



1 Act, 42 U.S.C. § 7661d(b)(2), this petition is based on objections to Hitco's draft Title V permit  
2 that were raised during the public comment period provided by the Act. Petitioner's comments  
3 on the draft Title V permit are attached as Exhibit A for reference<sup>1</sup>.

4 PETITIONER

5 Petitioner OCE is an organization dedicated to protecting the public, especially children,  
6 from the health impacts of pollution and other environmental hazards, and to improve  
7 environmental quality for the public benefit. OCE has members who live, work, recreate and  
8 breathe air in the Los Angeles Air Basin and OCE is active in issues concerning air quality in the  
9 Los Angeles Air Basin and throughout the State of California.  
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11 APPLICANT—HITCO

12 Hitco is applying for an initial Title V permit for an existing facility that manufactures  
13 composite materials used in aircraft parts. This facility is operating two boilers, four internal  
14 combustion engines (ICEs), five spray booths, 28 tanks, 20 furnaces, one degreaser, one  
15 scrubber, one condenser, seven oxidizers, five ovens and other supporting equipment.  
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17 LEGAL BACKGROUND

18 A. *The Clean Air Act's State Implementation Plan Program*

19 The CAA directs the EPA to prescribe national ambient air quality standards ("NAAQS")  
20 at a level sufficient to protect the public health and welfare. 42 U.S.C. §§ 7409 (a) and (b).  
21 Each state, or region of a state, is then required to adopt rules that will be effective in reaching the  
22 NAAQS standards set by EPA. 42 U.S.C. § 7409(a)(1). After developing its air quality rules,  
23 the state submits the rules to EPA for approval or rejection. Collectively, the full set of state air  
24 quality rules approved by EPA is called the state implementation plan, or "SIP." If a SIP, or a  
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28 <sup>1</sup> On December 13, 2002, the South Coast Air Quality Management District ("SCAQMD" or "District") responded to OCE's comments. The District's December 13, 2002 response is attached as Exhibit B for reference.

1 rule that is part of the SIP, is approved by the EPA, its requirements become federal law and are  
2 fully enforceable by EPA and citizens in federal court.

3 Two of the pollutants for which there are NAAQS are nitrogen dioxide (“NO<sub>2</sub>”) and  
4 ozone. NO<sub>2</sub> is a dangerous pollutant that can cause people to have difficulty breathing by  
5 constricting lower respiratory passages; it may weaken one’s immune system, causing increased  
6 susceptibility to pulmonary and other forms of infections. While children and asthmatics are the  
7 primary sensitive populations, individuals suffering from bronchitis, emphysema, and other  
8 chronic pulmonary diseases are also predisposed to sensitivity to NO<sub>2</sub> exposure.

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10 Other Nitrogen-Oxygen compounds, known as NO<sub>x</sub> also contribute to the formation of  
11 ground level ozone, which adversely affects the health of residents in the area. NO<sub>x</sub> also  
12 contributes to haze and reduces visibility. The Los Angeles area does not meet the NAAQS for  
13 either NO<sub>2</sub> or ozone. In fact, the area has the nation’s worst ozone air pollution problem, and  
14 ozone pollution in the area has been demonstrated to impair human respiratory function.

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16 B. *The RECLAIM Program Approved by EPA into the SIP*

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18 The South Coast Air Quality Management District (“SCAQMD”) is the public agency  
19 responsible for the adoption of the SIP for the greater Los Angeles area. In an attempt to control  
20 the emission of NO<sub>x</sub> and sulfur oxides from “stationary sources,” such as power plants,  
21 SCAQMD adopted a set of regulations called the Regional Clean Air Incentive Market  
22 (“RECLAIM”). Some regulations in the RECLAIM program have been approved by the EPA  
23 into the California SIP as Regulation XX, Rules 2000 – 2015. *See*, 61 Fed. Reg. 57775 (Nov. 8,  
24 1996), 40 C.F.R. § 52.220(c)(232)(i)(A)(1); 63 Fed. Reg. 32621 (June 15, 1998), 40 C.F.R. §  
25 52.220(c)(240)(i)(A)(2), (3), and (4); and 65 Fed. Reg. 13694 (March 14, 2000), 40 C.F.R. §  
26 52.220(c)(268) and (271).  
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1 RECLAIM is a "cap and trade" air pollution control program. Simply put, the program  
2 puts a ceiling on the total amount of NOx emissions that may be emitted by all of the program's  
3 participants in a given year. The cap is represented by credits, called RECLAIM Trading Credits  
4 ("RTCs"). Each federally-approved RTC is worth one pound of NOx pollution, and each  
5 RECLAIM participant is given an annual allocation of RTCs. The RTCs are only valid for one  
6 year. The sum of all these allocations equals the total NOx cap. Each pound of NOx that a  
7 participant emits must be covered by an RTC created in compliance with the SIP.

8  
9 Under Rule 2004(d)(1)<sup>1</sup> of the SIP-approved RECLAIM program, at the end of each  
10 quarter, RECLAIM participants must hold sufficient RTCs to cover the amount of NOx emitted  
11 by the participant up to that point in the year to assure quarterly compliance. In addition, under  
12 SIP-approved Rule 2004(d)(4)<sup>2</sup> at the end of each compliance year, RECLAIM participants must  
13 hold sufficient RTCs to cover the amount of NOx emitted by the participant up to last quarter of  
14 the year to assure annual compliance.

15  
16 A RECLAIM facility is in violation of Rule 2004(d)(1) if, at the end of the Reconciliation  
17 Period of any quarter, it is not holding sufficient RTCs to cover its emissions to date through the  
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19  
20 <sup>1</sup> SIP-approved Rule 2004(d)(1) of RECLAIM provides that:

21 Emissions from a RECLAIM facility from the beginning of a compliance year through the end of any  
22 quarter shall not exceed the annual emissions Allocation in effect at the end of the applicable reconciliation  
23 period for such quarter. Except as provided in paragraph (d)(2), any such emissions in excess of the  
Allocation shall constitute a single, separate violation of this rule for each day of the compliance year (365  
days).

24 <sup>2</sup> Rule SIP-approved 2004(d)(4) of RECLAIM provides that:

25 The 60 calendar days following the last day of each compliance year shall be the reconciliation period for  
26 the last quarter. On or before the last day of such reconciliation period, the Facility Permit holder shall  
27 calculate the facility's total emissions for the last quarter, acquire and have credited to the facility, pursuant  
28 to Rule 2007 and Rule 2020, any RTCs necessary to reconcile the Allocations to the emissions, and submit  
an Annual Permit Emissions Program (APEP) report, as prescribed by the Executive Officer, for the  
purpose of compliance reporting, permit review, and determination of fees. As part of the APEP report, the  
Facility Permit holder shall accurately report the information specified in Rule 2015 subparagraph  
(b)(1)(C), (b)(1)(D), and (b)(1)(H) for the District's annual audit.

1 end of that quarter. For example, if a facility is in arrears by 25,000 lbs. of NOx during the third  
2 quarter, that facility is in violation of Rule 2004(d)(1) and would be even if it had obtained  
3 sufficient credits in the fourth quarter to the end year in a surplus. On the other hand, a  
4 RECLAIM facility is in violation of Rule 2004(d)(4) if, at the end of the Reconciliation Period  
5 for the last quarter, it is not holding sufficient RTCs to cover its emissions for the last quarter.

6  
7 When a facility violates Rule 2004(d)(1) or (d)(4), SIP-approved Rule 2010 of  
8 RECLAIM requires that each violation be addressed, whether it is a quarterly and/or an annual  
9 violation. In particular, Rule 2010(b)(1)(A) provides that:

10 Upon determining that a Facility Permit holder has violated Rule 2004(d), the  
11 Executive Officer will reduce the facility's annual emissions Allocation for the  
12 subsequent compliance year by the total amount the Allocation was exceeded.

13 Finally, SIP-approved Rule 2004(k) of RECLAIM provides that failure to comply with Rule  
14 2004(d) constitutes a separate violation for each day until such requirement is satisfied.

15 C. *Title V Permit Requirements*

16 Clean Air Act § 502(b), 42 U.S.C. § 7661a(b), required EPA to promulgate regulations  
17 establishing an operating permit program for stationary sources of air pollution. These  
18 regulations, found at 40 C.F.R. Part 70, governed the establishment of federal operating permit  
19 programs.  
20

21 Pursuant to these regulations, SCAQMD created a Title V operating permit program to  
22 which EPA gave interim approval on March 31, 1997. 62 Fed. Reg. 8878. Each Title V permit  
23 issued pursuant to this program must contain "enforceable emission limitations and standards"  
24 necessary to assure compliance with applicable requirements of the Clean Air Act, including  
25 requirements imposed by State Implementation Plans. 42 U.S.C. § 7661c(a).  
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1 RECLAIM facilities are required by the SIP-approved RECLAIM Rules to comply not  
2 only on an annual basis, (*See*, Rule 2004(d)(4)), but also on a quarterly basis, pursuant to Rule  
3 2004(d)(1). The proposed permit violates California's SIP because it leaves out the requirement  
4 that Hitco, a RECLAIM facility, comply on a quarterly basis pursuant to SIP-approved Rule  
5 2004(d)(1) of RECLAIM. To illustrate, Section B of Hitco's proposed permit states:

6  
7 The annual allocation of NOx RECLAIM Trading Credits (RTCs) for this facility is  
8 calculated pursuant to Rule 2002. Total NOx emissions shall not exceed such annual  
9 allocations unless the operator obtains RTCs corresponding to the facility's increased  
10 emissions in compliance with Rules 2005 and 2007.

11 Accordingly, Section B of Hitco's permit fails to require quarterly compliance because it only  
12 mandates annual compliance.

13 As stated above, each Title V permit issued pursuant to the SCAQMD's Part 70 program  
14 must contain "enforceable emission limitations and standards" necessary to assure compliance  
15 with applicable requirements of the Clean Air Act, including requirements imposed by a SIP.  
16 CAA § 504(a), 42 U.S.C. § 7661c(a). Consequently, because Hitco's permit does not include  
17 SIP-approved Rule 2004(d)(1), an "applicable requirement," SCAQMD's proposed permit for  
18 Hitco violates California's SIP and 42 U.S.C. § 7661c(a). Accordingly, because Hitco's permit  
19 fails to include SIP-approved Rule 2004(d)(1), an "applicable requirement," the Administrator is  
20 required to object to SCAQMD's proposed permit. CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1)  
21 (*See*, *Supra* FN 3); 40 C.F.R. § 70.8(c)(1) ("The [U.S. EPA] Administrator will object to the  
22 issuance of any proposed permit determined by the Administrator not to be in compliance with  
23 applicable requirements or requirements of this part.")  
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1 **2. The Administrator Must Object to the Proposed Permit Because it Does Not Assure**  
2 **Compliance with “the Requirements of [40 C.F.R. Part 70]”**

3 40 C.F.R. § 70.8(c)(1) provides, “[t]he [U.S. EPA] is required to object to the issuance of  
4 any permit determined by the Administrator not to be in compliance with *applicable*  
5 *requirements or requirements of this part*”) (emphasis added). By “requirements of this part,” 40  
6 C.F.R. § 70.8(c)(1) is referring to the requirements of 40 C.F.R. Part 70. 40 C.F.R. § 70.6(a)(1)  
7 further mandates that a Title V permit “assure compliance with all applicable requirements.” As  
8 discussed above, Hitco’s permit lacks a SIP-approved requirement, in particular, Rule  
9 2004(d)(1), which requires that at the end of each quarter, RECLAIM participants hold sufficient  
10 RTCs to cover the amount of NOx emitted by the participant up to that point in the year. If a  
11 RECLAIM facility violates Rule 2004(d)(1), Rule 2010(b)(1)(A) requires that each violation be  
12 addressed by “reduc[ing] [the quarterly violation from] the facility’s annual emissions Allocation  
13 for the subsequent compliance year by the total amount the Allocation was exceeded.”  
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15  
16 Because Rule 2004(d)(1), an “applicable requirement,” is completely left out of Hitco’s  
17 proposed permit, the facility’s Title V permit cannot “assure compliance with all applicable  
18 requirements” of the RECLAIM program. 40 C.F.R. § 70.6(a)(1) (*See, Supra*; FN 4). For  
19 example, if Hitco is in arrears by 25,000 lbs. of NOx during the third quarter, (thus violating  
20 Rule 2004(d)(1)), but obtains sufficient credits in the fourth quarter to end the year in a surplus  
21 (thus in compliance with Rule 2004(d)(4))—under Hitco’s current proposed permit, the facility  
22 would end the year in compliance, notwithstanding the facility’s quarterly violation of Rule  
23 2004(d)(1)—since Section B of the proposed permit only requires annual compliance (or  
24 compliance with Rule 2004(d)(4)).  
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27 On the other hand, however, using the same example above, if the proposed permit  
28 included Rule 2004(d)(1), which it does not, Hitco would be in violation of Rule 2004(d)(1) by

1 25,000 lbs. during the third quarter even though it obtained sufficient credits in the fourth quarter  
2 and ended the year in surplus. Consequently, assuming Rule 2004(d)(1) was properly included  
3 in the facility's permit, Rule 2010(b)(1)(A) would then require that the third quarter violation of  
4 Rule 2004(d)(1) be addressed by reducing the facility's annual emissions allocation for the  
5 subsequent compliance year by the total amount the Allocation was exceeded. Accordingly, the  
6 SCAQMD would be required to reduce Hitco's annual emissions allocation, pursuant to Rule  
7 2010(b)(1)(A) by 25,000 lbs. for the subsequent compliance year.

9 For that reason, Hitco's permit as written is not in compliance with the requirements of  
10 Part 70 because it leaves out SIP-approved Rule 2004(d)(1), an "applicable requirement." 42  
11 U.S.C. 7661c(a). In addition, the facility's permit cannot "assure compliance with all applicable  
12 requirements," since the permit will leave potential quarterly violations unanswered, as  
13 illustrated above. 40 C.F.R. § 70.6(a)(1) (*See, Supra*, FN 4). Accordingly, the Administrator is  
14 mandated to object to Hitco's proposed Title V permit. CAA § 505(b)(1), 42 U.S.C. §  
15 7661d(b)(1) (*See, Supra*, FN 3); 40 C.F.R. § 70.8(c)(1) ("The [U.S. EPA] Administrator will  
16 object to the issuance of any proposed permit determined by the Administrator not to be in  
17 compliance with applicable requirements or requirements of this part.").  
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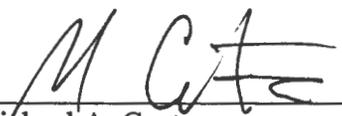
#### 20 CONCLUSION

21 In light of the significant violations of California's SIP, 42 U.S.C. § 7661c(a), and 40  
22 C.F.R. Part 70, as identified in this petition, the Administrator must object to the proposed Title  
23 V permit for Hitco as required by CAA § 505(b)(1) and 40 C.F.R. § 70.8(c)(1).  
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25 Dated: January 13, 2003  
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27 Respectfully submitted,  
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Michael A. Costa  
Our Children's Earth Foundation  
915 Cole St, Suite 248  
San Francisco, CA 94117  
(415) 934-0220

Attorney for Petitioner Our Children's Earth  
Foundation

cc: Wayne Nastri, Administrator U.S. EPA, Region 9  
Jack Broadbent, Director, Air Management Division, U.S. EPA, Region 9  
Nahid Zoueshtiagh, Air Permits Office, U.S. EPA, Region 9  
Barry R. Wallerstein, Executive Officer, South Coast Air Quality Management District

## ATTACHMENT A

December 12, 2002

**By E-Mail:** [byeh@aqmd.gov](mailto:byeh@aqmd.gov) ; [zoueshtiagh.nahid@epa.gov](mailto:zoueshtiagh.nahid@epa.gov)

Mr. Brian Yeh  
Air Quality Analysis and Compliance Supervisor  
P.O. Box 4830  
Diamond Bar, CA 91765-0830

Re: Comments re: SCAQMD's Notice of Intent to Issue Hitco Carbon Composites Inc. Permit

Dear Mr. Yeh,

On behalf of members that live and breathe the air in the South Coast air basin, Our Children's Earth (OCE) submits these comments in response to the South Coast AQMD's (SCAQMD's or District's) Notice of Intent to Issue a Title V Permit for the Hitco Carbon Composites Inc. facility (Hitco). OCE is an organization dedicated to protecting the public, especially children, from the health impacts of pollution and other environmental hazards and to improve environmental quality for the public benefit. OCE appreciates the opportunity that the SCAQMD has provided to submit comments.

### ***Background***

Section B of Hitco's proposed Title V permit states that:

The annual allocation of NO<sub>x</sub> RECLAIM Trading Credits (RTCs) for this facility is calculated pursuant to Rule 2002. Total NO<sub>x</sub> emission shall not exceed such annual allocations unless the operator obtains RTCs corresponding to the facility's increased emissions in compliance with Rules 2005 and 2007.

OCE believes that RECLAIM facilities are required by RECLAIM Rule 2004(d)(1) to comply on a quarterly basis rather than on an annual basis (*See*, Section B, above). RECLAIM Rule 2004(d)(1) has been approved by the EPA into the California State Implementation Plan (SIP). Accordingly, for the reasons discussed in more detail below, OCE believes that Section B of Hitco's proposed permit does not comply with section 505(b)(1)<sup>1</sup> of the Clean Air Act (CAA) and 40 CFR Part 70, section 70.6(a)(1).<sup>2</sup>

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<sup>1</sup> Section 505(b)(1) of the CAA states:

***Each Time a Facility Violates Rule 2004(d), the Amount of the Excess Must Be Determined on a Quarterly Basis and then Deducted From the Subsequent Year's Allocation.***

OCE believes that the success of the RECLAIM program hinges on the enforcement of the program's monitoring, reporting and compliance rules. In particular, because pollution occurs on a daily basis, it is crucial that emissions be reduced on a short term (quarterly), as opposed to a long term (annual) basis. To these ends, the existing federally enforceable RECLAIM program requires that facilities monitor, report and comply with the program on a quarterly basis. Thus, Section B of Hitco's proposed permit which requires compliance on an annual basis violates the CAA's section 505(b)(1) and 40 CFR Part 70, section 70.6(a)(1). To illustrate, Rule 2004(d)(1) provides that:

Emissions from a RECLAIM facility from the beginning of a compliance year through the end of any quarter shall not exceed the annual emissions Allocation in effect at the end of the applicable reconciliation period for such quarter. Except as provided in paragraph (d)(2), any such emissions in excess of the Allocation shall constitute a single, separate violation of this rule for each day of the compliance year (365 days).

The term Allocation means "the number of RECLAIM Trading Credits (RTCs)...a RECLAIM facility holds for a specific compliance year, as referenced in the Facility Permit."

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[Continues onto next page]

If any permit contains provisions that are determined by the Administrator as not in compliance with applicable requirements of this chapter, including the requirements of an applicable implementation plan, the Administrator shall, in accordance with this subsection, object to its issuance.

<sup>2</sup> 40 CFR Part 70, section 70.6(a)(1) states:

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

OCE interprets this provision to mean that a RECLAIM facility will be in violation of Rule 2004(d)(1) if, at the end of the Reconciliation Period of any quarter, it is not holding sufficient RTCs to cover its emissions to date through the end of that quarter. For example, if a facility is in arrears by 25,000 lbs. of NO<sub>x</sub> during the third quarter, that facility is in violation of Rule 2004(d)(1) and would be even if it had obtained sufficient credits in the fourth quarter to end the year in a surplus.

For example, Rule 2010 which applies to non-power producing facilities, requires that each violation be addressed—on a quarterly basis. In particular, Rule 2010(b)(1)(A) provides that:

Upon determining that a Facility Permit holder has violated Rule 2004(d), the Executive Officer will reduce the facility's annual emissions Allocation for the subsequent compliance year by the total amount the Allocation was exceeded.

OCE interprets this rule to mean that each time a facility violates Rule 2004(d), the amount of the excess must be determined and then deducted from the subsequent year's allocation. Accordingly, in the case above where the facility violated during the third quarter by 25,000 lbs. of NO<sub>x</sub>, the third quarter violation must be independently addressed, notwithstanding the fact that the facility might end the compliance year with a surplus.

### *Conclusion*

For the reasons above, OCE respectfully requests that the District reconsider issuing a Title V permit to the Hitco facility until the District requires the facility to comply with the RECLAIM program on a quarterly basis, as required by RECLAIM Rule 2004(d)(1) and section 505(b)(1) of the CAA, and 40 CFR Part 70, section 70.6(a)(1).

Sincerely,

Mike Costa  
Staff Attorney  
Our Children's Earth Foundation  
915 Cole St., Suite 248  
San Francisco, CA 94117  
415.934.0220, fax: 650.745.2894  
email: [mike@ocefoundation.org](mailto:mike@ocefoundation.org)

## EXHIBIT B



Close

**From:** Brian Yeh [SMTP:byeh@aqmd.gov]  
**To:** Mike Costa; zoueshtiagh.nahid@epa.gov  
**Cc:** sproul@sbcglobal.net; georgehays@mindspring.com  
**Subject:** RE: Hitco Proposed Title V Permit  
**Sent:** 12/13/2002 4:41 PM

**Importance:** Normal

Mike,

Thank you for your comments on the proposed Title V permit for Hitco Carbon Composites Inc (ID 800066). We agree with your analyses on the quarterly compliance requirements for emission allocations under AQMD Rule 2004(d)(1). All RECLAIM Facility Permit holders are required to comply with the emission allocation requirements both on a quarterly and annual basis pursuant to AQMD Rule 2004. Rule 2004(b) further specifies the procedures that each RECLAIM Facility Permit holder shall follow to certify the facility's total emissions at the end of the applicable reconciliation period for each quarter and each compliance year. Section K of the proposed Title V permit specifically states that Hitco is subject to AQMD Rule 2004. If the facility's emissions exceed the emission allocation in effect at the end of the applicable reconciliation period for any quarter or any compliance year, such exceedance shall constitute a violation of this rule and AQMD will take necessary enforcement actions against the facility.

The purpose of Section B of the proposed Title V permit is to provide the RECLAIM Facility Permit holder with a quick reference of the RTC that was initially allocated for their facility and the RTC holding at the time when Section B is issued. The initial allocations always remain the same while the current allocation holding is based on the date of permit issuance. However, this section does not imply that the RECLAIM Facility Permit holder is required to comply with the allocation requirements only at the end of each compliance year. As previously stated, all RECLAIM Facility Permit holders are required to comply with the emission allocation requirements both on a quarterly and annual basis pursuant to AQMD Rule 2004.

I hope that the above response addresses your concerns. Please let me know if you have any questions or need additional information.

Brian Yeh  
SCAQMD  
Tel: (909) 396-2584  
Fax: (909) 396-3350  
E-mail: byeh@aqmd.gov

-----Original Message-----

From: Mike Costa [mailto:mike@ocefoundation.org]  
Sent: Thursday, December 12, 2002 3:44 PM  
To: Brian Yeh; 'zoueshtiagh.nahid@epa.gov'  
Cc: 'sproul@sbcglobal.net'; 'georgehays@mindspring.com'  
Subject:

Brian,

Attached you'll find Our Children's Earth Foundation's (OCE's) comments re: the Hitco facility's proposed Title V permit. Thanks for accepting OCE's comments today. If you have any questions, please feel free to contact me at the number below. In addition, if you have any trouble opening the attached comments, please let me know.

Thanks.

Mike Costa  
Staff Attorney  
Our Children's Earth Foundation  
915 Cole St., Suite 248  
San Francisco, CA 94117  
email: mike@ocefoundation.org



Brian Yeh  
<byeh@aqmd.gov>  
12/13/2002 04:41 PM

To: Mike Costa <mike@ocefoundation.org>, Nahid  
Zoueshtiagh/R9/USEPA/US@EPA  
cc: sproul@sbcglobal.net, georgehays@mindspring.com  
Subject: RE: Hitco Proposed Title V Permit

Resp. to  
Comments

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I hope that the above response addresses your concerns. Please let me know if you have any questions or need additional information.

Brian Yeh  
SCAQMD  
Tel: (909) 396-2584  
Fax: (909) 396-3350  
E-mail: byeh@aqmd.gov

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Thanks.

Mike Costa  
Staff Attorney  
Our Children's Earth Foundation  
915 Cole St., Suite 248  
San Francisco, CA 94117  
email: [mike@ocefoundation.org](mailto:mike@ocefoundation.org)

# Comments

December 12, 2002

**By E-Mail:** [byeh@aqmd.gov](mailto:byeh@aqmd.gov) ; [zoueshtiagh.nahid@epa.gov](mailto:zoueshtiagh.nahid@epa.gov)

Mr. Brian Yeh  
Air Quality Analysis and Compliance Supervisor  
P.O. Box 4830  
Diamond Bar, CA 91765-0830

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OCE believes that RECLAIM facilities are required by RECLAIM Rule 2004(d)(1) to comply on a quarterly basis rather than on an annual basis (*See*, Section B, above). RECLAIM Rule 2004(d)(1) has been approved by the EPA into the California State Implementation Plan (SIP). Accordingly, for the reasons discussed in more detail below, OCE believes that Section B of Hitco's proposed permit does not comply with section 505(b)(1)<sup>1</sup> of the Clean Air Act (CAA) and 40 CFR Part 70, section 70.6(a)(1).<sup>2</sup>

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<sup>1</sup> Section 505(b)(1) of the CAA states:

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***Each Time a Facility Violates Rule 2004(d), the Amount of the Excess Must Be Determined on a Quarterly Basis and then Deducted From the Subsequent Year's Allocation.***

OCE believes that the success of the RECLAIM program hinges on the enforcement of the program's monitoring, reporting and compliance rules. In particular, because pollution occurs on a daily basis, it is crucial that emissions be reduced on a short term (quarterly), as opposed to a long term (annual) basis. To these ends, the existing federally enforceable RECLAIM program requires that facilities monitor, report and comply with the program on a quarterly basis. Thus, Section B of Hitco's proposed permit which requires compliance on an annual basis violates the CAA's section 505(b)(1) and 40 CFR Part 70, section 70.6(a)(1). To illustrate, Rule 2004(d)(1) provides that:

Emissions from a RECLAIM facility from the beginning of a compliance year through the end of any quarter shall not exceed the annual emissions Allocation in effect at the end of the applicable reconciliation period for such quarter. Except as provided in paragraph (d)(2), any such emissions in excess of the Allocation shall constitute a single, separate violation of this rule for each day of the compliance year (365 days).

The term Allocation means "the number of RECLAIM Trading Credits (RTCs)...a RECLAIM facility holds for a specific compliance year, as referenced in the Facility Permit."

OCE interprets this provision to mean that a RECLAIM facility will be in violation of Rule 2004(d)(1) if, at the end of the Reconciliation Period of any quarter, it is not holding sufficient

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If any permit contains provisions that are determined by the Administrator as not in compliance with applicable requirements of this chapter, including the requirements of an applicable implementation plan, the Administrator shall, in accordance with this subsection, object to its issuance.

<sup>2</sup> 40 CFR Part 70, section 70.6(a)(1) states:

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

RTCs to cover its emissions to date through the end of that quarter. For example, if a facility is in arrears by 25,000 lbs. of NOx during the third quarter, that facility is in violation of Rule 2004(d)(1) and would be even if it had obtained sufficient credits in the fourth quarter to end the year in a surplus.

For example, Rule 2010 which applies to non-power producing facilities, requires that each violation be addressed—on a quarterly basis. In particular, Rule 2010(b)(1)(A) provides that:

Upon determining that a Facility Permit holder has violated Rule 2004(d), the Executive Officer will reduce the facility's annual emissions Allocation for the subsequent compliance year by the total amount the Allocation was exceeded.

OCE interprets this rule to mean that each time a facility violates Rule 2004(d), the amount of the excess must be determined and then deducted from the subsequent year's allocation. Accordingly, in the case above where the facility violated during the third quarter by 25,000 lbs. of NOx, the third quarter violation must be independently addressed, notwithstanding the fact that the facility might end the compliance year with a surplus.

### *Conclusion*

For the reasons above, OCE respectfully requests that the District reconsider issuing a Title V permit to the Hitco facility until the District requires the facility to comply with the RECLAIM program on a quarterly basis, as required by RECLAIM Rule 2004(d)(1) and section 505(b)(1) of the CAA, and 40 CFR Part 70, section 70.6(a)(1).

Sincerely,

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May 1, 2003

**VIA POUCH**

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**RE: Hitco and San Tan Petition Information**

Dear Greg, Robert and Kirt:

Please find enclosed petitions to object for the Hitco and San Tan Title V permits. These are the petitions that I described to you in an email dated April 25, 2003. On the Hitco petition, I have included all relevant comments and permit information. On the San Tan petition, since David Kim of our office is handling the matter and he is still gathering those documents, please coordinate directly with him.

Thank you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Ivan Lieben".

Ivan Lieben  
Assistant Regional Counsel

Attachments