**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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Ref: 8ARD-PM

David Beatty - Manager

Operating Permits Section

Division of Air Quality

P.O. Box 144820

Salt Lake City, Utah 84114-4820

Re: EPA Comments on HF Sinclair – Woods Cross Title V Operating Permit

Dear David Beatty:

This letter is in response to the Utah Department of Environmental Quality’s (UDEQ) public notice of the draft renewal of the title V operating permit for the HF Sinclair – Woods Cross refinery (HF Sinclair). UDEQ’s public comment period for this permit ends on December 19th, 2023.

After reviewing the draft title V permit action, EPA submits the following comments:

**Comments related to the Statement of Basis**

For each title V permit an authorized state issues, it is required under 40 CFR 70.8(a)(1) to provide EPA with, among others, a copy of the permit application, the statement of basis, the proposed permit, and the final permit. As described in 40 CFR 70.7(a)(5) and R307-415-7a(4), the statement of basis (SOB) is “a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions.” UDEQ has previously stated to Region 8 that the section of the title V permit labeled as “Reviewer Comments” is intended to meet this requirement. In the case of the draft HF Sinclair title V operating permit, the Reviewer Comments are found from page 88 through page 94. Region 8 has reviewed the Reviewer Comments for the HF Sinclair permit and is concerned that it may not meet the requirements of the title V regulations for SOBs.

The SOB for a title V permit is a separate document which is to be sent to EPA and to interested parties upon request, 40 CFR 70.7(a)(5), and which must contain a brief description of the origin or basis for each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight elements that EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from a straight recitation of requirements. The SOB should highlight items such as the permit shield, streamlined conditions, or any monitoring that is required under 40 CFR 70.6(a)(3)(i)(B). Thus, it should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and EPA a record of the applicability and technical issues surrounding the issuance of the permit.

EPA has provided guidance on the content of an adequate SOB in a letter dated December 20, 2001, from Region V to the State of Ohio (<https://www.epa.gov/sites/default/files/2015-08/documents/sbguide.pdf>) and in a Notice of Deficiency issued to the State of Texas (67 Fed. Reg. 732 (January 7, 2002) <https://www.federalregister.gov/documents/2002/01/07/02-298/notice-of-deficiency-for-clean-air-act-operating-permits-program-state-of-texas>). These documents describe the following five key elements of a statement of basis: (1) a description of the facility; (2) a discussion of any operational flexibility that will be utilized at the facility; (3) the basis for applying the permit shield; (4) any federal regulatory applicability determinations; and (5) the rationale for the monitoring methods selected. In addition, the Region V letter further recommends the inclusion of the following topical discussions in a statement of basis: (1) monitoring and operational restrictions requirements; (2) applicability and exemptions; (3) explanation of any conditions from previously issued permits that are not being transferred to the title V permit; (4) streamlining requirements; and (5) certain other factual information as necessary. Each of the various guidance documents provide generalized recommendations for developing an adequate statement of basis rather than “hard and fast” rules on what to include in any given statement of basis. Taken as a whole, these recommendations provide a road map as to what should be included in a SOB considering the technical complexity of the permit and the history of the facility.

In addition to the above cited guidance, in the May 24, 2004, Los Medanos Energy Center title V Petition Order (<https://www.epa.gov/sites/default/files/2015-08/documents/los_medanos_decision2001.pdf>), the EPA partially granted and partially denied a petition to object to a title V operating permit issued by the Bay Area Air Quality Management District. The EPA objected to the permit in part based on issues related to the adequacy of the SOB for the Los Medanos title V permit.

Region 8 has reviewed the Reviewers Comments and has concerns that the supplied information may be inadequate to determine the legal basis for the conditions set forth in the HF Sinclair title V permit.

As stated above, the SOB is where the permitting authority should explain the decision-making process on how applicable requirements are stated in the permit, or why sections of applicable requirements are absent from the permit. Our review of the Reviewers Comments finds this discussion lacking. For example, the HF Sinclair refinery is subject to requirements in 40 CFR Part 61 Subpart FF – National Emission Standards for Benzene Waste Operations. These are found in permit Condition II.B.1.o. This condition appears to be based on a determination that the HF Sinclair facility produces less than 10 megagrams of benzene from waste over a year. However, the Reviewer Comments do not discuss why this is the applicable standard for the facility. There is no way to assess how UDEQ reached the determination that this is the applicable standard, as there is no discussion of 40 CFR Part 61 Subpart FF applicability in the Reviewers Comments.

As stated above, the SOB should contain a description of the facility and an explanation of any conditions from previous permits that are not being transferred to the title V operating permit. This draft permit is stated as being the initial title V operating permit for the HF Sinclair facility and should reflect all construction activity covered by New Source Review (NSR) permits issued to the HF Sinclair facility. See 40 CFR 70.2 (definition of “applicable requirement”). However, the Reviewer Comments section contains no discussion on any NSR permits issued to the facility other than DAQE-AN101230057-23. A review of the UDEQ online database of issued NSR permits indicates at least six other permits have been issued to the facility since 2011, including DAQE-AN101230039-11, dated September 16th, 2011; DAQE-AN101230040-11, dated December 16th, 2011 DAQE-AN101230041-13, dated November 18th, 2013 DAQE-AN101230052-20, dated October 8th, 2020 DAQE-AN101230053-22, dated September 1st, 2022 and DAQE AN-101230053-23, dated June 9th, 2023. These are only the NSR permits that were available online and it is possible that additional NSR permit actions exist prior to DAQE-AN101230039-11. The Reviewer Comments section does not contain any discussion of these six NSR permits. It is therefore unclear whether any applicable requirements from these permits are, or should be, present in the draft title V operating permit.

On March 13th, 2008, HF Sinclair entered into a Consent Decree (<https://www.epa.gov/sites/default/files/documents/hollyrefining-cd.pdf>) to address compliance concerns at the refinery. This Consent Decree created applicable requirements that should be incorporated first into an underlying permit (a non-title V permit) and then second, into the title V operating permit. This Consent Decree is still active and has not been closed. Review of the Reviewer Comments shows that the only mention of this Consent Decree is in Comment 13. This limited discussion of the Consent Decree in the Reviewers Comments makes it difficult for the public and EPA to determine if all the applicable requirements in the Consent Decree are incorporated correctly. For example, Condition II.B.2.b of the permit discusses particulate matter (PM) limits at Fluidized Catalytic Cracking Unit (FCCU) 4 and sets a limit of 2.0 pounds/ton of Coke Burn (or 1.0 pound/1000 pounds of Coke Burn). The Consent Decree in Paragraph 33 sets an emission limit of 0.5 pounds of PM per 1000 pounds of coke burned—one-half the limit in the draft permit. Paragraph 34 of the Consent Decree provides an exception to the 0.5 pounds PM limit during periods of Startup, Shutdown or Malfunction of the FCCU or during periods of Malfunction of the wet gas scrubber control device, but otherwise, the 0.5 pounds PM limit applies at all times at FCCU 4.

EPA believes a thorough examination of requirements imposed by the Consent Decree should be performed to ensure limits and associated quality control/quality assurance requirements for monitoring equipment have been correctly included in underlying permits and this draft Title V permit, before issuance of a final Title V permit. EPA also suggests that Reviewers Comments fully documents any discussion of why conditions were included or not included in the document.

The above cited deficiencies in the Reviewer Comments are not meant to be exhaustive. As it currently exists, the Reviewer Comments do not explain the history of the HF Sinclair facility and do not assist in determining the legal and factual basis for the terms of the title V operating permit. 40 CFR 70.8(a)(1) requires that a permitting authority submit an SOB as part of the EPA 45-day title V review process and failure to do so could be grounds for the EPA to object to the issuance of the title V operating permit under 40 CFR 70.8(c)(3).

The EPA recommends that UDEQ withdraw the HF Sinclair draft title V permit and develop a robust and complete SOB, beyond what is currently included in the Reviewers Comments, to accompany the draft permit, as required by 40 CFR 70.7(a)(5). The Reviewers Comments do not adequately set forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions as contemplated by 40 CFR Part 60.70.7(a)(5) and R307-415-7a(4). As such, the the public and EPA has an incomplete understanding of the language used to express the appropriate applicable requirements and why UDEQ may have determined some applicable requirements do or do not apply. The EPA recommends that, once this SOB is completed, UDEQ put the HF Sinclair permit back out for a full public notice and comment.

**Environmental Justice (EJ)**

EPA is committed to advancing EJ and incorporating equity considerations into all aspects of our work. This commitment includes improving our assessment and consideration of the impacts of permits on communities already overburdened by pollution. EPA welcomes UDEQ’s partnership in this important effort.

Executive Order (EO) 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994) has been supplemented by EO 14096, *Revitalizing Our Nation’s Commitment to Environmental Justice for All* (April 26, 2023). As defined in EO 14096:

“Environmental justice” means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people: (i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and (ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

EO 14096, 88 Fed. Reg. 25251, 25253 (Apr. 21, 2023).

EO 14096 directs federal agencies, as appropriate and consistent with applicable law, to identify, analyze, and address disproportionate and adverse human health and environmental effects including risks and hazards of federal activities, including those related to climate change and cumulative impacts of environmental and other burdens on communities with EJ concerns.

EPA has determined that the draft permit action raises potential EJ concerns. Data from EPA’s EJ screening tool, EJScreen, illustrates the severity of pollution and health impacts in the area around the HF Sinclair refinery. EJScreen is a useful first step in understanding communities that may have EJ concerns.

The values for 5 of the 13 EJ indexes for the 1-mile radius area surrounding the facility exceed the 80th percentile in the state. This area includes over 7,000 residents surrounding the refinery. The elevated environmental justice indexes include ozone, toxic releases to air, superfund proximity, hazardous waste proximity and proximity to a Risk Management Plan (RMP) facility. The population living around the area is significantly comprised of people of low income and children under 5. Children are particularly susceptible to impacts of air pollution.

EPA recommends UDEQ work with other governmental entities and HF Sinclair to further identify and mitigate disproportionate and adverse effects on the community and apply that framework to inform this permitting action. An appropriate scope of the analysis includes: obtaining input from the affected community to identify concerns; an evaluation of existing environmental data, including air monitoring, air modeling, or, as appropriate, data from other media; an assessment of cumulative impacts; an evaluation of existing public health data; an evaluation of demographic data indicating vulnerabilities in the affected population; an evaluation of the facility’s compliance record; an evaluation of the permitting action’s potential health and non-health adverse effects (e.g., noise, odor, and traffic); an evaluation of the potential health effects of anticipated emissions given existing vulnerabilities and the distribution of those effects within the population; and an evaluation of potential methods for minimizing or mitigating adverse effects on the community.

EPA recommends the assessment of cumulative impacts referenced above include cumulative air impacts associated with emissions from all units at the HF Sinclair facility, fugitive emissions from the facility, and emissions from nearby industrial facilities (including other local refineries). The assessment should follow the approach of a cumulative risk assessment.

Given the current environmental conditions facing this community and the potential for additional disproportionate and adverse impacts based on race, color or national origin; the location of this facility may raise civil rights concerns. UDEQ should assess its obligations under civil rights laws.

**Community Engagement**

Community engagement is an essential aspect of the permit process, particularly in communities already overburdened by pollution.

UDEQ and HF Sinclair should work together to inform and engage with affected community members throughout this air permitting process. The goal of community engagement is to ensure that the people most affected by the permit have input into the decisions that will impact human health and the environment. Community engagement builds relationships crucial for making informed permit decisions that consider the site-specific circumstances of the permit action. Essential EJ topics to consider include (but are not limited to):

* Air monitoring that incorporates public health concerns;
* How to lodge a complaint (e.g., odors, respiratory distress associated with emissions);
* Data (e.g., required reporting, air monitoring) accessibility (including Limited English Proficiency);
* Alert and emergency notifications procedures;
* Application of additional pollution controls to improve emissions, and;
* Traffic, road and related noise impacts.

The following community engagement guidelines should be followed for this permit process and for all subsequent permitting actions within the immediate area, including the surrounding refineries.

To encourage meaningful involvement from the community, UDEQ should create a written community engagement plan that contains the below elements prior to conducting community engagement.

* UDEQ should conduct an evaluation to identify the number of Limited English Proficiency households in the affected community, gauge access to reliable Internet services, and assess technological literacy. After conducting this evaluation, UDEQ should hold at least two public hearings, which include interpretation and written translation of all materials into all primary languages spoken in the affected community.
* UDEQ should hold public hearings at times and locations accessible to community members, with the goals of sharing information and soliciting feedback to inform the permit decision. In addition to public hearings, UDEQ should make several mechanisms available for accepting community feedback, such as written comments submitted online and setting up call-in numbers. UDEQ should maintain contact lists containing emails and phone numbers of residents to keep the community informed of any future permit activities.
* UDEQ should identify technical assistance resources to individuals or groups in the community to overcome technical and other barriers to engagement.
* UDEQ should publicize all community engagement activities through a variety of means to accommodate the community's level of technical knowledge, linguistic needs, and technological capacities.
* UDEQ should summarize technical documents in plain language, and should make all written documents, including permit documents, hearing presentations, and hearing notices, available to the community through a variety of means (e.g., online, at libraries, in mailings, or posted at community centers. After conducting community engagement activities, UDEQ should incorporate the feedback received into the final permit process.

Additionally, we recommend ongoing transparency and engagement after the permit is issued and recommend that UDEQ make any ongoing compliance data publicly available on an easily accessible website.

**Conclusion**

We are committed to working with UDEQ to ensure that the final title V permit is consistent with all applicable title V permitting requirements and the EPA-approved Utah title V Air Permitting Program. The EPA plans to review any public comments received and may provide additional comment during the EPA 45-day review period.  If you have questions or wish to discuss this further, please contact me, or your staff can contact Donald Law at (303) 312-7015 or law.donald@epa.gov.

EPA Region 8’s EJ program is available to partner with UDEQ in EJ analysis, planning and public engagements. For additional information on EJ resources, you can contact David Dorian at (303) 312-7011 or dorian.david@epa.gov.

 Sincerely,

 Adrienne Sandoval

 Director

 Air and Radiation Division

Enclosure: EJ Screen Report