



ENVIRONMENTAL LAW AND JUSTICE CLINIC • SCHOOL OF LAW

August 9, 2002

*By Facsimile & U.S. Mail*

Brenda Cabral  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109

Re: Comments Pursuant to BAAQMD Regulation 2-6-112 on Proposed Major Facility Review Permit - Valero Benicia Asphalt Plant - Facility #B3193

Dear Ms. Cabral:

I am writing to the Bay Area Air Quality Management District ("BAAQMD" or the "District") on behalf of Our Children's Earth Foundation ("OCE"), in order to comment on the draft Major Facility Review Permit for the Valero Benicia Asphalt Plant - Facility #B3193 ("Valero Asphalt Permit").

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 has at least one member who lives and works near the Valero Asphalt Plant in Benicia.

The Valero Asphalt Permit cannot be finalized as it stands because it is deficient. BAAQMD's assessment that a facility is in "reasonable intermittent compliance" is not equivalent to the compliance assurance required by 40 C.F.R. § 70.1(b) and related District regulations.

Federal Title V regulations state that Title V sources shall have a permit to operate that "assures compliance" with all applicable requirements. See 40 C.F.R. § 70.1(b). More specifically, 40 C.F.R. § 70.7(a)(1)(iv) provides that a permit may only be issued if "the conditions of the permit provide for compliance with all applicable requirements." The federal regulations implementing Title V do not allow the permitting agency to issue a permit where it can only assure "reasonable intermittent compliance." Indeed, an expectation of "intermittent compliance" in this context can only be understood as an expectation of non compliance. The District has a duty to determine that the draft permit assures future compliance; or if it cannot do so, it must include conditions in the permit to assure compliance.<sup>1</sup>

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<sup>1</sup> If in fact the District, based on review of all relevant evidence, can assure compliance, it should say so. It is impossible for the public to determine whether the District's assessment means that the permittee will or will not comply. For example, the Review of Compliance Record for the Valero Asphalt Plant indicates that Valero has been issued 2 violation notices between June 15, 2000 and June 15, 2001, and that BAAQMD received 5 complaints about the facility. See Exhibit A. Yet, the District concludes that "reasonable intermittent compliance can be assured at this facility for the review period."

It is also possible that the District uses the term "reasonable intermittent compliance" because the District believes that assessment of "reasonable intermittent compliance" is sufficient under the regulations. That position, too, would be inconsistent with the law for the reasons stated above.

This is not the first instance in which the District has made a determination inconsistent with the law on this issue. The District has made a similar determination for other Title V facilities in the Bay Area.

For example, in the Review of Compliance Record for Hexcel Corporation - Facility # A0054, attached as Exhibit B, the District indicates that Hexcel was issued 51 violation notices, had 29 parametric monitor excesses and 28 equipment breakdowns between March 1, 2001 and February 28, 2002. BAAQMD then concludes that "reasonable intermittent compliance can be assured at this facility for the review period." The District docs state that the facility has improved and has not had any violations since November 1, 2001, but does not state that compliance can be assured. OCE submitted public comments on the Hexcel Title V permit on the issue of "reasonable intermittent compliance," and argued that the District could not issue Hexcel a Title V permit when compliance was not assured. *See Exhibit C.* The response from the District did not sufficiently explain why Hexcel's compliance was intermittent, and neither did it explain the District's legal authority under Title V regulations to issue a permit to a facility which is not in compliance. In the District's response to OCE's comments on the Hexcel Title V permit it states that "[i]n using the term "intermittent compliance," the District is indicating its view that the likelihood of future violations is within acceptable limits, and that the Title V permit is appropriately written to help the District identify violations that may occur." *See Exhibit D.* However, this characterization of a facility's compliance is in direct conflict with the federal regulations that govern Title V permits.

Further, the District has also argued that

"If the Title V permit is not issued simply because future violations are likely to occur, the result will be that enforcement efforts will be disadvantaged by the lack of additional compliance information that would be required by the Title V permit. Although a history of egregious non-compliance may be a basis for denial of a Title V permit, the District believes that, for most facilities, the appropriate action is to issue the Title V permit so that it may begin functioning as a tool for ensuring future compliance."

*See Exhibit D.*

The District is correct that the Title V permit should be a tool to ensure future compliance at a facility. However, when a facility like the Valero Asphalt Plant has a history of non-compliance, and the District cannot assure compliance – and can only assure "reasonable intermittent compliance" – the law requires that the permit contain conditions to assure compliance with all applicable requirements.

Ms. Brenda Cabral  
August 9, 2002  
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Thank you for this opportunity to comment. If you have any questions please call me at 415-369-5351.

Sincerely,

A handwritten signature in black ink, appearing to read 'MK', is written over a faint, larger version of the same signature.

Marcie Keever  
Staff Attorney  
Environmental Law & Justice Clinic

cc: David Wampler, U.S. EPA Region 9

**Exhibit A**

**COMPLIANCE AND ENFORCEMENT DIVISION**

**OFFICE MEMORANDUM**

**JULY 17, 2001**

**TO: WILLIAM DEBOISBLANC, DIRECTOR, PERMIT SERVICES**  
**FROM: DIRECTOR OF ENFORCEMENT** *[Signature]*  
**SUBJECT: REVIEW OF COMPLIANCE RECORD OF:**

**VALERO PLANT #901**

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In keeping with standard practice, the Compliance and Enforcement Division has conducted a review of the compliance record of:

**Valero Asphalt Refinery**

This memorandum is intended to provide you with the results of the review, and to advise of further action, if any, that will be initiated by the Director of Enforcement.

**Background**

It is standard practice of the Compliance and Enforcement Division to undertake a compliance record review in advance of the initial renewal of a Permit to Operate. The purpose of this review is to assure that any non-compliance problems identified during the prior permit term or twelve months have been adequately addressed. Additionally, the review is intended to recommend such additional permit conditions and limitations as may be necessary to reasonably assure on going compliance.

**Finding**

The Enforcement Division staff has commenced a review of the records for the Valero Asphalt Refinery from June 15, 2000 to June 15, 2001. This review was initiated as part of the District evaluation of an application by Valero Refinery for a Title V Permit. During the period subject to review, Valero's activities known to the District include:

Two Notice of Violations were issued during this review period for violation of Regulation 2, Rule 1, permit condition violations for H2S in the fuel gas.

The District received a total of five alleged complaints of none of which were confirmed. Four were odor and one was visible emissions.

**REVIEW OF COMPLIANCE RECORD OF (VALERO)**

July 17, 2001

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There were two indicated excesses reported, which resulted in the above Notice of Violations. There were no breakdowns reported.

Valero is not under a variance or an Order of Abatement by the District.

There were no Office Conferences held during this reporting period.

**Conclusions**

The Director of Enforcement finds that reasonable intermittent compliance can be assured at this facility for the review period.

**Recommendations**

The Director of Enforcement believes that the proposed application for a Title V Permit is adequate and recommends that the Director of the Permit Services Division approve this application.

JRG, JB, TG, JGG

cc: Brenda Cabral

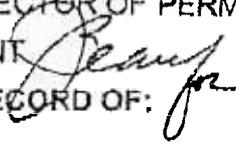
HUNTWAY  
VGC

**Exhibit B**

**COMPLIANCE AND ENFORCEMENT DIVISION**

**OFFICE MEMORANDUM**

March 27, 2002

TO: WILLIAM DEBOISBLANC, DIRECTOR OF PERMIT SERVICES  
FROM: DIRECTOR OF ENFORCEMENT   
SUBJECT: REVIEW OF COMPLIANCE RECORD OF:

**HEXCEL CORPORATION (SITE #A0054)**

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In keeping with standard practice, the Compliance and Enforcement Division has conducted a review of the compliance record of:

**HEXCEL Corporation**

This memorandum is intended to provide you with the results of the review, and to advise of further action, if any, that will be initiated by the Director of Enforcement.

**Background**

It is standard practice of the Compliance and Enforcement Division to undertake a compliance record to review in advance of the initial renewal of a Permit to Operate. The purpose of this review is to assure that any non-compliance problems identified during the prior permit term or twelve months have been adequately addressed. Additionally, the review is intended to recommend such additional permit conditions and limitations as may be necessary to reasonably assure on going compliance.

**Finding**

The Enforcement Division staff has commenced a review of the records for Hexcel for the period of March 1, 2001 to February 28, 2002. This review was initiated as part of the District evaluation of an application by Hexcel for a Title V Permit. During this review period, Hexcel activities known to the District include:

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March 28, 2002  
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50 Notices of Violation were issued for failure to comply with permit condition requirements. One violation was for violation of Regulation 8, Rule 35, Section 301 (no lid on mixer).

No complaints were alleged against Hexcel.

29 parametric monitor excesses and 28 equipment breakdowns were reported and documented by District Staff.

Hexcel is not currently under a District variance or an Order of Abatement.

District staff and Hexcel personnel met for an office meeting on February 27, 2001. During this meeting staff and Hexcel personnel were able to discuss the number of episodes and breakdowns that have occurred. It has been documented that Hexcel has had no preventative maintenance program in place during the on-going episodes to ensure the proper operation of the four thermal oxidizers in place to abate VOC emissions from the mixing and coating operations. The personnel at Hexcel demonstrated to District staff the ongoing improvements at the plant and the installation of a preventative maintenance program with computer tracking. Hexcel has brought in existing staff from other Hexcel corporate facilities and outside environmental consultants to address the non-compliance issues.

No violations have been documented since November 1, 2001 and the amount of parametric monitor excesses and equipment breakdowns has significantly decreased.

### Conclusions

The Director of Enforcement finds that reasonable intermittent compliance can be assured at this facility for the review period.

III |

III |

**Exhibit C**



## ENVIRONMENTAL LAW AND JUSTICE CLINIC • SCHOOL OF LAW

May 10, 2002

Mr. Julian Elliot  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109

*By facsimile to: 415-749-5030*

*By U.S. Mail*

**Re: Public Comment on the Proposed Major Facility Permit for the Hexcel Corporation Facility #A0054**

Dear Mr. Elliot:

I am writing you today on behalf of Our Children's Earth Foundation, in order to comment on the proposed Major Facility Review permit for the Hexcel Corporation Facility #A0054 ("Hexcel facility"). Our comments are as follows:

1. We do not believe that the permit can be approved as it stands, because the District has not demonstrated that compliance with all the terms and conditions of the permit can be assured. The Compliance Review for the facility indicates that Hexcel has been issued 51 violation notices between March 1, 2001 and February 28, 2002, 50 of which were related to breakdown of its abatement devices. In order to justify the granting of a permit under these extraordinary circumstances, the Review discusses measures that have been taken to rectify compliance problems at the facility. These consisted of a meeting between District staff and facility personnel, "ongoing improvements," and the installation of a preventative maintenance program. The District concludes that "intermittent compliance can be assured" for the permit period. We find several problems with this approach.

First, the federal Title V regulations state that Title V sources shall have a permit to operate that "assures compliance" with all applicable requirements. (40 CFR 70.1(b)) More specifically, Title V permits shall contain, "compliance certification, testing, monitoring, reporting and recordkeeping requirements *sufficient to assure compliance* with the terms and conditions of the permit." (40 CFR 70.6(c)) [emphasis added] The federal regulations do not contemplate or deem acceptable a condition such as "intermittant compliance." Indeed, an expectation of "intermittant compliance" in this context can only be understood as an expectation of non-compliance.

Second, there is insufficient discussion in the Statement of Basis regarding the "ongoing improvements" and "preventive maintenance program." In order to support its findings, the District should discuss in detail how the non-compliant abatement devices were brought into compliance, and it should also describe the elements of the maintenance program and any related additional monitoring or reporting requirements. Furthermore, the District's statement that the improvements

are "ougoing" implies that all the changes necessary to assure compliance have not yet been implemented. If this is the case, then the permit needs to include a schedule of compliance.

Third, the District staff admit in the Compliance Review that equipment breakdowns and parametric monitor excesses are still occurring. For example, the Review states that "the amount of parametric monitor excesses and equipment breakdowns has significantly decreased," but not that these conditions have been eliminated. Again, this supports our contention that the draft permit is not acceptable as currently written.

2. In our review of proposed permits at District facilities, we have continued to request that the District provide more comprehensive Basis Statements in order to make the permits more understandable to reviewers and the general public. The Hexcel Basis Statement should contain a more detailed facility description, including information on the permitted and exempt sources and their emissions (type and quantity), as well as, a discussion of the overall production process including a diagram showing the linkage of the facility process equipment. As noted in the previous comment, the Basis Statement should also include details of the steps by which the compliance problems identified in the Compliance Report were remedied.
3. Table IV-A of the proposed permit appears to be missing a number of applicable SIP regulations, for example: SIP regulations 8-16-501.1, 8-16-303.2 through 303.4, 8-16-303.1.1 through 3.3.1.5, and 8-4-302. Please correct this problem.
4. Several of the permit conditions place a VOC emission limitation of 10 lbs/day upon facility sources. For example, Condition #6978 limits the VOC emissions from resin reactors and tanks to 10 lbs/day. Compliance with these limitations is to be verified by monitoring the temperature of the abatement devices. However, no calculations or data are provided in the Engineering Evaluation to demonstrate that the operating conditions placed upon the abatement devices (e.g., conditions #6978 (6) and (7a)) will assure compliance with the 10 lb/day limitation. A similar problem exists for the permit conditions that limit VOC emissions to 120 lbs/day. (e.g. see #4197 (7) which establishes VOC limits for Coater S-58 and Dryer S-59) Please provide information to demonstrate that the defined operating conditions will ensure compliance with the mass emission limitations. In addition, yearly source testing should be required for all abatement devices to ensure the accuracy of the assumed abatement efficiencies.
5. Regarding Condition 17566.4: The record-keeping requirements of this condition are not clearly spelled out. The results of the periodic visible emissions monitoring should also be recorded and maintained along with the log of other A-4 inspections.

Please feel free to contact me if you have any question regarding this correspondence.

Sincerely,



Ken Klac  
Staff Scientist

**Exhibit D**



May 30, 2002

**BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT**

**Mr. Ken Kloc  
Golden Gate University School of Law  
Environmental Law and Justice Clinic  
536 Mission Street  
San Francisco, CA 94105-2968**

**ALAMEDA COUNTY**  
Roberta Cooper  
Scott Haggerty  
(Vice-Chairperson)  
Nate Miley  
Shelia Young

**SUBJECT: Response to Comments, dated May 10, 2002, for Proposed  
Major Facility Permit for Hexcel Corporation**

**CONTRA COSTA COUNTY**  
Mark DeSaulnier  
Mark Ross  
Gayle Uilkema

**Dear Mr. Kloc:**

**MARIN COUNTY**  
Harold C. Brown, Jr.

The following responses are offered to your comments. They are arranged in the same order as your comments:

**NAPA COUNTY**  
Brad Wagenknecht

1. You correctly note that Title V permits must "assure compliance" with applicable requirements. However, you have interpreted this to mean that a Title V permit may not be issued if there is a likelihood of future violations. As a general matter, the District disagrees with this interpretation. No permit can exclude the possibility that actions taken by a facility will lead to a violation. A Title V permit "assures compliance" by, among other things, providing a means to verify whether non-compliance has occurred. This information, coupled with an appropriate enforcement response, helps bring about compliance. If the Title V permit is not issued simply because future violations are likely to occur, the result will be that enforcement efforts will be disadvantaged by the lack of additional compliance information that would be required by the Title V permit. Although a history of egregious non-compliance may be a basis for denial of a Title V permit, the District believes that, for most facilities, the appropriate action is to issue the Title V permit so that it may begin functioning as a tool for ensuring future compliance.

**SAN FRANCISCO COUNTY**  
Chris Daly  
(Vacant)  
(Vacant)

**SAN MATEO COUNTY**  
Jerry Hill  
Marian Townsend  
(Secretary)

**SANTA CLARA COUNTY**  
Randy Altaway  
(Chairperson)  
Liz Kniss  
Julia Miller  
Dona Moesar

Consistent with the above, the District also disagrees with your assertion that "intermittent compliance" is an inappropriate designation for a facility receiving a Title V permit. Again, the fact that future violations cannot be entirely ruled out should not, of itself, be a reason to deny the facility a permit to operate. In using the term "intermittent compliance", the District is indicating its view that the likelihood of future violations is within acceptable limits, and that the Title V permit is appropriately written to help the District identify violations that may occur.

**SOLANO COUNTY**  
William Carroll

**SONOMA COUNTY**  
Tim Smith  
Pamela Todlatt

**William C. Norton  
INTERIM DEPUTY EXECUTIVE  
SECRETARY**

**Ellen Garvey  
Air Pollution Control Officer**

The root cause for the large number of violations documented at Hexcel during the review period was an inadequate preventative maintenance program. In fact, prior to meeting with the District, Hexcel had no formal, documented preventative maintenance program for the facility thermal oxidizers. Not surprisingly, Hexcel experienced many equipment failures that lead to non-compliance. Since then, Hexcel has developed and presented to the District a program which appears to meet industry standards and which, if implemented diligently, is expected to

minimize failures of emission control equipment. In fact, although Hexcel received 51 violation notices in the 12-month period ending February 28, 2002, this facility has not been issued a violation notice in over a year. Based on this marked reduction in non-compliance events, it appears that Hexcel's new maintenance program has been successful. Although the District recognizes that future non-compliance events are a possibility, there no longer appear to be any obvious deficiencies that will inevitably lead to non-compliance, as was the case in the past.

Finally, it is inappropriate at this time to require specific maintenance activities in the proposed permit because the District cannot say with certainty which actions are necessary to avoid non-compliance. However, because the proposed permit contains monitoring requirements adequate to detect non-compliance, the District may require that additional steps be taken if the current program proves inadequate in the long term.

2. You have requested that a more detailed facility description be included in the permit Statement of Basis, including a discussion of the production process with a diagram of facility process equipment, and that such enhancement be included in other Statements of Basis. The Statement of Basis serves to provide some context for reviewers of a proposed permit and to explain changes made to the existing permit to ensure that adequate monitoring is in place.

First, it should be noted that the District did not receive comments from any other reviewer indicating that the Statement of Basis for the proposed permit was unclear or inadequate. Secondly, The District believes that a facility and process description as detailed as you have requested is beyond the scope of the Title V permit program. However, the District is prepared to answer specific questions about permitted source operations if the required information is in our records.

3. You indicated that several applicable SIP citations that do not appear in Table IV-A of the proposed permit should be added. These sections are not applicable, as described below:

- SIP Regulations 8-16-303.1.1 through 8-16-303.1.5 and 8-16-303.2 through 303.4 are cold cleaner requirements. The sources in Table IV-A (resin mixers and reactors) are not subject to these requirements.
- SIP Regulation 8-16-501.1 is a recordkeeping requirement for the trichloroethylene use limitation of 8-16-304. This facility does not use trichloroethylene. In fact, this facility does not have permits to use chlorinated solvents. The tanks where the solvents are stored are only allowed to contain MEK (methyl ethyl ketone) and acetone. For this reason, the facility is not subject to SIP 8-16-304, the National Emission Standard for