U.S. Environmental Protection Agency  
Mail Code: 6RC  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
[murray.suzanne@epa.gov](mailto:murray.suzanne@epa.gov)