



November 23, 2009

HOUSE OF REPRESENTATIVES
AUSTIN

Mr. Stanley M. Spruiell
Air Permits Section (6PD-R)
Environmental Protection Agency
1445 Ross Avenue
Suite 1200
Dallas, Texas 75202-2733

Re: Comments Supporting EPA's Proposed Disapprovals Docket ID No:
(1)EPA-R06-OAR-2005-TX-0032,(2) EPA-R06-OAR-2005-TX-0025,and (3)
EPA-R06-OAR-2006-0133

Dear Mr. Spruiell:

We, members of the Texas legislature, support the EPA's proposed disapproval of the air permitting program submittals from the Texas Commission on Environmental Quality regarding: (1) Flexible Permits, (2) Qualified Facilities, and (3) Major and Minor New Source Review.

While we support the inherent flexibility in the federal Clean Air Act allowing states to decide how best to reduce air pollution to safe levels, we recognize that this flexibility must be exercised within the context of a functioning, transparent, process that protects the public's right-to-know and ability to participate in air permitting decisions that can affect their health and welfare. We believe that the current Texas procedures for issuing air permits fail to meet these standards for reasons including those identified below.

We are particularly concerned with the Texas program's lack of transparency, which thwarts public participation and makes enforcement of legal limits very difficult. Air quality affects the health and safety of our constituents and we look forward to working with you and the Texas Commission on Environmental Quality to ensure that Texas has an air-permitting program that meets federal standards, values transparency and public input, and protects the health and safety of all Texans.

1. Flexible Permit Program

We agree with EPA's determination that the Texas Flexible Permit program should be disapproved. The federal Clean Air Act does allow for flexibility and streamlining in air permitting. The Texas Flexible Permit program, however, goes too far in sacrificing transparency, monitoring and enforceability in the name of flexibility. Further, it allows

major sources of air pollution to avoid compliance with important regulatory limits. In particular, we are concerned with:

- *The lack of adequate monitoring and reporting requirements*, including the routine use of emission estimates based on calculations rather than actual monitoring.
- *Inadequate public participation*. The Flexible Permit rules fail to provide adequate public notice or participation for draft permits and changes to existing permits, which keeps the surrounding communities uninformed about any changes in the pollution levels they are breathing.
- *The failure to require compliance with, or monitoring or reporting pursuant to, federal individual unit pollution limits*.

While we do believe that the TCEQ can provide some flexibility in permitting, such as pre-approving modifications, we do not believe that the flexible permit approach in the current Texas rules is viable. We, therefore, support disapproval of the rules.

2. Qualified Facilities

While the Qualified Facilities program was a legislative creation, we recognize that the statutory language and associated regulations are inconsistent with current federal Clean Air Act requirements regarding modifications and public participation. In particular, we are concerned with:

- *Inadequate TCEQ oversight*. The rules authorize many changes at facilities without any pre-approval by TCEQ or procedures for denial for cause. These off-permit changes are difficult to track and enforce and may threaten ambient air quality.
- *The lack of understandable and traceable permits*. Texas industry, regulators, and the public should be able to obtain a permit, read it, and know what quantity of what pollutants the facility is authorized to emit. The off-permit changes authorized through the Qualified Facilities rules prevent such transparency.
- *Inadequate public participation*. The Qualified Facilities rules allow industrial plants to make changes that can affect neighboring residents with absolutely no public notice or opportunity for participation.

We, therefore, support final disapproval of the Qualified Facilities rules.

3. Major and Minor New Source Review

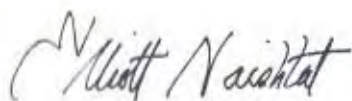
Lastly, the EPA should finalize disapproval of revisions to the Major and Minor New Source Review SIP because they are substantively different and less stringent than the federal New Source Review rules. Of particular concern is Texas' definition and application of Best Available Control Technology (BACT). Texas is applying a definition of BACT, and using a BACT determination process, that is significantly less stringent than required by federal law. As a result, Texas industrial facilities emit more pollution than similar facilities

in other states. However, use of federal BACT alone will not be sufficient for the State to achieve and maintain attainment of the NAAQS and protect the health of the communities downwind of these new sources. We recommend that the EPA also adopt the procedures necessary to ensure that TCEQ has explicit authority and direction to analyze individual and cumulative effects of emissions from proposed significant point sources on regional ozone levels when considering a permit application. Analysis of ozone effects should include photochemical modeling of impacts to downwind areas under typical high ozone conditions. Because the Texas New Source Review revision rules fail in numerous ways to meet federal requirements and to protect public health, we support their disapproval.

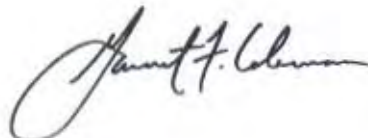
Conclusion

We are pleased that EPA is taking steps to ensure that the Texas air permitting process complies with federal law and is protective of public health. We believe that a strong, effective, transparent air program is important for all Texans and will ultimately reduce permitting timelines, cost and litigation.


Sincerely,



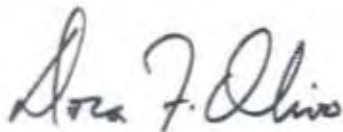
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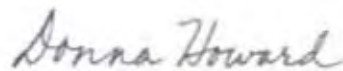
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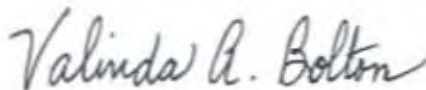
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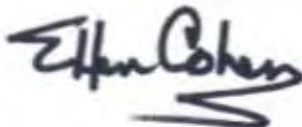
Eddie Rodriguez



Donna Howard



Valinda Bolton



Ellen Cohen