

**BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of the Proposed Title V
Operating Permits Issued to

Chevron Products Company
to operate a petroleum refinery
located in Richmond, California

Facility # A0010

Issued by the Bay Area Air
Quality Management District

**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO THE
ISSUANCE OF THE PROPOSED TITLE V PERMITS FOR THE CHEVRON
REFINERY IN RICHMOND**

INTRODUCTION

Pursuant to Clean Air Act § 505(b)(2) and 40 C.F.R. § 70.8(d), Communities for a Better Environment (“CBE”) hereby petitions the Administrator of the United States Environmental Protection Agency (“US EPA” or “EPA”) to object to issuance of the proposed Title V Operating Permits for the Chevron Petroleum Refinery in Richmond, California (“Chevron Refinery”), Facility #A0010.

The Bay Area Air Quality Management District (“BAAQMD” or “District”) submitted the proposed Title V permit for US EPA’s review on August 5, 2003.¹ US EPA received the proposed Title V permit on August 12, 2003 and its 45-day review period ended on September 26, 2003. This petition is timely filed within 60 days following the conclusion of US EPA’s 45-day review period as required by Clean Air Act § 505(b)(2). The Administrator must grant or deny this petition within 60 days after it is filed.² In compliance with Clean Air Act § 505(b)(2), this petition is based on objections to the proposed Title V permit that were raised during the public comment periods.³

¹ See Letter to Jack Broadbent, Director, Air Management Division, US EPA Region 9, from William Norton, Executive Officer, Air Pollution Control, BAAQMD, August 5, 2003. Available at <http://www.baaqmd.gov/pmt/t5/Refinery2003/a0010EPA8-5-03.pdf> (last visited October 31, 2003).

² See 42 U.S.C. § 505(b)(2).

³ The proposed Title V permits were first issued by the District in June, 2002, and public hearings were held in July, 2002. The District made changes to the draft permit, reissued the draft permit in August, 2003, and held another public comment period. Petitioner submitted comments on the draft Title V permits on September 27, 2002 and September 22, 2003. These comments are attached as Appendices 1 and 2 for reference.

Richmond is a community that bears a disproportionate share of environmental hazards from the Chevron Refinery and other industrial activities. The community surrounding the refinery is comprised primarily of low-income people and people of color. For example, Liberty Village housing complex is home to very low income, mono-lingual Spanish speaking, immigrant families. Other community facilities within close proximity of the refinery are the Verde, Peres, Washington, Lincoln, and Nystrom Elementary Schools, Samuel Gompers Alternative School, Shields Park/Community Center, and several low income residences. The demographics of schoolchildren at the schools reflect that of the surrounding community.

CBE is a non-profit environmental justice organization committed to the rights of urban low-income communities and communities of color in California who are disproportionately impacted by environmental hazards. CBE has worked in Richmond for numerous years on environmental justice issues.

EPA “does not have discretion whether to object to draft permits once noncompliance has been demonstrated.”⁴ In *New York PIRG*, NY PIRG petitioned EPA to object to three Title V permits issued in the state of New York.⁵ The court held that “once NYPIRG demonstrated to the EPA that the draft permits were not in compliance with the CAA, the EPA was required to object to them.”⁶

The Title V comments submitted by CBE to BAAQMD on September 27, 2002 and again on September 22, 2003 demonstrate that the permit is not in compliance with the Clean Air Act and related regulations. These examples of non-compliance are further discussed below. Based on this non-compliance, EPA must object to the permit.

In addition, at the close of EPA’s 45-day comment period, EPA submitted a letter to BAAQMD requesting revisions to the permit in order to bring the permit into compliance; however EPA did not object to the permit. The contents of EPA’s letter to BAAQMD on its own, requires EPA to object to the permits because it sets out numerous examples of non-compliance. However, EPA stated that “[w]e are not objecting to these permits because the District has committed to make a number of specific improvements, and has also committed to following EPA guidelines and regulations to make several applicability determinations once [the District] obtains the necessary information.”⁷

The CAA and related regulations do not give EPA the discretion to engage in informal negotiations with the District in an attempt to piece together an adequate Title V permit. EPA has already identified instances of non-compliance in the permit that requires EPA to object to the permit. In addition, if EPA had taken the time to review the public comments that were submitted to BAAQMD rather than allowing for an

⁴ *New York PIRG v. Whitman*, 321 F.3d 316, 334 (2nd Cir. 2003).

⁵ *Id.* at 323.

⁶ *Id.* at 334.

⁷ US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003. For all references to this letter please see Appendix 3.

inappropriate concurrent review period,⁸ the non-compliance in the permit would be even more clear.

SUMMARY OF OBJECTIONS

Petitioner requests that the Administrator object to the proposed Title V permit because the permit does not comply with the Clean Air Act and applicable requirements. In particular:

A) The permit is based on an incomplete permit application and an inadequate public process.

B) The permit does not assure compliance with all applicable requirements under the Clean Air Act and related regulations. In particular, the permit does not assure compliance with applicable emissions limitations and with the New Source Review (“NSR”) rules; therefore, schedules of compliance must be added to the permit.

C) The District’s claim that current monitoring practices are adequate is incorrect and violates the requirements of Title V. The permit must contain adequate monitoring to assure compliance with applicable requirements.

D) The permit does not comply with applicable recordkeeping requirements because the permit does not require submission of the records to the District to ensure access to the records by the public.

E) The treatment of flares is incomplete.

F) The District failed to apply the miscellaneous operations rule to the refinery’s emissions.

G) Since the refinery emits several hazardous air pollutants, the permit must contain all of the applicable MACT standards.

H) The permit shield is improperly drafted and therefore inaccessible to the public. In addition, the permit shield improperly subsumes applicable requirements.

A. INCOMPLETE PERMIT APPLICATION AND INADEQUATE PUBLIC PROCESS

The District issued the permit based on an inadequate permit application in violation of 40 C.F.R. § 70.7(a)(1)(i), which states that “[a] permit . . . may be issued only if . . . [t]he permitting authority has received a complete permit application for a permit.” However, despite this clear language, the District does not deny the validity of the permit application inadequacies, but instead claims that “[i]nadequacies in the permit application do not necessarily invalidate the permit. The requirement to submit a

⁸ See infra pgs. 7-8 for a more detailed discussion.

complete permit application is an obligation on the facility . . . Whether the facility has met its obligation to submit a complete permit application does not predetermine whether the District can meet its obligation to issue an accurate permit . . . The District could spend a vast amount of time and effort working with the facility to perfect its application, but this would be an exceedingly inefficient allocation of resources, particularly when the legal risk for application incompleteness fall [sic] upon the facility, not the District.”⁹

The District’s legal analysis is simply incorrect. Although the facility *does* have an obligation to submit a complete application, under the Title V implementing regulations, the District may *not* issue a permit that is not supported by a complete application.

The submission of a complete permit application is directly correlated with the public’s ability to participate in the Title V permitting process. However, the District’s procedure regarding public participation in the permitting process was not in compliance with 40 C.F.R. § 70.7(h)(2). The District failed to provide the public with appropriate access to information relevant to the facilities in order to meaningfully comment and participate in the Title V permitting process. 40 C.F.R. § 70.7(h)(2) requires the District to post public notice that includes the “name, address, and telephone number of a person from whom interested persons *may obtain* additional information including *all relevant supporting materials . . . , and all other materials available to the permitting authority that are relevant to the permit decision.*”¹⁰ The Title V regulations further support the substantive requirement of notice by stating that “the permitting authority shall provide such notice *and opportunity for participation.*”¹¹ The District incorrectly suggests that this requirement is solely an obligation to provide public notice information and does not oblige the District to actually *provide* relevant documents or information upon request. The District’s interpretation of this rule strips the notice requirement from the substantive participation requirements.

In violation of the above mentioned regulations, the District and the facilities failed to make information required under the Clean Air Act and applicable regulations available to the public. The information the refinery submitted since the original permit application in 1996 has not been made available to the public as an application update.¹² In some cases there are serious gaps between what the refinery applied for and what appears in the permit.

The Air District must make available to the public “a copy of each permit application.”¹³ In its summary of the application, Chevron stated that it would be submitting at a later date alternatives to permit conditions.¹⁴ Chevron submitted fourteen

⁹ BAAQMD Consolidated Responses to Comments on Refinery Title V permits, July 25, 2003, pg. 9 (“Consolidated Responses”). For all references to the Consolidated Responses, please refer to Appendix 4.

¹⁰ 40 C.F.R. § 70.7(h)(2) (emphasis added).

¹¹ 40 C.F.R. § 70.7(h)(3) (emphasis added).

¹² CBE had to piece together what constituted the pertinent information through a broad public records request.

¹³ 42 U.S.C. § 7661b(e).

¹⁴ See Richmond Refinery Major Facility Review Application Summary.

letters to the Air District that proposed Title V permit limits for individual sources at the refinery. These letters are additional submittals by Chevron that constitute part of Chevron's Title V permit application.¹⁵ Yet, CBE was only able to discover these letters through a broad public records act request. The information in these letters must be incorporated into a new permit application.

Chevron claimed that the supporting documentation for these permit application submittals were trade secret. However, the federal Title V regulations authorize the District to "require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source"¹⁶ The information in the appendices is the data necessary to determine if the correct permit requirement is applicable to the source. The Clean Air Act and its implementing regulations require that this information be made available to the public.

The difference between the information provided in the permit application and the information in the permit makes it next to impossible for the public to adequately review the draft permit. The public has little information about changes at the refineries that may have occurred between 1996 and the present that, for example, could affect the permit's applicable requirements. Further, the public has no method of determining whether the draft permit includes all relevant information because the only reference the public has is an out-of-date and unreliable permit application. Unless the updates to the application are provided to the public with the draft permit, or the District thoroughly explains the differences between the original application and the draft permit in the Statement of Basis, the application and the permit does not meet the minimum requirements of Part 70 and the permit should not be finalized in its current form.

In addition, the permit application is missing several required pieces of information. The permit application fails to list insignificant sources at the refinery. BAAQMD Rule 2-6-405.4 requires every source to be in the permit application even if they are exempt or insignificant. During the rulemaking for BAAQMD's Title V program, the Air Resources Board ("ARB") commented that BAAQMD's rules failed to

¹⁵ In addition, rather than having Chevron draft the permit application and the District draft the permit, as required by Title V, it appears that Chevron had inappropriate access to the initial drafts of the permit. On January 17, 2002, the Air District sent Chevron an electronic version of the draft Title V permit with the following email message: "Attached is the single Microsoft Word document that contains your permit. Re-format and add index to make it more user-friendly. *Don't change any content yet.*" (Email, Barry Young, BAAQMD to stie@chevron.com, dated Jan. 17, 2002 (emphasis added) (Attached as Appendix 5). On April 2, 2002, Alex Stiem of Chevron emailed Barry Young of the Air District changes to the Title V permit. This email attaches a word document and states: "With a few exceptions (which I noted), I have incorporated the District's changes in the permit conditions. This attached file is now the master copy of Section VI. You can look through the file and decide how to handle the yellow-highlighted changes. I left the deleted condition numbers and part umbers [sic] or letters in tact if you wanted to leave them in the draft. If you don't you can delete the yellow stuff." (Email, Alex M. Stiem, ChevronTexaco, to Barry Young, dated April 2, 2002) (Attached as Appendix 6). The cozy relationship between the Air District and Chevron deprives the public of the assurance that they have any effective voice in the process.

¹⁶ 40 CFR § 70.5(c)(3)(i).

adequately address insignificant activities.¹⁷ In response to ARB's concern, BAAQMD stated that "[t]he District requires a listing of all sources in the permit application (Section 2-6-405.4) whether significant or insignificant."¹⁸ BAAQMD's failure to require the correct listing of every source is in direct contradiction to its statements to ARB.

In that same response to ARB, the District also stated that "we have expanded the requirement for emission calculations in Section 2-6-405.6 to require calculations of emissions from all sources that have significant emissions, even those that are exempt from District permits or excluded from District regulations." BAAQMD failed to require the facility to submit this information in its permit application. The permit application must be resubmitted with the emission calculations for sources that are exempt from District permits or excluded from District regulations.

The Chevron permit application cites out-of-date requirements. The application improperly lists insignificant sources of hazardous air pollutants ("HAPs") as sources that emit less than 0.5 tons per year (or 1000 pounds) of HAPs.¹⁹ BAAQMD Regulation 2-6-239 provides, however, that a significant source is one that has a potential to emit of more than 2 tons per year of any regulated air pollutant, or more than 400 lbs per year of any hazardous air pollutant.²⁰

The District failed to require the refinery to submit specific information that is crucial for a determination of all applicable requirements and to identify all emission sources. The following information should have been included in the application:

- Comprehensive information on stack discharge points required under 40 C.F.R. §§ 70.5(c)(3)(ii) & (vii). This information should include stack descriptors, stack heights and discharge conditions necessary to conduct air quality modeling to ensure attainment and maintenance of National Ambient Air Quality Standards ("NAAQS") and calculation of Prevention of Significant Deterioration ("PSD") increment consumption.
- Detailed information on fuels, fuel use, raw materials, production rates and operating schedules as required by 40 C.F.R. § 70.5(c)(3)(iv).
- Detailed information on air pollution control equipment and compliance monitoring devices as required by 40 C.F.R. § 70.5(c)(3)(v).
- Detailed information on the dates when emission sources and air pollution control equipment were last installed and modified, as required by 40 C.F.R. §

¹⁷ Staff Report on Proposed Amendments to BAAQMD Regulation 2, Rule 6, Major Facility Review, April 17, 2001, at p. 12, ARB Comment #7. Attached as Appendix 7.

¹⁸ *Id.*, Response to ARB Comment #7.

¹⁹ *Id.*

²⁰ See also 40 C.F.R. § 70.5(c) which states that "for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application."

70.5(c)(5). This would enable verification of claims of permit exemption and NSR compliance for modified sources.

- Detailed calculations, input assumptions to the calculations and sufficiently detailed process production rate and throughput capacities which would be required to support other quantitative aspects of its application in violation of 40 C.F.R. § 70.5(c)(3)(viii).

Until all such information is included in the permit application the permit is inadequate and should not be finalized in its current form.

Finally, the District's submission of the "proposed" permit to US EPA on August 5, 2003 was not in compliance with Clean Air Act § 505(a)(1)(B) and 40 C.F.R. § 70.8(c). The District is required to "provide to the Administrator a copy of each permit proposed to be issued" and the Administrator is required "to object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements" of 40 C.F.R. § 70 or the Clean Air Act.²¹ A "proposed permit" is "the version of a permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with 70.8."²² In contrast, a "draft permit" is "the version of a permit for which the permitting authority offers public participation."²³ In other words, a draft permit indicates revision, whereas a proposed permit indicates final review.

The District submitted essentially identical draft/proposed permits to US EPA on August 5, 2003 and to the public on August 15, 2003. Although US EPA has indicated that some renderings of concurrent review are valid,²⁴ these actions by the District are not in compliance with the Clean Air Act or related regulations. The District is required to "submit any information necessary to review adequately the proposed permit."²⁵

²¹ 42 U.S.C § 505(a)(1)(B); 40 C.F.R. § 70.8(c)(1).

²² 40 C.F.R. § 70.2.

²³ 40 C.F.R. § 70.2.

²⁴ During the issuance process, can a permitting authority give notice to EPA, affected States, and the public simultaneously?

Yes, provided EPA has a reasonable opportunity to review any comments received from the public and affected States. The minimum public comment period is 30 days and the EPA review period is 45 days. This would allow EPA 15 days additional review after the public and affected State review, assuming the permitting authority does not provide for a longer public comment period. *Fifteen days may not be sufficient depending on the complexity of the permit.* To provide for a longer EPA period for reviewing the results of public comment, the permitting authority could vary the beginning of EPA's review resulting in less overlap of the EPA and public comment review where more EPA review after the public comment would likely be needed.

Questions and Answers on the Requirements Of Operating Permits Program Regulations (July 7, 1993) § 7.6 #1 (emphasis added).

²⁵ 40 C.F.R. § 70.8(c)(3)(ii).

Public comments were due on September 22, 2003 and US EPA's 45-day review period concluded on September 26, 2003 – a disparity of a mere four days. The improper concurrent review period resulted in violations of the Title V public participation requirements. First, the permit submitted to EPA was not a final proposed permit, as it did not contain revisions by BAAQMD based on the submitted public comments. Second EPA admitted that it did not have adequate time to review all five refinery permits that were submitted at the same time and were hundreds of pages each, nor did it have time to review the comments submitted by the public during its 45-day review period.²⁶ EPA stated that “EPA has received substantial comments from the public and the refineries earlier this week that we were not able to review in the few days prior to the end of our review period.”²⁷ EPA also stated that “[w]e were unable to review the proposed Title V permits for Conoco-Phillips Company and Shell Martinez Refinery due to the short review period.”²⁸ As a result, US EPA submitted a subsequent letter to the District on October 31, 2003, well after the close of the public comment period and the close of EPA's 45-day review period, offering comments on the Conoco-Phillips and Shell Martinez refineries.²⁹

US EPA's review of a proposed permit is intended to be the final step prior to the issuance of a final permit; either EPA objects or approves the permit. However, it is clear that the District and US EPA view this as an “evolving document that will be updated over time” rather than an adequate final permit as required by Title V.³⁰ US EPA also stated in its September 26, 2003 letter to Steve Hill that “[w]e understand that the District also intends to proposed [sic] additional permit revisions in the near future.”³¹ The District's submission of a draft permit to US EPA and US EPA's ad hoc attempt to remedy a clearly inadequate permit is not in compliance with the Clean Air Act.³²

B. INADEQUATE SCHEDULES OF COMPLIANCE

The permit is not in compliance with several sections of 40 C.F.R. § 70 regarding the facility's compliance status. 40 C.F.R. § 70.1(b) requires that “[a]ll sources . . . have a permit to operate that assures compliance by the source with all applicable requirements” and 40 C.F.R. § 70.7(a)(1)(iv) states that “a permit . . . may be issued only if . . . the conditions of the permit provide for compliance with all applicable requirements.” However, the facility is out of compliance with many of the permit requirements. Therefore, the permit must contain a compliance schedule.³³ In particular,

²⁶ In fact, the District spent 7 years (1996-2003) preparing the proposed permit and 9 months (October, 2002-July 2003) preparing a combined response to the public comments for all 5 refineries. Just 45 days to review the proposed permits *and* the public comments is inappropriate under Title V.

²⁷ US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003.

²⁸ *Id.*

²⁹ US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, October 31, 2003. For all references to this letter please refer to Appendix 8.

³⁰ Consolidated Responses, pg. 5

³¹ US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003.

³² See *New York PIRG*, 321 F.3d at 334.

³³ 40 C.F.R. § 70.5(c)(8)(iii)(C).

“[s]uch a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements.”³⁴ In addition, the permit must include “[a] schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.”³⁵

However, despite these clear requirements, and despite the District’s admission that the public “comments described evidence of particular instances of non-compliance,”³⁶ the permit was issued without a compliance schedule. In fact, the District suggested that issuing the permit without addressing the non-compliance issues was entirely appropriate under Title V. The District responded to the allegations of non-compliance by stating that “there is a balance to be achieved between delaying the permit issuance to address significant compliance issues versus putting those issues aside . . . so that the permit can go into effect. In general, the District approaches this balancing exercise with a bias towards issuing the Title V permit while using other enforcement authorities to address the compliance issues . . . If compliance concerns progress to the point where additional Title V permit terms are warranted, those terms can be added later on.”³⁷ Simply stated, the District does not have the discretion to read compliance requirements out of the statute and Title V requirements.³⁸

In particular, the District improperly excludes compliance with NSR rules from the Title V permit. “The District takes the position that the preconstruction review rules themselves are not applicable requirements, for purposes of Title V.”³⁹ The District also asserts that EPA itself does not view preconstruction permitting rules as applicable requirements. The District’s position is unfounded and incorrect. The District’s SIP, the C.F.R., and EPA rulings and correspondence all unequivocally establish that Title V does require Title V permits to apply preconstruction review rules.

The BAAQMD Rule 2-6-202 describes applicable requirements as:

Air quality requirements with which a facility must comply pursuant to the District’s regulations, codes of California statutory law, and the federal Clean Air Act, including all applicable requirements as defined in 40 C.F.R. 70.2.

NSR is an air quality requirement, codified in the District’s regulation 2-2-101. It applies to all new and modified sources subject to BAAQMD’s regulation 2-1-301, authority to construct requirements. Since the District regulations require facilities to comply with NSR, these preconstruction review rules must be incorporated in the Title V permit.⁴⁰

³⁴ 40 C.F.R. § 70.5(c)(8)(iii)(C).

³⁵ 40 C.F.R. § 70.5(c)(8)(iv).

³⁶ Consolidated Responses, pg. 4.

³⁷ Consolidated Responses, pg. 5.

³⁸ The District is being disingenuous; the District waited 7 years to issue this permit and now they are claiming that they did not have enough time to address the non-compliance.

³⁹ Consolidated Responses, pgs. 6-7.

⁴⁰ See also 42 U.S.C. § 7503.

EPA's C.F.R. 70.2 also defines applicable requirements to include preconstruction review requirements. Specifically, applicable requirement means:

(1) Any *standard or other requirement* provided for in the applicable implementation plan approved [SIP] or promulgated by EPA . . . that implements the relevant requirements of the Act, (2) any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking . . . (3) any standard or requirement under section 111 [standards of performance for new and existing stationary sources; and] (4) any standard or other requirement under section 112 [accident prevention for new and existing sources] of the Act.⁴¹

EPA confirms its position that Title V permits include preconstruction review rules in *In the Matter of Pacific Coast Building Products, Inc., Apex Nevada, EPA* (1999). In *Pacific Coast Building*, the petitioner alleged that the Title V permit under review failed to assure compliance with federal and state preconstruction review programs because, in its opinion, the permit did not apply BACT.⁴² Before determining that the permit did apply BACT, EPA articulated that applicable requirements include the requirement to obtain preconstruction permits that comply with Clean Air Act requirements.

[A]ll sources subject to Title V must have a permit to operate that assures compliance by the source with all applicable requirements. Applicable requirements are defined in 40 C.F.R. 70.2 to include . . . Such applicable requirements include the requirement to obtain preconstruction permits that comply with preconstruction review requirements under the Act, EPA regulations, and State Implementation Plans ("SIPs").⁴³

The District's claim that preconstruction review rules are not applicable requirements for purposes of Title V is clearly erroneous. In fact, the facilities must comply with the preconstruction review rules by formulating appropriate schedules of compliance. The District's claim that "there is no advantage to holding the Title V permits in abeyance while compliance issues are investigated and resolved"⁴⁴ violates federal law. Since the District improperly excluded these requirements from the Title V permit, the permit is not in compliance with appropriate laws and EPA must object.

The Chevron Refinery is out of compliance with applicable New Source Review rules in the following instances:

⁴¹ 40 C.F.R. § 70.2 (emphasis added).

⁴² See *Pacific Coast*, pg. 6.

⁴³ *Pacific Coast*, pg. 7.

⁴⁴ Consolidated Responses, pg. 6

Retrofit of Heaters and Furnaces with Low NOx burners

Chevron administratively increased the maximum firing rate of several pieces of equipment at the refinery, alleging that firing rates had previously been underreported.⁴⁵ The increase in firing rates was due to debottlenecking of the Refinery's fuel gas system, which led to a significant increase in the fuel gas compressor capacity. Although these administrative increases have caused significant emission increases, the District has allowed them to occur without requiring appropriate NSR review under CAA § 111, and related regulations and BAAQMD rule 2-2.

The District explained that it was allowing the increases based on BAAQMD rule 2-1-234.3. However, BAAQMD rule 2-1-234.3 is not applicable to these sources because the rule does not apply to sources, such as these, which have been issued a District authority to construct and are subject to daily or annual emissions limits. In addition, this BAAQMD rule does not preempt the requirements of the Clean Air Act. These changes resulted in modifications to the source requiring NSR because the sources underwent physical or operational changes that caused significant emissions increases.

Since the permit does not contain a schedule of compliance to remedy the deficient NSR, the permit is not in compliance with the Clean Air Act and related regulations and EPA must object to the permit.

Fluid Catalytic Cracking Unit

The permitting process of the last decade for the Chevron FCCU (Fluid Catalytic Cracking Unit, a central part of the refinery process, and major pollution source) has been riddled with improper permitting including the failure to require NSR.⁴⁶ This improper process has set the throughput and emissions limits of the unit at extremely high levels, e.g. 1504.7 tons per year of NOx and 2199.4 tons per year of SOx.⁴⁷ However, this improper permitting of the past should not be formalized in the Permit.

The Air District has long been aware of its failure to require NSR on the FCC unit and the resulting improperly high permit limit for NOx. For example, Robert Kwong, District Counsel identified this issue in a September 28, 1999 memorandum to Senior Management at the District regarding Chevron's application for pollution credits:

⁴⁵ These comments are based on comments submitted by Adams Broadwell. See Adams Broadwell's comments: September 27, 2002 regarding the Chevron refinery, pgs. 35-39, attached as Appendix 9 and September 22, 2003, pg. 15, attached as Appendix 10, for a more detailed discussion of these issues.

⁴⁶ The permitting history is described fully in CBE's September 27, 2002 comment letter at pgs. 5-8, attached as Appendix 1. The document's referenced in this section were submitted with CBE's September 27, 2002 comment letter, unless otherwise noted.

⁴⁷ Draft permit, pgs. 474 and 473, respectively.

A good argument can also be made that these reductions are not enforceable because the underlying new source review basis for this emission reduction project [sic]. FCCU emission reduction is not surplus because Chevron is using the FCCU's potential to emit (a holdover of its 1996 modernization effort) of 1,504 tons per year of NOx. This higher permit limit for allowable emissions from the FCCU is the outcome of accommodation set forth in 2-2-113. Rule 2-2-213, after being added to Regulation 2 in November 1991, was deleted in June 15, 1994, because 'the modernization provisions of Section 2-2-13 have been superseded by new offset requirements for replacement sources in Section 2-2-313 requiring a 1.0:1.0 offset ratio.' The 1994 staff report does not fully explain the deletion of 2-2-113. The District staff report does, however, refer to new section 2-2-213 as the requirement governing offsets from 'replacement sources.' One can surmise from this deletion of 2-2-113 and addition of 2-2-313 that the 'modernization' exemption was untenable from the federal NSR standpoint. This becomes even more credible given EPA's vigilance on NSR issues.⁴⁸

The District must correct its past permitting and place correct permit levels for the FCCU in the Title V permit. Another District memo states that the "District Emission Inventory for the 1999 SIP list [sic] the Chevron FCC (Source No. 10) units as emitting 81.5 tons per year of NOx. The new FCCU has been emitting at or near this rate since it went into service in 1995 although permit conditions allow the unit to emit 1504 tons per year of NOx."⁴⁹ CBE has not done an exhaustive analysis of BACT, but an Air District memo provides a good source for comparison.⁵⁰ In 1993, staff reported that the same technology used at Chevron was in use at Ultramar in Southern California and met an 8.7 ppm NOx limit. Using Ultramar baseline and Chevron's calculation methodology, CBE's expert Julia May calculated that the FCCU should have been permitted at 8.7 ppmv NO₂, which results in 65 tons per year of NOx.⁵¹

Despite the identification of the ability of the same equipment to meet 8.7 ppm at Ultramar, the District allowed Chevron the limits of 220 ppmv NOx (over any 24-hr operating day period), 180 ppmv (averaged over any rolling 30 day period) or 150 ppmv (averaged over any calendar year period, corrected to 3% oxygen, dry), and 1504.7 tons per year. This limit does not meet NSR requirements, and must be corrected in the Title V permit. Similarly, the SOx limit is overly inflated and based on the old FCCU rather than BACT on the new FCCU.

In addition, an interoffice memo written by Steve Hill at BAAQMD, regarding the FCC unit states that "it is impossible to characterize the current operation of the ESP

⁴⁸ BAAQMD Memo, Robert Kwong to Ellen Garvey, Peter Hess, William de Boisblanc, September 28, 1999, pgs. 6-7, fn.3. Attached as Appendix 11.

⁴⁹ BAAQMD Memo, William de Boisblanc to Peter Hess, May 10, 1999, Subject: Application No. 19515: Reconsideration of your decision to allow Chevron IERC credits. Attached as Appendix 12.

⁵⁰ To: Peter Hess, via: Bill de Boisblanc, From: Barry Young, Date: November 16, 1993, Subject: Chevron Application 9978 FCC Regenerator BACT Determination. Attached as Appendix 13.

⁵¹ CBE's September 27, 2002 comment letter at pgs. 7-8, attached as Appendix 1.

as BACT for particulate The problem, from a legal standpoint, with this situation is that the ESP was (incorrectly, in my opinion) deemed to be BACT at the time, and the project was approved. . . . should we reopen the particulate BACT determination?”⁵² It is clear from this memo that BAAQMD questioned the BACT determination. Based on this memo and the above discussion, the District must also do a compliance plan that includes BACT and Offset determinations for all criteria pollutants including PM, SO_x and HAPs for the FCCU.

The permitting failures related to the FCCU extend beyond NSR. The source specific applicable requirements fail to include New Sources Performance Standards (“NSPS”) Subpart A.⁵³ During the modernization of the FCCU, Chevron made changes to the unit by installing a new regenerator/generator and by removal of the CO boiler from emission train. Since major changes were made, the FCCU is subjected to the New Sources Performance Standards (NSPS) Subparts A and J.

Alkylation Expansion and New Butamer Units

The Alkylation and Butamer plants also had permitting irregularities, including the failure to comply with NSR.⁵⁴ The Reformulated Fuels Project (RFG2) permitted a large number of new and modified refinery units, many of which were not built until after the RFG2 permit application #9978 expired. Two of these were the major expansion of the Alkylation Unit and new Butamer plant.

On March 6, 1997, the District issued a Permit to Operate for the H₂SO₄ Alkylation Plant and the Butamer Plant, with throughputs of 36,000 BPD and 40,000 BPD, respectively. The Butamer plant and Alkylation unit were not built when the RFG2 project was constructed. A letter from the District, Feb. 3, 2000 cancelled the permit for the Butamer plant. It appears that the Alkylation unit Authority to Construct (A/C) under the FCCU Modernization and Reformulated Fuels project phase 2 (or RFG2 of 1993) expired, and with it the increased throughput of 36,000 bbl/day. In this case, the original throughput of 21,000 bpd should apply, and this throughput should be in the Title V permit. Both of these projects need to be re-permitted and to undergo NSR. A schedule of compliance must be added to the permit; therefore EPA must object to the permit.

Throughput Limits

The permit contains improper throughput limits for grandfathered sources. The method for determining these throughput limits is not in compliance with the Clean Air Act’s NSR rules. In fact, the District has engaged in an exercise of creating improper emission limits that result in misleading and inappropriate presumptions for NSR for these sources. The District improperly adopted these throughput limits using

⁵² Interoffice memorandum, from Steve Hill, to DAPCO, dated March 10, 2000 regarding comments on Chevron IERCs, pg. 6. Attached as Appendix 14.

⁵³ Draft Permit, pgs. 142-45.

⁵⁴ The permitting history is described fully in CBE’s September 27, 2002 comment letter at pgs. 13-18 and the referenced documents submitted with that letter, attached as Appendix 1.

administrative permits changes that had the sole purpose of creating new permit conditions for the refinery's Title V permit.⁵⁵ Rather than comply with the requirements of Title V and simply collect all of the existing permit conditions that apply to the refinery and place them in a Title V permit, the Air District engaged in a program of creating new limits; these limits on grandfathered sources are wholly inappropriate and should be deleted from the Title V permits.

The throughput limits in the permit are not a reasonably accurate surrogate for any NSR baseline determination. The District states that:

[t]hese [throughput] limits are generally based upon the District's review of information provided by the facility regarding the design capacity or highest documented capacity of the grandfathered source. To verify whether these limits reflect the true design, documented, or "bottlenecked" capacity . . . of each source is *beyond the resource abilities of the District* in this Title V process. Moreover, the District *cannot be completely confident* that the facility has had time or resources necessary to provide the most accurate information available in this regard."⁵⁶

The discussion of throughput limits in the Statement of Basis indicates that the District has little reliable information regarding these "grandfathered" sources with which to make judgments about modifications or NSR at these sources.

The District considers these throughput limits to be a form of indicative monitoring. Any violation of the throughput limit would be an indication that something has changed at the refinery. However, if the District is inserting throughput limits in the permit as a form of indicative monitoring, then it should create a separate list of throughput limits for "grandfathered" sources solely based on actual emissions derived from SIP Regulation 2-2. These actual emission throughput limits should be based on the federally enforceable District NSR program and should be designed to indicate increases of actual emissions at grandfathered sources.

The District's assignment of improper throughput limits in the permit violates the federal NSR rules and the Title V monitoring requirements. Therefore EPA must object to the permit.

The following issues also require schedules of compliance:

⁵⁵See *NYPIRG*, 321 F.3d at 320 ("Title V permits do not impose additional requirements on sources but, to facilitate compliance, consolidate all applicable requirements in a single document"); see also 40 C.F.R. 70.2.

⁵⁶ Statement of Basis, pg. 15. (Unless otherwise noted, the references to the Statement of Basis refer to the Statement of Basis issued in August, 2003).

*Bubble Permit*⁵⁷

The permit incorporates Condition #469, which is the Chevron Refinery “bubble” emissions cap. According to the permit, the refinery-wide emissions cap applies to several units, specified at the top of the permit conditions.⁵⁸ Adams Broadwell modified the District’s emissions inventory⁵⁹ to include only these units.⁶⁰ The District’s emissions inventory indicates that the refinery has been out of compliance with the refinery-wide emissions cap for particulates, SOx, and CO for every year for which the District has made the inventory available. SOx emissions are more than double the bubble cap of 918 tons/yr (for both Wharf and refinery sources) in 1993-2001. PM emissions are more than six times the bubble cap of 326 tons/yr. CO emissions are almost three times the cap of 773.5 tons/yr. Only NOx emissions appear to comply with the refinery-wide emissions cap, according to the District’s emissions inventory.

Neither the Statement of Basis nor the permit itself specifically address the Refinery’s compliance with Condition #469, or the discrepancy between the District’s emissions inventory for the refinery and the emissions cap. The District must address this discrepancy and, if the refinery is out of compliance with Condition #469, impose an enforceable schedule of compliance. Without an appropriate schedule of compliance, the permit is not in compliance with the Clean Air Act and related regulations and EPA must object.

Emissions Inventory

In response to comments that find non-compliance history based on exceedances of the refinery’s reported emissions inventories, the District claims that “[b]ecause the emissions inventory functions as a macro tool the District does not subject emissions inventory figures to analysis sufficiently rigorous to ensure credibility relative to compliance with applicable requirements.”⁶¹ Yet, the District uses emissions inventory estimates for purposes of establishing exemptions from emissions limits. In the Chevron permit application, Chevron states that it uses emissions inventory to demonstrate the applicability of Hazardous Air Pollutant (“HAPs”) requirements.⁶² The District must take a consistent position. If emissions inventory data is not sufficiently accurate for purposes of Title V permitting, then it cannot be included in the refinery’s permit applications and may not be used for establishing any permit conditions, including exemptions.

The District’s response to comments is inconsistent with its own guidelines. The District’s Manual of Procedures does allow the use of emissions inventory for establishing the emission limits of a Title V permit.

⁵⁷ These comments were taken from Adams Broadwell’s comments submitted to BAAQMD on September 27, 2002, pg. 60. Attached as Appendix 9.

⁵⁸ Draft permit, pg. 289.

⁵⁹ See discussion of emissions inventory below.

⁶⁰ See Appendix 15.

⁶¹ Consolidated Responses, pg. 16.

⁶² See, e.g., Chevron’s application at 4.

The requirement to include emission calculations for a source may be satisfied by the submission of emission inventory calculations provided by the District, based on throughput data from the most recent annual renewal and calculated using APCO approved emission factors. If accurate emission inventory calculations for a source are not available from the District, the facility must provide the calculations and explain any assumptions regarding emission factors and abatement factors. . . . The emission calculations included in the permit application (whether those supplied by the District or calculated independently by the facility) must be certified by the responsible official as complete, accurate, and true.⁶³

In addition, the Clean Air Act requires that the submission of nonattainment plans include “a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants.”⁶⁴ The Bay Area is in nonattainment for ozone; therefore, accurate emissions inventories are required. Emissions inventory data must either be corrected in the refinery’s permit application or accurate data must be offered in its place.

C. INADEQUATE MONITORING

Title V of the Clean Air Act and related regulations requires “periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit” and that “[e]ach permit issued . . . shall set forth inspection, entry, and monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.”⁶⁵ However, despite these requirements, the District has determined that including monitoring in a Title V permit is discretionary based on a balancing test of their own making, rather than a clear requirement.

The District stated in the Statement of Basis that “although Title V calls for a re-examination of all monitoring, there is a presumption that these factors [used by the District to determine whether monitoring is necessary] have been appropriately balanced and incorporated in the District’s prior rule development and/or permit issuance. It is possible that, where a rule or permit requirement has historically had no monitoring associated with it, *no monitoring may still be appropriate in the Title V permit if, for instance, there is little likelihood of a violation.* Compliance behavior and associated costs of compliance are determined in part by the frequency and nature of associated monitoring requirements. As a result, the District will generally revise the nature or frequency of monitoring only when it can support a conclusion that existing monitoring is inadequate.”⁶⁶

⁶³ BAAQMD Manual of Procedures, Volume II, Part 3, p.3-7,3-8 (May 2, 2001).

⁶⁴ 42 U.S.C. § 7502.

⁶⁵ 42 U.S.C. §504(c); 40 C.F.R. § 70.6(a)(3)(i)(B).

⁶⁶ Statement of Basis, pg. 17 (emphasis added).

The District's determination that, in some cases, requiring additional monitoring is inappropriate where there is no monitoring, directly contradicts the mandate of Title V of the Act. "If an applicable State emission standard contains no monitoring requirement to ensure compliance, EPA's regulation requires the State permitting agency to impose on the stationary source some sort of 'periodic monitoring' as a condition in the permit or specify a reasonable frequency for any data collection mandate already specified in the applicable requirement."⁶⁷ By its own admission, the District has failed to place monitoring requirements on sources where historically there has been no monitoring.

In addition, the District created and relies upon its own presumption that existing monitoring is adequate. According to the District, "a presumption of adequacy for existing monitoring is appropriate because the District has traditionally applied the same factors to assessing monitoring that are called for by Title V."⁶⁸ The District claims it reviewed all monitoring in the permit for sufficiency and determined that, with very few exceptions, the monitoring is sufficient.⁶⁹ However, neither Title V nor its implementing regulations authorize such a presumption. To the contrary, Title V specifically authorizes and requires the imposition of new monitoring requirements on a facility to assure compliance with permit conditions and other applicable requirements.

Emissions Limitations

For all of the following pollutants/sources of pollutants, the permit cites no or inadequate monitoring to assure compliance with applicable requirements:

No monitoring exists for boilers,⁷⁰ furnaces,⁷¹ asphalt operations,⁷² and internal combustion engines⁷³ that have federally enforceable limits for opacity and/or filterable particulate ("FP") pursuant to BAAQMD regulations 6-301 and 6-310, respectively.⁷⁴ Periodic monitoring on an event basis exists for cogeneration⁷⁵ devices and Claus units⁷⁶ that are subject to the same federally enforceable limits for opacity and FP.

No monitoring exists for furnaces⁷⁷ that have federally enforceable limits for ammonia pursuant to particular permit conditions.

⁶⁷ *Appalachian Power Co. v. Environmental Protection Agency*, 208 F.3d 1015, 1019 (D.C. Cir. 2000).

⁶⁸ Consolidated Responses, pg. 17.

⁶⁹ *See id.*

⁷⁰ Draft permit, pg. 421.

⁷¹ Draft permit, pgs. 400, 408, 416, 419.

⁷² Draft permit, pg. 423.

⁷³ Draft permit, pg. 420.

⁷⁴ In the Statement of Basis, pgs. 22-23, the District advances a number of alleged reasons for these exemptions. *See* Adams Broadwell's comments submitted to BAAQMD regarding the Chevron refinery on September 27, 2002, pgs. 10-16, for a more detailed discussion of the inadequacy of these reasons. Attached as Appendix 9.

⁷⁵ Draft permit, pg. 397.

⁷⁶ Draft permit, pg. 442.

⁷⁷ Draft permit, pg. 416.

No monitoring exists for gasoline dispensing facilities that have federally enforceable limits for VOCs pursuant to BAAQMD regulations 8-7.⁷⁸

Periodic monitoring on an event basis exists for the facility that has federally enforceable limits for SO₂ pursuant to BAAQMD regulation 9-1-302.⁷⁹ In the Statement of Basis, the District explains that “[n]o monitoring is required for BAAQMD regulation 9-1-302 because it only applies when the ground level monitors (GLMs) are not operating, which is infrequent.”⁸⁰ The Statement of Basis must be updated to reflect the current permit’s monitoring requirements.

Certainly the refinery cannot assure compliance with applicable requirements without any monitoring at all. In addition, monitoring based solely on “events” at the facility is not adequate to assure compliance with applicable requirements. Since the permit does not contain adequate monitoring, EPA must object to the permit.

Refinery Vessel Depressurization

Federally enforceable BAAQMD regulation 8-10-301.4 allows opening refinery vessels after the pressure within a vessel is brought “as close to atmospheric pressure as practically possible, in no case shall a process vessel be vented to the atmosphere until the partial pressure of organic compounds in that vessel is less than 1000mm Hg (4.6 psig).” There are no requirements in this rule specifying monitoring or protocols for determination of the partial pressure of hydrocarbon gases in the vessels. The permit only requires periodic monitoring on an event basis for this provision.⁸¹

Since neither the rule, nor the permit specifies how facilities determine that they are meeting a maximum of 4.6 psig, there is inadequate monitoring, and emissions could exceed 4.6 psig and consequently even more could be released at each vessel opening. Again, these are episodic releases, and thus have the potential to release large amounts in a relatively short time, contributing significantly to smog formation during hot days and emitting toxic vapors into communities. The permit must have adequate monitoring, not based on “events” to assure compliance with these requirements.

Fugitives

EPA inspections have identified much higher leak rates for refinery valves (including for Bay Area refineries) than were reported by the refineries.⁸² EPA found an average leak rate of 5%, compared to 1.3% reported by these refineries. EPA estimated the emissions from the unreported leaks at over 80 million lbs/year of VOCs emissions, including 15 million pounds of toxics.

⁷⁸ Draft permit, pg. 424.

⁷⁹ Draft permit, pg. 435.

⁸⁰ Statement of Basis, pgs. 22-23.

⁸¹ Draft permit, pg. 435.

⁸² See “Oil Refineries Fail to Report Millions of Pounds of Harmful Emissions,” U.S. Representative Henry A. Waxman, November 1999.

The range of leak rates reported by the refineries was 0.2 to 3.6%, but EPA found a range of 1.7 to 10.5% for ten companies for which the investigation was completed. For another 7 refineries still under investigation, the refineries reported a leak range of 0.2 to 2.3%, but EPA found a range of 2.8 to 11.5%.

Of the ten companies for which investigations were completed, two were San Francisco Bay Area refineries. The highest leak rate found among all ten investigated was at the Bay Area Chevron Richmond refinery, with a 10.5% leak rate compared to a 2.3% Chevron-reported rate. EPA's leak rate for Chevron was based on an inspection of 3,363 of Chevron's valves, of which EPA found 354 valves leaking. Chevron reported finding only 179 leaking valves in the entire valve population of 7,694. Despite this finding, BAAQMD insists that no more monitoring is necessary for valves at Chevron. A monitoring regime must be put in place that assures compliance with Reg. 8-18-300.

In addition, EPA has already conceded that this is a clear example of non-compliance in the permit. In EPA's September 26, 2003 letter to BAAQMD in regard to the Chevron permit, EPA stated: "Please add appropriate monitoring for 8-18-306.1, 8-18-306.2, 8-18-306.3, 8-18-307 to Table VII."⁸³ In other words, EPA has established non-compliance and therefore it is required to object to the permit.⁸⁴

Storage Tanks

Storage tanks have federally enforceable limits for VOCs pursuant to BAAQMD regulations 8-5. Therefore monitoring requirements are necessary to assure compliance with these limits. However, the use of "look up" tables and sample analysis as the required type of monitoring is inappropriate – in fact these methods are not actually monitoring. For this rule, the District improperly proposes to use emission factors as a substitute for monitoring.⁸⁵

Pressure Relief Valves

The permit is not in compliance with BAAQMD rule 8-28, particularly sections 301 and 401. In addition, the miscellaneous operations rule⁸⁶ applies to repeated pressure relief valve ("PRV") lifts.

As discussed above, valve leaks, including those from PRVs, occur on a frequent basis. Therefore, appropriate limits and monitoring must be added to the permit to comply with BAAQMD rule 8-28-301. In addition, EPA has already conceded that this is a clear example of non-compliance in the permit. In EPA's September 26, 2003 letter to BAAQMD in regard to the Chevron permit, EPA stated: "Please add limits and

⁸³ US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003.

⁸⁴ See 42 U.S.C. § 505(b)(2); see also *New York PIRG v. Whitman*, 321 F.3d at 334.

⁸⁵ See Draft permit, pgs. 447, 450.

⁸⁶ BAAQMD rule 8-2, discussed in more detail *infra* pgs. 24-25.

monitoring for 8-28-301 to Table VII.”⁸⁷ In other words, EPA has established non-compliance and therefore it is required to object to the permit.⁸⁸

Flares

The Title V permit that BAAQMD submitted to EPA failed to include any flare monitoring requirements. EPA instructed BAAQMD, in its September 26, 2003 letter, to add local BAAQMD regulation 12-11 to flares in the Title V permit.⁸⁹ EPA was required to object to the permit at this point based on Clean Air Act § 505(b)(2). Moreover, BAAQMD’s revised permit still omits the more stringent federal monitoring rules outlined in 40 C.F.R. § 60.8. Those rules are necessary to ensure compliance with BAAQMD regulation 6-301 requirements contained in the permit.

In sum, public participation is one of the cornerstones of the Title V process and it is unclear how the public, or the District for that matter, will be able to determine when violations have occurred and therefore when monitoring is inadequate, when there is no monitoring in the first place. Title V specifically requires monitoring to assure compliance with the permit conditions; the permit is clearly out of compliance with these requirements and therefore EPA must object.

D. INADEQUATE SUBMISSION OF REPORTING REQUIREMENTS

The reporting requirements in the permit are not in compliance with 40 C.F.R. § 70.6(a)(3)(iii)(A), which states that “[w]ith respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following . . . [the] *[s]*ubmittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports.”⁹⁰

In many places in the permit, BAAQMD requires the refinery to maintain logs at the facility for five years, but BAAQMD fails to require reporting of the data collected in these logs every six months, as required by Title V.⁹¹ BAAQMD consistently states that

⁸⁷ US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003.

⁸⁸ See 42 U.S.C. § 505(b)(2); see also *New York PIRG v. Whitman*, 321 F.3d at 334.

⁸⁹ US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003, Enclosure A, pg. 2.

⁹⁰ Emphasis added.

⁹¹ See Chevron Draft Permit Condition 5270, Title V Permit at 334; Condition 8715, Title V Permit at 337-38; Condition 8773, Title V Permit at 339; Condition 8869, Title V Permit at 339; Condition 10761, Title V Permit at 343; Condition 10967, Title V Permit at 344; Condition 11025, Title V Permit at 345; Condition 11193, Title V Permit at 348; Condition 11228, Title V Permit at 351; Condition 11436, Title V Permit at 351; Condition 11891, Title V Permit at 352; Condition 12842, Title V Permit at 356; Condition 14701, Title V Permit at 362; Condition 15107, Title V Permit at 362; Condition 16393, Title V Permit at 366; Condition 18166, Title V Permit at 381; Condition 16731, Title V Permit at 370; Condition 17470, Title V Permit at 370; Condition 17527, Title V Permit at 371; Condition 17553, Title V Permit at 371; Condition 17628, Title V Permit at 373; Condition 17631, Title V Permit at 374; Condition 17675, Title V Permit at 375; Condition 18003, Title V Permit at 378; Condition 18015, Title V Permit at 379; Condition 18029, Title V Permit at 379; Condition 18166, Title V Permit at 380; Condition 18172, Title V Permit at 381;

these logs “shall be kept on site and made available to District staff upon request.”⁹² By itself, this is improper. BAAQMD needs to include the semi-annual reporting requirement in each place in the permit where BAAQMD requires the facility to make the log “available to District staff upon request.”

BAAQMD’s failure to include semi-annual reporting requirements appears to be an improper policy adopted in the permit: the permit consistently requires the refinery to maintain records at the facility, but does not require those records to be regularly submitted to BAAQMD. This defeats the purpose of Title V. Title V was created to allow the public the ability to see if a facility was in compliance with its permit conditions. If all the records are maintained at the facility, the public has no access to them through the Public Records Act. Without access to the compliance information, the public remains in the dark despite adoption of the permit.

General permit condition F in the permit fails to compensate for this problem; it states: “Reports of all required monitoring must be submitted to the District at least once every six months, except where an applicable requirement specifies more frequent reporting.” Even though this condition requires semi-annual reporting, the lack of a specific directive with each record keeping requirement in the permit creates an ambiguity that could result in the facility arguing that very few items must be reported to the District and the withholding of important information that must be publicly available under Title V. The District must change this condition F to add the following italicized language: “Reports of all required monitoring *and reports of data from all logs maintained at the facility* must be submitted to the District at least once every six months, except where an applicable requirement specifies more frequent reporting.” Since the permit is out of compliance with applicable Title V regulations, EPA must object.

E. FLARES

Chevron’s Title V permit fails to include key federal and state applicability provisions and fails to include the monitoring necessary to comply with federal rules related to flares. For instance, while Chevron’s Title V permit has been revised, and now subjects the majority of Chevron’s ten flares to portions of NSPS Subpart J, it fails to include NSPS general requirements, set forth in Subpart A. General applicability requirements, such as 40 C.F.R. §§ 60.18, 60.11, and 60.13, should have been incorporated in permit Tables IV and VII. The permit also should require compliance with 40 C.F.R. § 60.106, BAAQMD rule 8-2, and with monitoring necessary to ensure compliance with the 90% destruction rate requirement. EPA is required to object to Chevron’s Title V permit in the absence of these federally enforceable requirements.

In addition to Subpart J of the NSPS, the general provisions in subpart A are also applicable and must be included in Chevron’s permit as applicable requirements.

Condition 18350, Title V Permit at 382; Condition 18387, Title V Permit at 386; Condition 18391, Title V Permit at 387; Condition 18400, Title V Permit at 388; Condition 18702, Title V Permit at 389; Condition 18945, Title V Permit at 391; Condition 19063, Title V Permit at 392; Condition 19425, Title V Permit at 392. (This is not an exhaustive list)

⁹² *Id.*

Specifically, the monitoring provisions and control device requirements apply. The District acknowledges these rules in other sections of the permit, but not in the flare applicable requirement sections. For instance, section 40 C.F.R. § 60.18 is a general requirement that describes design and operation requirements for control devices that are used to comply with Part 60 (and 61). The Chevron permit's applicable requirements for fixed roof tanks require flares to be designed as specified in § 60.18.⁹³ Also, a flare used in wastewater treatment cluster 10 must demonstrate compliance with § 60.18. However, these sections, and others, neither identify requirements for specific flares, nor include those requirements in flare sections IV or VII.⁹⁴

Similarly, BAAQMD alluded to 40 C.F.R. § 61, related to flares, in the permit, but failed to include that provision in the general flare applicability sections.⁹⁵ 40 C.F.R. § 61 regulates National Emission Standards for Hazardous Air Pollutants (“NESHAPS”), generally and 40 C.F.R. § 61.349 specifically sets design, installation, and operation requirements for control devices. Since 40 C.F.R. § 60.18 and 40 C.F.R. § 61 are flare related requirements that relate to refinery operations, BAAQMD must include them as a flare applicable requirement.

BAAQMD also failed to include 40 C.F.R. § 60.11 as an applicable requirement. BAAQMD did not respond to public comments on the applicability of that section to flares. 40 C.F.R. § 60.11 states that “at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.” BAAQMD did not indicate why this NSPS provision would be inapplicable to any of the flares. This section does apply. EPA noted in its comments that BAAQMD should make 40 C.F.R. § 60.11 applicable at each refinery.⁹⁶ In the absence of such an explanation in the Statement of Basis, BAAQMD erred in not applying this requirement. In its Enforcement Alert, EPA stated that “good air control practices” include corrective action or other ways to reduce probability of recurrences.

BAAQMD excluded other applicable sections as well. The District failed to include NSPS section 40 C.F.R. § 60.13, which imposes monitoring requirements on continuous monitoring systems, in applicable rules. This was omitted without explanation. And while the District largely applied NSPS Subpart J, it omitted 40 C.F.R. § 106, the section that describes the test methods and procedures to be used in conducting performance tests. EPA was obligated to object to the Title V comments based on these omissions.⁹⁷

⁹³ Draft permit, pg. 206; *see also* draft permit, pg. 248.

⁹⁴ Draft permit, pgs. 102-106, 397, respectively.

⁹⁵ Draft permit, pgs. 248, 266.

⁹⁶ *See* US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, October 31, 2003, enclosure B, pg. 8.

⁹⁷ *See* 42 U.S.C. § 505(b)(2); *see also* *New York PIRG v. Whitman*, 321 F.3d at 334.

In its letter, EPA acknowledged that NSPS Subpart A should be reflected in the permits or that the “Statement of Basis for each permit must document the reasons for each applicability determination.”⁹⁸ EPA violated the Clean Air Act by not objecting to these omissions because EPA is required to object to permits that do not comply with the requirements of the Title V program.⁹⁹

A prerequisite for Title V permit issuance is for the permitting agency to have provided “a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions.” Therefore, if BAAQMD did properly exclude Subpart A from Chevron’s Title V permit, then it was required to include information explaining why these general provisions were inapplicable in the Statement of Basis. Since the District failed to provide this information, the permit is issued in violation of the Clean Air Act.

BAAQMD erroneously asserts that the federally enforceable miscellaneous operations rule is inapplicable to flares, and thus omits the requirement from Chevron’s Title V permit.¹⁰⁰ The miscellaneous operations rule limits emissions from all refinery operations not limited by another rule in regulation 8 or 10.¹⁰¹ Since no other rule in regulations 8 or 10 limit flares, they are subject to the miscellaneous operations rule.

The miscellaneous operations rule provides that “a person shall not discharge into the atmosphere from any miscellaneous operation an emission containing more than 6.8 kg. (15 lbs.) per day and containing a concentration of more than 300 PPM total carbon on a dry basis.”¹⁰² A flare fits this description.¹⁰³

BAAQMD’s assertion that flares are limited by rules 8-10 and 8-28 is unreasonable. In its response to comments, BAAQMD stated:

Emergency flares are not subject to Regulation 8, Rule 2. Flares are abatement devices controlling emissions from controlled releases from process units, which are subject to Regulation 8-10 (Process Vessel Depressurization) and Regulation 8-28 (Episodic Releases). Because flare

⁹⁸ US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003, Enclosure A, EPA General Comments, pg. 1.

⁹⁹ See 42 U.S.C. § 505(b)(2); see also *New York PIRG v. Whitman*, 321 F.3d at 334.

¹⁰⁰ See Consolidated Responses, pg. 35.

¹⁰¹ BAAQMD Regulation 8-2-201, 8-2-301.

¹⁰² BAAQMD Regulation 8-2-301.

¹⁰³ Note that BAAQMD has held the position that emergency flares are not subject to the miscellaneous source rule, but CBE provided evidence in its initial Title V comments that flare use was not in fact restricted to emergency use. BAAQMD also found in its Technical Assessment Document on Flares that non-emergency flaring occurred regularly. In EPA’s Enforcement Alert, it too found that flaring was routine and not reserved for emergencies. It wrote:

EPA investigations suggest that flaring frequently occurs in routine, nonemergency situations or is used to bypass pollution control equipment. This results in unacceptably high releases of sulfur dioxide and other noxious pollutants and may violate the requirement that companies operate their facilities in a manner consistent with good air pollution practices for minimizing emissions.

emissions are limited by these other regulations, flares do not meet the definition of “miscellaneous source” contained in Regulation 8-2-201.¹⁰⁴

But neither rule 8-10 nor 8-28 limits flaring in any way. Regulation 8-10, process vessel depressurization, seeks to limit emissions of precursor compounds from process vessel depressurization at, *inter alia*, oil refineries. Specifically, the rule requires that depressurized vessels be recovered, controlled and incinerated, flared, or contained and treated during a process unit turnaround. There is nothing in this section that limits - restricts or confines - flaring itself.

Regulation 8-28 does not limit flaring either. Regulation 8-28 is designed to prevent episodic emissions and collect information on organic compounds from pressure relief devices (“PRD”) on any equipment handling gaseous organic compounds at, *inter alia*, oil refineries.¹⁰⁵ Two standards in this section contemplate flare use. First, the regulation requires that under certain circumstances, pressure relief devices vent to a vapor recovery or disposal system.¹⁰⁶ A flare is a disposal system. Second, the refinery must evaluate installing additional flare gas compressor recovery capacity if a PRD releases repeatedly.¹⁰⁷ Neither of those standards limits flares.

Since BAAQMD regulations 8-10 and 8-28 sets no limit, the miscellaneous operations rule applies. The omission of the miscellaneous operations rule from the Title V permit requires EPA to object to the proposed permit.

F. MISCELLANEOUS OPERATIONS RULE

BAAQMD improperly decided not to apply the “miscellaneous operation” rule in Reg. 8-2 to the refinery.¹⁰⁸ BAAQMD is attempting to limit the use of Reg. 8-2 at the Richmond refineries. BAAQMD attempts to limit use of Reg. 8-2 at the refinery by conjuring up a “policy justification” rather than applying the plain meaning of the rule. However, one District staffer wrote that “[e]missions occur routinely that are not covered by specific regulations.”¹⁰⁹

BAAQMD states that it “has determined that the definition of ‘miscellaneous operation’ in Regulation 8-2-201 excludes sources that are in a source category regulated by another rule in Regulation 8, even if they are exempt from the other rule.”¹¹⁰ This determination is contrary to the plain meaning of the rule.

¹⁰⁴ Consolidated Responses, pg. 35.

¹⁰⁵ BAAQMD Regulation 8-28-101.

¹⁰⁶ BAAQMD Regulation 8-28-303.

¹⁰⁷ BAAQMD Regulation 8-28-304.1.

¹⁰⁸ See Statement of Basis, pg. 10.

¹⁰⁹ Email, Harold Lips to Brenda Cabral, Subject: Review of Title V Permit for Chevron, dated April 3, 2002. Attached as Appendix 16.

¹¹⁰ Statement of Basis, pg. 10.

The purpose of the “miscellaneous operation” provision is to “reduce emissions of precursor organic compounds from miscellaneous operations.”¹¹¹ Regulation 8-2-201 defines a “miscellaneous operation” as “any operation other than those limited by the other Rules of this Regulation 8 and the Rules of Regulation 10.” The District has now broadly construed this definition to include sources that are exempt from the remaining provisions of Regulation 8 and Regulation 10.

In its broad interpretation, the District is contradicting the plain language of the definition of “miscellaneous operation.” The “miscellaneous operation” provision covers operations that are not already limited by Regulation 8 and Regulation 10. The District overlooks the fact that operations that are exempt from Regulation 8 and Regulation 10 are not actually limited by those provisions. Furthermore, operations that are exempt from Regulation 8 and Regulation 10 are precisely the types of operations that should fit into the category of “miscellaneous operation.” The District’s non-textual reading of the rule improperly undermines the purpose of this provision – to regulate miscellaneous sources.

The “miscellaneous operation” must be applied in the permit to the appropriate sources across the refinery,¹¹² and monitoring must be implemented to assure compliance with this rule. In addition, EPA has already conceded that this is a clear example of non-compliance in the permit. In EPA’s September 26, 2003 letter to BAAQMD in regard to the Chevron permit, EPA stated that “[w]e understand the District agrees with us that it is inappropriate to exempt flares from Regulation 8-2 based on a determination that they are exempt from Regulation 8-1. Regulation 8-1, which regulates the storage and disposal of rags, open containers, and the clean-up of spray equipment, is not an appropriate reason for an exemption. Please remove citations to Regulations 8-1-110.3 exempting flares from Regulation 8-2.”¹¹³ In other words, EPA has established non-compliance and therefore it is required to object to the permit.¹¹⁴

G. APPLICABLE MACT STANDARDS

The refineries are “major sources” of Hazardous Air Pollutants (HAPs) because they emit or have the potential to emit 10 tons per year or more of any single HAP or 25 tons per year or more of any combination of HAPs.¹¹⁵ Therefore they are required to comply with Clean Air Act section 112 National Emission Standards for HAPs (NESHAPS) reflected in the application of Maximum Achievable Control Technology (MACT). Several MACT requirements that apply to the refineries have not been included in the permit and therefore the permit is out of compliance with section 112 of the Clean Air Act and related regulations.¹¹⁶

¹¹¹ BAAQMD regulation 8-2-101.

¹¹² See supra discussion of flares, pgs. 23-24 and PRVs pgs. 19-20.

¹¹³ US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003.

¹¹⁴ See 42 U.S.C. § 505(b)(2); see also *New York PIRG v. Whitman*, 321 F.3d at 334.

¹¹⁵ 42 U.S.C. § 112(a)(1).

¹¹⁶ See comments submitted by Adams Broadwell regarding the Chevron refinery, September 27, 2002, pgs. 39-51 Attached as Appendix 9.

H. IMPROPER PERMIT SHIELD

The permit shield in the permit is not in compliance with 40 C.F.R. § 70.6(f). A permit shield allows the District to “expressly include in a [Title V] permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of the permit issuance.” In addition, permit shields allow the District to find certain requirements inapplicable to a facility and/or to subsume one set of requirements into another more stringent set of requirements for that facility. However, the permit shield is only adequate if “[t]he permitting authority . . . determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.”

In regard to the subsumed requirements, the District improperly subsumed several applicable regulations, thereby improperly shielding the facility from applicable requirements. For example, the District improperly subsumed 40 C.F.R. § 60.484 into BAAQMD regulation 8-18-308.¹¹⁷ Although the BAAQMD regulation additionally allows for a public comment period and the CFR section does not, the CFR section provides for an opportunity for a public hearing and the BAAQMD section does not. The District cannot subsume a regulation unless the applicable regulation is *completely* more stringent, not somewhat more stringent and somewhat less stringent.¹¹⁸

In addition, EPA has already conceded that this is a clear example of non-compliance in the permit. In EPA’s September 26, 2003 letter to BAAQMD in regard to the Chevron permit, EPA stated that “[t]he ‘subsumed requirements’ shield is allowed . . . if the District includes permit conditions that assure compliance with the subsumed requirements and demonstrates the reason for the shield . . . For instance, the demonstration must show that the applicability of the permit conditions will be as broad as the rule that would be streamlined.”¹¹⁹ Based on the above comments, EPA has established non-compliance and therefore it is required to object to the permit.¹²⁰

In addition, the permit shield tables contained on pages 491-496 of the draft permit are improperly drafted and almost completely unusable by the public. The tables fail to include an explanation of why particular requirements are non-applicable or subsumed; in fact it is unintelligible on its face. The example discussed above should be found in the subsumed section of the permit shield; however it is improperly located in the non-applicable requirements section of the permit shield. In addition, in the second column, titled “regulation title or description of requirement,” the permit should indicate specifically what rule the requirement is being subsumed into. For instance, several

¹¹⁷ See 40 C.F.R. § 60.484(e)(1); Draft permit, pg. 491. (Table IX-A-2 VOC Sources)

¹¹⁸ For an additional example, see draft permit pg. 494: The District improperly subsumed 40 C.F.R. 60.115b(b) (which requires reporting in a specific time frame) into the Refinery MACT requirements (which only requires periodic monitoring).

¹¹⁹ US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003.

¹²⁰ See 42 U.S.C. § 505(b)(2); see also *New York PIRG v. Whitman*, 321 F.3d at 334.

requirements have been subsumed into “refinery MACT recordkeeping requirements.”¹²¹ However, there is no indication of where or what the MACT requirements are, and no explanation of why one section standard or requirement will better assure compliance. Similarly, the District provides no explanation of why the requirement can be subsumed. Therefore the permit shield is not in compliance with 40 C.F.R. § 70.6(f) and EPA must object.

CONCLUSION

In sum, the permit is drastically out of compliance with the Clean Air Act and applicable regulations. Therefore, EPA has no choice but to object to the permit.

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Respectfully Submitted,

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¹²¹ See Draft permit, pg. 491-96.