

Field Hearing of the U.S. House of Representatives Energy and Power Subcommittee of the U.S. House Energy and Commerce Committee

Testimony of Bryan W. Shaw, Ph.D., Chairman
Texas Commission on Environmental Quality

March 24, 2011

What you will hear the U.S. Environmental Protection Agency (EPA) say about Flexible Permits:

1. Texas Commission on Environmental Quality's (TCEQ's) flexible permitting program allows companies to circumvent federal New Source Review (NSR) permitting requirements;
2. Flexible permits are not transparent and are hard to understand;
3. Flexible permits lack enforceability;
4. Flexible permits lack adequate monitoring, recordkeeping, and reporting (MRR);
5. Federal law requires all permits to have individual emission rates;
6. No other state uses site-wide caps in permits like Texas;
7. The TCEQ's delegated Title V program is not consistent with the Federal Title V program; and
8. In a meeting with EPA headquarters on October 8, 2009, EPA stated that fixing TCEQ rules is of utmost importance.

Although we disagree with all of these statements, we wanted to provide certainty to the regulated community in Texas and continue to work with the EPA so we have done the following:

1. Adopted revised flexible permit rules on December 14, 2010, that:
 - Further enhanced our rigorous MRR requirements; and
 - Our MRR requirements are very similar to the federal Plant-wide Applicability Limit (PAL) program.

2. Adopted rules on June 2, 2010, that enhanced public participation for all air permits in Texas.
 - Federal notice and comment process requires 30 days of notice;
 - Texas process requires a minimum of 60 days of public notice as well as the contested case hearing process;
 - Texas' thresholds for notice of modified sources are significantly lower than the federal thresholds for notice; and
 - An example would be total particulate matter equal to or less than 10 microns in diameter (PM₁₀) (5 tons per year [tpy] for Texas vs. 15 tpy for EPA).
3. Circumvention of Major NSR is specifically not allowed under state law, federal law or any of our permitting rules (not just flexible rules).
 - The revised flexible permit rules further clarify this requirement as well;
 - To EPA's surprise many of the flexible permit holders have undergone major NSR reviews over the years; and
 - Many have prevention of significant deterioration (PSD) and non-attainment (NA) permits in addition to the state flexible permit authorization.
4. The EPA has yet to point to any federal law or rule that requires individual emission rates because this law does not exist.
5. Other states have developed permits with site-wide emission caps for similar sources as done in Texas.
 - Virginia, Minnesota, Illinois, Florida, Ohio, and Louisiana; and
 - Permits in Louisiana, Virginia, and Florida have been reviewed and approved by EPA.

6. The TCEQ's Title V Program is a delegated program and was given interim approval in 1996 and final approval in 2001.
 - It's EPA's program and they have the right to change their mind. That is what they have done.
 - The program is not broken; they want us to do things different for no added environmental benefit.
 - In 2001 when we were given final approval, many of these permitting elements, including Incorporation by Reference (IBR), were known by EPA and approved by EPA as stated in the federal register notice.
 - If these elements were such major flaws in our program why did they not bring them up at that time or not give us final approval?
7. If our rules are so important why did we get a letter dated April 15, 2010, that said EPA is not sure they have time to look at our revised flexible permitting rules when submitted.
 - Chairman Shaw wrote a letter dated August 9, 2010, expressing his concern that we have drifted away from our agreement that we would work together on fixing our rules made in an October 8, 2009 meeting, and subsequently confirmed in a TCEQ letter dated October 23, 2009; and
 - The EPA response continued to find additional faults with our program and made little effort in getting back to our agreement of fixing our rules.
8. How has TCEQ improved the environment of Texas?
 - Eliminated grandfathered facilities – EPA has not done this;
 - Improved Air Quality significantly;
 - From 2000 to 2009, ozone levels in Texas have decreased by 27 percent statewide, more than any other state in the nation; and
 - By comparison, the rest of the nation averaged only a 12 percent decrease in ozone levels over this same time period.