

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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IN THE MATTER OF )  
CITGO PETROLEUM CORPORATION - )  
DORAVILLE TERMINAL )  
DORAVILLE, GEORGIA )  
GASOLINE BULK TERMINAL )  
PETITION IV-2001-4 )

PERMIT No. 5171-089-0127-V-01-0 )  
ISSUED BY THE GEORGIA )  
ENVIRONMENTAL PROTECTION )  
DIVISION )  
\_\_\_\_\_

ORDER RESPONDING TO PETITIONER'S  
REQUEST THAT THE ADMINISTRATOR  
OBJECT TO ISSUANCE OF A STATE  
OPERATING PERMIT

**ORDER DENYING PETITION FOR OBJECTION TO PERMIT**

On August 30, 2001, the United States Environmental Protection Agency ("EPA") received a petition from the Georgia Center for Law in the Public Interest ("GCLPI") on behalf of the Sierra Club ("Petitioner"), requesting that EPA object to the permit issued by the Georgia Environmental Protection Division ("EPD" or the "Department") to CITGO Petroleum Corporation's Doraville Terminal ("CITGO" or "Permittee") for its facility, located in Doraville (DeKalb County), Georgia. The permit is a state operating permit, issued May 23, 2001, pursuant to title V of the Clean Air Act ("CAA" or "the Act") 42 U.S.C. §§ 7661-7661f.

Petitioner challenged the adequacy of the permit's monitoring and reporting requirements, the permit's apparent limitation on credible evidence, the facility's synthetic minor source status, and the adequacy of the public notice. Petitioner has requested that EPA object to the CITGO permit pursuant to CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2). For the reasons set forth below, I hereby deny the Petitioner's request.

**I. STATUTORY AND REGULATORY FRAMEWORK**

Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), calls upon each state to develop and submit to EPA an operating permit program intended to meet the requirements of CAA title V. The State of Georgia originally submitted its title V program governing the issuance of operating permits on November 12, 1993. EPA granted interim approval to the program on November 22, 1995. *See* 60 Fed. Reg. 57836 (Nov. 22, 1995). Full approval was granted by EPA on June 8, 2000. *See* 65 Fed. Reg. 36358 (June 8, 2000). The program is now incorporated into Georgia's Air Quality Rule 391-3-1-.03(10). All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission

limitations and other conditions as necessary to assure compliance with applicable requirements of the Act, including the applicable implementation plan. See CAA sections 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (referred to as "applicable requirements") on sources. The program does require permits to contain monitoring, recordkeeping, reporting, and other conditions to assure compliance by sources with existing applicable requirements. See 57 Fed. Reg. 32250, 32251 (July 21, 1992). One purpose of the title V program is to “enable the source, States, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements.” Id. Thus, the title V operating permit program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document, therefore enhancing compliance with the requirements of the Act.

Permitting authorities must provide at least 30 days for public comment on draft title V permits and give notice of any public hearing at least 30 days in advance of the hearing. 40 CFR § 70.7(h). Following consideration of any comments received during this time, section 505(a) of the Act, 42 U.S.C. § 7661d(a), and 40 CFR § 70.8(a) require that states submit each proposed permit to EPA for review. Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the permit if it is determined not to be in compliance with applicable requirements or the requirements of title V. 40 CFR § 70.8(c). If EPA does not object to a permit on its own initiative, CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2), and 40 CFR § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA’s 45-day review period, to object to the permit. These sections also provide that petitions shall be based only on objections to the permit raised with reasonable specificity during the public comment period (unless the petitioner demonstrates that it was impracticable to raise such objections within that period or the grounds for such objections arose after that period).

Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), requires the Administrator to issue a permit objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act, including the requirements of 40 CFR Part 70 and the applicable implementation plan. If, in responding to a petition, EPA objects to a permit that has already been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause. A petition for review does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA’s 45-day review period. See 42 U.S.C. §§ 7661d(b)(2)-(b)(3); 40 CFR § 70.8(d).

## II. PROCEDURAL BACKGROUND

### A. Permitting Chronology

EPD received a title V permit application submitted by CITGO on December 19, 1996. The Department determined that the application was administratively complete on February 17, 1997. On October 19, 2000, EPD published the public notice providing for a 30-day public comment period on the draft title V permit for CITGO. The Petitioner submitted (via facsimile) comments to EPD in a letter, dated November 17, 2000, which serves as the basis for this petition. EPD notified the Petitioner via an e-mail message, dated May 17, 2001, that the permit had been re-proposed to EPA on the same date as the e-mail message. See Exhibit 4 of the petition. EPD subsequently issued the final permit to CITGO on May 23, 2001.

### B. Timeliness of Petition

EPA's 45-day review period for the CITGO permit ended on July 2, 2001. The sixtieth day following that date and the deadline for filing any petitions of this permit was August 31, 2001. As noted previously, on August 30, 2001, EPA received a petition from GCLPI on behalf of the Petitioner requesting that EPA object to the permit. Therefore, EPA considers this petition to be timely.

## III. FACILITY BACKGROUND

CITGO receives petroleum products such as diesel fuel and gasoline via pipeline and stores these products in storage tanks. The facility has seven storage tanks: one (1) fixed roof, one (1) internal floating roof, and (5) external floating roofs. The products are eventually dispensed from these tanks to tanker trucks via loading racks for distribution.

The primary air emissions from this facility are volatile organic compounds (VOC). The facility is subject to federal New Source Performance Standards for bulk gasoline terminals. 40 CFR 60, Subpart XX, *Standards of Performance for Bulk Gasoline Terminals*. The facility is also subject to the following State Implementation Plan (SIP) requirements: Georgia Rules 391-3-1-.02(2)(bb), *Petroleum Liquid Storage*; (cc), *Bulk Gasoline Terminals*; (nn), *VOC Emissions from External Floating Roof Tanks*; (ss), *Gasoline Transport Vehicles and Vapor Collection Systems*; and (bbb), *Gasoline Marketing*. See Title V Application Review, CITGO, Permit No. 5171-089-0127-V-01-0.

#### IV. ISSUES RAISED BY THE PETITIONER

##### A. Limitation of Credible Evidence

Petitioner's comment: The CITGO permit contains language that appears to limit the use of credible evidence in enforcement actions, specifically Conditions 4.1.3, 6.1.3, and 8.17.1. EPD must remove language that intends or appears to limit the use of credible evidence. EPA should further require EPD to affirmatively state in the permit that any credible evidence may be used in an enforcement action.

EPA's response: EPA believes that the CITGO permit as amended (see the discussion below) appropriately provides for the use of reference test methods as the benchmark for determining compliance with applicable requirements and for the use of other credible evidence in enforcement actions and in compliance certifications. By way of background, EPA in 1997 issued final changes to 40 CFR Parts 51, 52, 60, and 61 to clarify the appropriate roles of reference test methods and of other credible evidence. 62 Fed. Reg. 8314 (Feb. 24, 1997). The final regulations made clear (1) that the reference test methods set forth or cited to in federal emissions standards and SIP emission limits remain the official benchmark for determining compliance with those standards; and (2) that other credible evidence such as emissions data, parametric data, engineering analyses, or other information may also be used in compliance certifications under Title V and for enforcement purposes. For example, 40 CFR § 60.11(g) was amended to provide that such other data could be used for these purposes if it were "relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed." Here, it appears that Petitioner has mistakenly concluded that permit conditions specifying that certain test methods are the relevant reference test methods for the emission units in question – which as explained above are entirely proper – actually have the intent or effect of excluding the use of other credible evidence for compliance certification and enforcement purposes. As explained below, EPA believes that the permit as amended allows the use of other credible evidence to show whether the source would have been in compliance if the reference test had been performed at some particular time.

Thus, Condition 4.1.3 of the CITGO permit identifies the required reference methods to be used to satisfy any testing requirements; EPA does not believe this provision, in context, can reasonably be read as serving, in any way, to limit the use of credible evidence. In fact, Condition 4.1.3 allows the use of all credible evidence and information. Georgia Rule 391-3-1-.02(3)(a), which serves as the underlying authority for Condition 4.1.3, references EPD's *Procedures for Testing and Monitoring Sources of Air Pollutants*, which permits the use of all credible evidence. Section 1.3(g) of this document states that "nothing. . . shall preclude the use, including the exclusive use, of any credible evidence or information." Both the rule and referenced procedures are approved parts of the Georgia SIP.

Although the language in Condition 6.1.3 may appear to limit the use of credible evidence, EPA believes that this was not the intention of EPD and that such language does not ultimately limit the use of credible evidence because the Georgia SIP expressly prohibits such an exclusion. Condition 8.17.1 does not limit the use of credible evidence because it allows the use of “any information available to the Division” and the phrase “but is not limited to” renders the listed forms of acceptable information not exclusive.

Nonetheless, for further clarification, EPD added a general condition to the CITGO title V permit via a minor modification which expressly states that nothing shall preclude the use of any credible evidence. See CITGO Minor Permit Modification No. 5171-089-0127-V-01-1. Furthermore, EPD added this condition to the permit template to ensure that such language will be included in future title V permits issued by EPD.<sup>1</sup> The petition is therefore denied with respect to the issue of limiting credible evidence because the issue is moot.

## **B. Enforceability of Sulfur Content and Reid Vapor Pressure Limits**

Petitioner’s comment: The CITGO permit correctly notes in Condition 2.3.2 that the facility is subject to Georgia’s gasoline marketing standards. Georgia Rule 391-3-1-.02(2)(bbb). However, the permit does not contain sufficient monitoring and reporting, as required by 40 CFR § 70.6(a)(3), to assure compliance with these standards. Therefore, EPA should object to and reissue this permit with the appropriate monitoring and reporting requirements.

EPA’s response: EPA agrees with the Petitioner that the final CITGO permit lacked sufficient detail to make the permit practically enforceable with respect to Georgia Rule 391-3-1-.02(2)(bbb), particularly with respect to monitoring and reporting. However, EPD subsequently added more detailed requirements to the permit for practical enforceability purposes and to assure the Permittee’s compliance with this rule as a “carrier” as defined within the rule. See CITGO Minor Permit Modification No. 5171-089-0127-V-01-1 (copy attached). The petition is therefore denied with respect to this issue because the issue has been rendered moot by EPD’s permitting action.

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<sup>1</sup>EPD provided EPA with a written commitment to add a general condition to the title V permit template, which expressly states that nothing shall preclude the use of any credible evidence, and to include this condition in every final title V permit not already signed by the Director of EPD by the date of said letter. Existing title V permits will be revised upon renewal to include the new condition. See letter from Ronald C. Methier, Chief, Air Protection Branch, EPD, to James I. Palmer, Jr., Regional Administrator, EPA Region 4 (Mar. 22, 2002).

### **C. Omission of Synthetic Minor Limits**

Petitioner's comment: The failure to roll over the limits on the quantities of diesel fuel and gasoline additives that can pass through the facility (75,121,032 and 66,654 gallons, respectively) from underlying permits means that the facility is no longer a synthetic minor facility with regard to hazardous air pollutants (HAPs). Therefore, the limits should be included in the title V permit.

EPA's response: Conditions 3.2.1 and 3.2.2 contain a process limit and an emission standard, respectively, that together ensure that the facility remains a synthetic minor source with respect to HAP emissions. EPD did not roll over the diesel fuel and gasoline additive throughput limits from the original version of the previous permit (Permit No. 5171-089-0127-Y-01-0) because those limits were replaced by an amendment (to the previous permit) dated May 7, 1998. The amended limits are now contained in Conditions 3.2.1 and 3.2.2. Therefore, the title V permit currently contains the most recent underlying applicable requirements which render the facility as a synthetic minor HAP source and, thus, not subject to 40 CFR 63, Subpart R. The petition is therefore denied with respect to this issue.

### **D. Inadequate Reporting**

Petitioner's comment: The CITGO permit does not require the prompt reporting of all violations. Prompt reporting must be more frequent than the semi-annual reporting requirement for deviations not caused by malfunctions or breakdowns. Therefore, the permit should require the Permittee to report all deviations within seven days.

EPA's response: 40 CFR § 70.6(a)(3)(iii)(B) leaves permitting authorities discretion to define "prompt" for purposes of deviation reporting. EPD addresses the prompt reporting of deviations in Conditions 6.1.2 and 6.1.3 of the CITGO permit. In accordance with the guidance provided in Georgia's proposed title V program interim approval notice, which defines "prompt" reporting to be within two to ten days of a deviation, Condition 6.1.2 requires deviations related to malfunctions or breakdowns of process, fuel burning, or emissions control equipment for a period of four hours or more resulting in excess emissions to be reported within seven days. See 60 Fed. Reg. 49535 (Sept. 26, 1995). All other deviations are required to be reported under Condition 6.1.3 on a semi-annual basis. In addition, EPD will require a facility to submit reports on a more frequent basis than semi-annually (e.g., quarterly) if there is reason for concern regarding the facility's ability to maintain continuous compliance. EPA believes that defining "prompt" as being "within seven days" for all deviations is unnecessary and that EPD's interpretation of prompt reporting is acceptable given the discretion provided by § 70.6(a)(3)(iii)(B). Therefore, the petition is denied with respect to this issue.

### **E. Inadequate Public Notice**

Petitioner's comment: 40 CFR § 70.7(h) requires the permitting authority to provide "adequate" procedures for public notice. While part 70 and the Act do not define "adequate," it is apparent that adequate should at least include information that is accurate. The public notice itself is inadequate because it contains inaccurate information; it states that the permit is enforceable only by the EPA and EPD. The permit shall also be enforceable by any "person." 42 U.S.C. § 7604(a). Therefore, because § 70.7(a)(1)(ii) prohibits the issuance of a title V permit unless all the requirements for public participation pursuant to § 70.7(h) are satisfied, EPA should object to the permit and require a new 30-day public comment period and a public notice which clarifies that the public can also enforce this permit.

EPA's response: Although the public notice does not specifically name "persons" as being designated enforcers of the title V permit, it satisfies the requirements of part 70 regarding the contents of an adequate notice. The public notice requirements specified under § 70.7(h)(2) do not require a statement of who may enforce a permit. Nevertheless, the public notice accurately states that the permit will be enforceable by the EPD and EPA. The public notice does not preclude "persons" from enforcing the permit since it does not state that the permit will be enforceable only by EPD and EPA. EPA does not believe that the omission of "persons" compromised the effectiveness of the public notice. For clarification purposes, however, EPD has agreed to change future notices to include "persons" as designated enforcers. See the public notice for Shaw Industries, Inc. Plant No. 4 (Permit No. 2273-313-0084-V-01-0) as an example of a revised notice. Therefore, the petition is denied with respect to this issue.

## V. CONCLUSION

For the reasons discussed above and pursuant to Section 505(b) of the CAA, 42 U.S.C. § 7661d(b), 40 CFR § 70.8(d), I hereby deny the petition of GCLPI on behalf of the Sierra Club concerning the CITGO title V operating permit.

So ordered.

6/5/2002

Date

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Christine Todd Whitman  
Administrator