

September 22, 2003

BY EMAIL AND U.S. MAIL

Barry G. Young, (Chevron) *byoung@baaqmd.gov*
Greg D. Solomon, (Chevron) *gsolomon@baaqmd.gov*
Julian Elliot, (ConocoPhillips) *jelliot@baaqmd.gov*
M. K. Carol Lee, (Shell) *clee@baaqmd.gov*
Terry Carter, (Tesoro) *tcarter@baaqmd.gov*
Douglas W. Hall, (Valero) *dhall@baaqmd.gov*
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Re: Comments on draft Major Facility Review Permits: Chevron Products Company-Facility #A0010, ConocoPhillips – San Francisco Refinery-Facility #A0016, Shell Martinez Refining-Facility #A001, Tesoro Refining and Marketing Company-Facility #B2758 & #B2759, Valero Refining Co.-Facility #B2626.

Dear Permit Engineers,

1 Even after extensive public comment, the Bay Area Air Quality Management District's ("Air District or BAAQMD") Title V permits for the five Bay Area oil refineries are thoroughly inadequate. The Air District failed to specifically respond to many of the comments that Communities for a Better Environment ("CBE") and public commenters made in its first round of comments on the five Bay Area refinery Title V permits.¹ Therefore, CBE reincorporates its previous comments and resubmits those comments electronically with these comments on each refinery Title V permit.²

The Air District's "Consolidated Responses to Comments on Refinery Title V Permits" ("Consolidated Responses") adopts a format that simplifies and ignores its statutory obligations and glosses over specific comments regarding each particular refinery. The Air District has adopted Title V rules and a Manual of Operating Procedures for Title V. Rather than following the dictates of its own rules and the federal requirements, the Air District has made and taken arbitrary positions with respect to how it will apply Title V to the five oil refineries in the Air District.

BAAQMD's approach is analogous to its basic approach to the Title V permitting process itself, i.e., BAAQMD assumes that generalities without details constitute adequate regulatory oversight

¹ These comments apply to the proposed Title V permits for the Chevron, ConocoPhillips, Shell, Tesoro and Valero refineries.

² The attachments have not been reattached in the interest of conserving paper. However, CBE reincorporates all the attachments already submitted in the first round of refinery permits. Attachments to this letter are submitted by U.S. mail only.

and that disclosure of essential information to the public is unnecessary. One practical effect has been that BAAQMD has failed to adequately address many specific comments regarding each refinery's proposed Title V permit.

Confronted with extensive substantial evidence about serious deficiencies in its proposed approach to Title V permitting, BAAQMD erects artificial barriers that sever any meaningful connections between emissions violations, effective monitoring, and Title V permits. BAAQMD is faced with a huge backlog of unremedied refinery violations, a compliance complaint program that is in shambles, and a mountain of evidence that indicates that BAAQMD has only a faint clue about the magnitude of the ineffectiveness of its enforcement efforts. Rather than specifically address these problems, BAAQMD simply presumes, as the basic underlying premises of its Title V permitting process, refinery compliance and effective BAAQMD enforcement, assumptions that are not supported by any evidence presented by BAAQMD.

I. The Proposed Permits and Related Documents Fail to Discuss Deletions, Omissions and Additions.

2 BAAQMD's Consolidated Responses is replete with incomplete answers and outright omissions with respect to numerous concerns raised by CBE in its comment letter on each of the five oil refineries draft permits. Yet, the use of the Consolidated Responses format implies that there is a uniform treatment of each of the five refinery proposed Title V permits. This is far from the case. Although the five refinery permits cover similar facilities and sources, there are significant differences among the permits. For example, the only three of the five permits identify grandfathered sources in Table II. Shell and ConocoPhillips proposed permits still fail to identify grandfathered sources. Even among the three permits that identify grandfathered sources variation exists in the presentation of Table II. There is no explanation for why the permits have varying information.

3 Similarly, despite its use of a "Consolidated Responses" format, BAAQMD presents vastly different levels of explanation about deletions of permit conditions in the Title V permits for the five refineries. While some of the specific explanations provided are inadequate, Conoco Phillips' Title V Permit does try to explain why each deleted condition is proposed. The Tesoro Title V Permit also presents explanations for most deleted conditions. The Valero Title V Permit provides a mixed approach: no explanations are provided for about fifty deleted conditions, but several generic explanations are cited to support deletion of a score of other conditions. Chevron's Title V Permit provides absolutely no supporting explanations for the dozens of deletions now proposed relative to the conditions in its original Title V Permit. The Martinez Shell Title V Permit does not even identify any deleted conditions nor provide any explanations, even though the Consolidated Responses indicated errors and deletions were made in this permit.

To the limited extent that explanations have been provided, BAAQMD presents several generic approaches. In some cases, the originally proposed condition is obsolete because a particular source is no longer operating. In other cases, BAAQMD cites monitoring or conditions imposed through earlier permits and asserts that these need not be repeated in a refinery's Title V Permit. More commonly, BAAQMD explains deletions as redundant conditions that are not necessary

because they are supposedly addressed by District rules, NSPS controls, or other existing regulations.

Whether based on pre-existing conditions for a specific refinery or broader air quality regulations, BAAQMD has adopted the untenable position that applicable subsumed conditions need not be repeated in each Title V Permit to facilitate ease of use by the public. The Title V permitting process cannot legally be used to supercede existing conditions or regulations unless specifically identified in a permit shield, but BAAQMD's approach makes it impossible to recognize modified and deleted conditions. Instead, BAAQMD is burdening both the public and the refineries themselves with exhaustively searching through BAAQMD's files and regulations in order to understand the full range of relevant conditions. Even as it acknowledges numerous errors in the original preparation of the refineries' Title V permits, BAAQMD continues to insist that the Title V Permits are complete unless commenters provide irrefutable evidence to the contrary when critical information is being withheld by BAAQMD.

The inconsistencies in execution of Title V permit conditions for each refinery highlight how misleading many statements are in the Consolidated Responses. Title V at its core is based on pulling all permits at a facility together into a consolidated permit. But BAAQMD refuses to implement the logical corollary to this approach, namely to identify all relevant conditions in one place so that all parties can understand what obligations apply. Virtually all of the deletions and corrections made to each refinery's Title V Permits resulted from errors identified by CBE and other commenters, despite being handicapped by curtailed access to relevant information. The effect of BAAQMD's approach would be to contravene Title V requirements by improperly changing conditions on refinery operations. The sheer magnitude of found errors, not to mention the likelihood of many others, has already caused several refineries to request that the Title V permitting process not be rushed to an untenable conclusion fraught with prolonged subsequent litigation.

More fundamentally, BAAQMD has ignored CBE's request for thorough documentation of all existing permit conditions and explanations for any and all deletions or modifications proposed as part of each refinery's Title V Permit. Neither the Consolidated Responses nor the Proposed Title V Permits for each refinery catalogue all conditions or identify deleted conditions. At best, these documents indicate and partially explain only those conditions deleted relative to those initially proposed in the Title V Permits; at worst, these documents neither identify nor explain these particular deletions. Nowhere in the Title V documents can a comprehensive picture be found which shows what specific operating conditions apply to limit emissions from particular sources of pollution.

II. The District May Not Issue a Permit with an Incomplete Permit Application and without Sufficient Compliance Schedules and Certifications

In response to comments regarding the adequacy of the refineries' permit applications, the District does not deny the validity of those comments, but instead claims that "[i]nadequacies in the permit application do not necessarily invalidate the permit. The requirement to submit a complete application is an obligation on the facility. . . Whether the facility has met its obligation to submit a complete 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.” (Consolidated Responses at 9).

4

The District's legal analysis is 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. “A permit . . . may be issued only if all of the following conditions have been met: (i) [t]he permitting authority has received a complete application for a permit.” 40 C.F.R. § 70.7(a)(1)(i).

As detailed in CBE's first round of comments, the permit applications are clearly inadequate and warrant further submission of information by the refineries before final permits can be issued. (*See* Chevron at 21-23; Phillips at 4-5; Martinez at 1-2; Valero at 1-2; Tesoro at 1) Issuing a permit based on inadequate permit applications is contrary to the policy and purpose of the Title V program. Title V was intended to create a uniform federal permit program that would enhance compliance and allow for more meaningful public participation. 57 Fed. Reg. 32250 (July 21, 1992). However, incomplete permit applications, will result in inadequate permits, thereby thwarting the purposes of Title V.

5-7

In particular, as detailed in CBE's initial comments, many of the facilities are out of compliance with the draft permit requirements and have failed to submit required schedules to bring the facilities back into compliance. 40 C.F.R. 70.5(c)(8); BAAQMD rule 2-6-409.10. The District's response states that “comments described evidence of particular instances of non-compliance.” (Consolidated Responses at 4). The District's reaction to these detailed allegations of non-compliance should be three-fold: first, the permit applications are incomplete because they do not indicate these instances of non-compliance nor do they provide for required schedules to come into compliance; second the compliance certifications are potentially false; and third, a final permit cannot be issued based on an inadequate permit application.

However, rather than appropriately complying with the requirements of Title V, the District responds by suggesting “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.” (Consolidated Responses at 5, emphasis added).

CBE strongly disagrees with the District's interpretation of not addressing compliance issues in the context of Title V. First, the District does not have the discretion to decide that permits should be issued without addressing issues of significant non-compliance. The District cannot simply read compliance plans out of the statute and Title V requirements. Second, the District has not demonstrated that it uses “other enforcement authorities to address compliance issues” or amending the Title V permits. The Air District has a well documented history of failing to enforce violations at facilities it regulates. In particular, in regard to the Chevron refinery, CBE

already submitted comments regarding the cozy relationship between the District and Chevron in drafting the Title V permit. (CBE's Chevron comments at 2-3). Also, it has become quite clear that the District is engaging in side deals with at least Chevron regarding non-enforcement, while at the same time indicating to the public that enforcement authorities will be used in the future to deal with non-compliance. (*See, e.g.*, Evaluation Report, Chevron Products Co. Plant #10, Application Number 7025, signed by Gregory Solomon, Air Quality Engineer II, February 26, 2003, Attachment 1). Furthermore, ignoring these non-compliance issues is again contrary to the purpose of Title V; without full disclosure in the permit applications from the refineries and without schedules of compliance, meaningful public participation cannot take place and appropriate compliance will not occur.

Finally, the refineries are required not only to submit compliance certifications with the permit applications (40 C.F.R. 70.5(c)(9); BAAQMD rule 2-6-426.1), but also to "submit new certifications of compliance on every anniversary of the application date if the permit *has not been issued.*" BAAQMD rule 2-6-426.2 (emphasis added). The District incorrectly states that rule 2-6-426.2 requires "permit applicants to submit a new compliance certification annually [only] if the application *has not been acted upon.*" (Consolidated Responses at 4, emphasis added). Although the refinery permits may have been "acted upon," as the District suggests, they have not been "issued;" therefore annual compliance certifications are required.

III. Emissions Inventory Data Can Be Used to Determine Compliance Status.

In response to comments that find noncompliance history based on exceedances of the refineries' 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." (Consolidated Responses at 16). 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. (*See, e.g.*, Chevron's application at 4). 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 refineries' permit applications and may not be used for establishing any permit conditions, including exemptions.

8

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

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.

9

BAAQMD Manual of Procedures, Volume II, Part 3, p.3-7,3-8 (May 2, 2001). Emissions inventory data must either be corrected in the refineries' permit applications or accurate data must be offered in its place.³

The Air District's discussion of emissions inventory data makes a telling admission: BAAQMD reveals that it does not rely on emission inventory statistics except for generalized "planning" and "modeling" but fails to explain what it uses/would consider reliable site-specific emissions data. (Consolidated Responses at 16, 22 & 51). In short, BAAQMD is admitting that its existing emissions data is unreliable and fails to propose specific requirements whereby accurate emissions monitoring records could become available. Thus, CBE's expressed concern that BAAQMD lacks the routine ability to determine if a refinery is in compliance with applicable regulations has been backhandedly verified.

IV. At Best, the Air District has Paid Lip Service to Public Participation; At Worst, It Has Shown Disregard for Meaningful Public Participation.

10

Meaningful public participation is one of the cornerstones of the Title V program. *See* 57 Fed. Reg. 32250, (July 21, 1992). However, the District's process for drafting, revising and potentially issuing Title V permits to the refineries does not comply with the policies underlying Title V.

First, as discussed above, incomplete permit applications thwarts public participation. Second, undoubtedly, all parties agree that the operations and therefore the permits for these facilities are highly complicated. However, the disparity in the amount of time given to the interested parties to draft and comment on the permits is unreasonable and inappropriate:

- The District issued draft permits in the Summer of 2002 – 6 years after the submission of the refineries' permit applications in 1996.
- The refineries have been exchanging comments, letters and drafts of the permits on a rolling basis with the District for more than 2 years. Most of these exchanges are not available on the District's webpage, even though all comments from the public are available on the webpage.
- In contrast, the public (including CBE) had only 90 days to prepare comments on all 5 draft permits. In addition, the District scheduled hearings for all 5 refineries in a span of 21 days.
- The District spent close to 9 months preparing a *combined* response to comments on the draft permit, rather than responding to each specific comment and for comments for each facility individually.

³ The Air District's contrasting policies about emissions inventories also reveals another problem with the District's failure to require sufficient permit applications.

- In contrast, the public had 5 weeks to respond to the District's comments on all 5 refineries. The Consolidated Responses is over seventy pages and each refinery permit and statement of basis are several hundred pages.

The public had only two short time frames to prepare and submit comments on five of the largest and most complicated facilities in northern California. Whereas the District and the refineries have been mulling this over together for years.

Third, particularly given the short time frame for public comments, the public must have appropriate access to information relevant to the facilities in order to meaningfully comment and participate in the Title V permitting process. However, the District incorrectly believes that the public is not entitled to all relevant information in the District's files concerning issuance of the Title V permits. (Consolidated Responses at 7).

The District is required 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.*" 40 C.F.R. 70.7(h)(2) (emphasis added). The District's suggestion 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, is nonsensical in light of the notice language. The federal Title V regulations further support the substantive requirement of notice by stating that "the permitting authority shall provide such notice *and opportunity for participation.*" 40 C.F.R. 70.7(h)(3) (emphasis added). The District's interpretation of this rule strips the notice requirement from the substantive participation requirements.

Public review is not a "worthy . . . general goal" but rather a specific rule. (Consolidated Response at 7; *see* 40 C.F.R. 70.7). The District does not argue that the requested information is irrelevant, but rather that it is inconvenient. (*See* Consolidated Responses at 7-8). To deny the public access to relevant documents because it is inconvenient, or because the District itself failed to consult relevant information in formulating the Title V permits is not supported by the Clean Air Act or interpreting documents.

Finally, under these circumstances, concurrent review of the permits by the District and US EPA is inappropriate under Title V. In regard to this issue, CBE is in agreement with representatives of the Chevron and Tesoro facilities. In a letter from Chevron to US EPA, dated September 15, 2003, a Chevron representative states the following:⁴

The District has acted prematurely in submitting the Revised Draft Permit to EPA for review at this point given the Part 70 requirements associated with EPA's review of the proposed Title V permits. Pursuant to 40 C.F.R. § 70.8, the District is required to forward to EPA the "proposed permit." "Proposed permit" is defined as "the version of a permit that the permitting authority proposes to issue." 40 C.F.R. § 70.2. EPA's review of the proposed permit is intended to be the final review in the process, and is designed to

⁴ The language in the letter from a Tesoro representative to US EPA, dated September 12, 2003 is basically identical.

ensure that the permit is "in compliance with applicable requirements . . . under this part." 40 C.F.R. § 70.8(c)(1).

In contrast to a "proposed permit," a "draft permit" is "the version of a permit for which the permitting authority offers public participation under § 70.7(h) or affected State review under § 70.8 of this part." A draft permit contemplates further revision. The District's August 5, 2003 public notice makes it clear that the District is seeking substantive comment on the latest draft of the permit. . . .

11

Moreover, the Revised Draft Permit review process established by the District fails to comply with 40 C.F.R. § 70.8(c)(3), which requires that EPA have all "information necessary to review adequately the proposed permit." EPA will not have "necessary" information because it will not have the benefit of the public and affected State comments given that EPA's comment period ends [September 26, 2003],⁵ and the public comment period ends [just 4 days earlier], on September 22, 2003 . . . Absent consideration of this critical information, 40 C.F.R. § 70.8(c)(3) requires that EPA object to the Revised Draft Permit.

The District's premature submittal of the Revised Draft Permit to EPA for review has resulted in additional non-compliance with mandated EPA review requirements. Under 42 U.S.C. § 7661d and 40 C.F.R. § 70.8(c), EPA has a 45-day review period. Under 40 C.F.R. §§ 70.7(h) and 70.8(b)(1), the public and the affected State have a 30-day review period. As EPA has explained, these staggered review periods were established to ensure EPA has adequate time to consider all public and affected State comments before determining whether to object to the proposed permit. Specifically, EPA provides the following explanation to the staggered review periods:

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.

⁵ Since the submission of the letters by Chevron and Tesoro to US EPA, the EPA review period has been extended from September 20th to September 26th. The statements made by Chevron are still in full effect given that the EPA extension will only provide a 4 day lag beyond the close of the public comment period on September 22, 2003. Given the nature, complexity and number of facilities being reviewed, a 4 day lag is entirely inappropriate.

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

The checks and balance system ensured by the staggered review process will not occur here given that the EPA review period ends [just 4 days after] the public/affected State comment period. Thus, there is [virtually] no staggered review time. Indeed what we have here is the precise opposite of what the Title V program contemplates – i.e., the expiration of EPA's 45-day review period [immediately after] the deadline for public comment. Further, as the District noted multiple times in its Response to Comments, Chevron's Title V permit is extremely complex. As EPA explained, a complex permit review requires that EPA have more time for review following the conclusion of the public comment period rather than no time for such review.

CBE agrees with Chevron's statements regarding submission of the proposed permits to US EPA, as this premature submission will clearly deprive the EPA of appropriate consideration of comments regarding the most recent draft permits. Moreover, the Air District's failure to stagger the release of Refinery permits places the same unfair burden on the EPA that the Air District has foisted on the public. Namely, it is too resource intensive to thoroughly review five oil refinery permits at the same time.⁶ It is interesting to note that the South Coast Air Quality Management District staggered the release of its oil refinery permits. BAAQMD's approach once again demonstrates its disregard for public comment and public participation.

In sum, appropriate opportunities for public participation in the permitting of these refineries has not occurred. In addition, the Air District failed to address CBE's comments about the need for specific reporting requirements and regular submittals of log data to BAAQMD to be delineated in the Title V permit. As discussed in CBE's first round of comments, the monitoring, recordkeeping and reporting requirements in the proposed permits are inadequate to assure compliance and public review of the compliance. *See, e.g., Natural Resources Defense Council, Inc. ("NRDC") v. Environmental Protection Agency*, 194 F.3d 130, 133 (D.C. Cir. 1999) (with Title V, "Congress expressed an intention to obligate sources to a more stringent reporting standard").

V. New Source Review Rules are Applicable Requirements.

The Air District improperly excludes new source review rules from the Title V permits. "The District takes the position that the preconstruction review rules themselves are not applicable requirements, for purposes of Title V." (Consolidated Responses at 6-7). The District also asserts that EPA itself does not view preconstruction permitting rules as applicable requirements. The Air 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:

⁶ CBE and Adams and Broadwell requested a sixty day extension on the public comment period, which is modest given the complexity and sheer size of even one Title V permit for an oil refinery, much less five. The District responded with a one week extension, which while appreciated, was wholly inadequate.

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.

New source review is an air quality requirement, codified in the District's regulation 2-2-101. It applies to all new and modified sources subject to Regulation 2-1-301, authority to construct requirements. Since the District regulations require facilities to comply with New Source Review, these preconstruction review rules must be incorporated in the Title V permit. (*See also* 42 U.S.C.A. § 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. [Emphasis added]

In setting forth the applicable requirements for Title V permits, the C.F.R. avoided reducing "applicable requirements" to include permit conditions that were previously granted erroneously. It did this by defining "applicable requirement" as a standard or "other requirement," more broadly instead of the permit "as it currently exists." (See Responses to Comments p. 6.)

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. (*See Pacific Coast* p. 6.) 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").

(*In the Matter of Pacific Coast Building Products* at p. 7.) The District's claim that preconstruction review rules are not applicable requirements for purposes of Title V is clearly

12

erroneous. Since the District improperly excluded these requirements from the Title V permits, the permits are inadequate and must be revised.

VI. Threshold Limits That Merely Trigger Reporting Requirements Do Not Constitute Permit Conditions that Assure Compliance.

The District must create a permit that “assures compliance by the source with all applicable requirements.” 40 C.F.R. 70.1(a); 40 C.F.R. 70.1(b). As discussed in CBE’s first round of comments, the use of threshold limits for grandfathered sources served little useful purpose and had no basis in law. The Air District has changed the use of throughput limits to have even less utility than previously proposed in the draft permits. In the draft permit, the throughput levels were meant to be presumptive limits, thereby providing at least some level of predictability with respect to enforcement action. As explained in CBE’s first round of comments, the unjustified increases in throughput levels trigger both NSR and CEQA review, because they carry the potential for significant emission increases from the refineries. The Air District improperly adopted these throughput limits using administrative permit changes that had the sole purpose of creating new permit conditions for the refineries Title V permits. *See, e.g.*, 40 C.F.R. 70.2. Rather than comply with the requirements of Title V and simply collect all of the existing permit conditions that apply to the refineries 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. However, as discussed above, the Title V permits should identify which sources are grandfathered and provided uniform detail and format in each of the permits.

13

14

Now the Air District has taken the position that throughput limits for grandfathered sources will not act as presumptive limits, but will merely be “reporting thresholds” for the refineries.⁷ The Consolidated Responses postulates its position that an exceedance of throughput limits is not per se a violation, would be a violation only if a refinery failed to report, and, even then, the refinery would have an opportunity to show the limit was not appropriate.

Even Chevron’s attorneys acknowledge in their January 24, 2003 letter to BAAQMD that throughput limits for grandfathered sources are a loophole around emission limits. (Chevron’s letter to BAAQMD, January 24, 2003, signed by David Farabee at 12-13) BAAQMD, by contrast, is unwilling to recognize that grandfathered sources will undermine the application of emissions limits. These limits are meaningless and will only provide a mechanism for the Air District to ignore New Source Review violations. In contrast, the District claims that the “throughput limits being established for grandfathered sources will be a useful tool that enhance compliance with NSR.” (Consolidated Responses at 30.) Yet, the Air District reports that “an exceedance of these thresholds is not presumed to be a modification, neither is it presumed that a modification has not occurred at throughput amount lower than the thresholds.” *Id.* at 28. Thus, at best, these thresholds have no regulatory significance, but, at worst, they allow significant

⁷ Although, the Air District makes this claim in the Consolidated Responses, each statement of basis for each refinery still reports that the threshold limits are presumptive. Based on the Air District’s statement in the Consolidated Responses, CBE assumes the Air District failed to make the appropriate changes in each statement of basis. This error is indicative of the poor state of the proposed refinery permits. The Air District has failed to perform even basic editing to conform its documents to its Consolidated Responses.

increases of emissions without NSR or CEQA compliance. In no case do these thresholds actually "assure compliance" with NSR, as required by Title V.

15

The District's failure to articulate specific throughput limits in the proposed permit violates the Clean Air Act's mandate that each Title V permit "shall include enforceable emission limitations and standards . . ." CAA § 504(a). It also violates the Title V implementing regulations. 40 C.F.R. § 70.6 (a)(1) (each title V permit must include "emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements . . ."). The Air District's creation of a reporting threshold for throughput levels in grandfathered sources does not constitute an emission limitation or standard nor an operational requirement and limitation against which NSR violations can be accurately gauged; this violates the Clean Air Act.

VII. BAAQMD Proposes Several Positive Changes But These Fail to Adequately Address Title V Requirements.

On the positive side, BAAQMD states that each refinery's Title V permit will be modified to include the following conditions and information requested by CBE:

- Title V permits will require conditions for monitoring of flares based on parallel rule-making effort over past year (Consolidated Responses at 58-59 & 66);
- Conditions added for SO₂ emissions to require fuel sampling whenever ground level monitors are not operating (*Id.* at 65);
- Equipment list tables modified to include equipment capacity information (*Id.* at 12);
- Information added to each refinery's statement of basis which lists all exempt sources (*Id.* at 36-37).

16

While these are positive steps, these changes fall far short of what Title V permitting requires. There are clear deficiencies evident even in these four partially responsive steps. For example, instead of imposing clear requirements for monitoring of flares, BAAQMD defers details to an unspecified "future time," does not address CBE's specific recommendations about effective methods for monitoring of flares, and continues to make unsubstantiated claims that flaring events are self-correcting and probably not a significant source of emissions. (Consolidated

17

Responses at 58-59). In addition, BAAQMD tries to define away the critical need for monitoring of the destruction efficiency of flares by characterizing this as "a design requirement, rather than a performance requirement." (*Id.* at p. 59).

The District's claim that there is no means for measuring the minimum flare efficiency requirements in the permit is simply incorrect; not only do methods exist but they have already been identified by the District (including the Advisory Council). Specifically, Optical Sensing and other techniques have been used to measure flare pollution directly, in the open atmosphere. The District has already adopted a regulation that requires measuring flow volumes and constituency of gases within the flare. Utilizing techniques to measure pollutants directly in the atmosphere will allow the District to determine if flare efficiency requirements listed in the permit are met (since hydrocarbon destruction efficiency is determined by comparing the ratio of hydrocarbon gases coming out of the flare to the quantity of gases inside). The state of Texas is

in the process of doing a study directly measuring flare pollutants in the atmosphere. Please refer to CBE's attached comments that were submitted to the District during the Flare Monitoring rulemaking process, as well as additional information that the District has in its possession on monitoring flaring emissions directly in the atmosphere.

18 CBE agrees that directly measuring flare pollution in the atmosphere is more difficult than measuring the gases inside flares. However, it is improper for the District to have crucial flare permit conditions, such as minimum flare efficiency, in the permit, without some way to ensure that the condition is met. Substantial evidence is available indicating that flare efficiency can go very low (down to 50% under adverse conditions (such as high wind speed, low BTU content, etc.)), which grossly increases the emissions from the flare. This was extensively discussed in CBE's attached comments documenting studies showing that flare efficiency can go much lower than the permit condition requirements. The Air District should require the performance of independent testing using available methods for monitoring flare efficiency under worst case conditions.

19 Similarly, BAAQMD's proposal for fuel sampling for SO₂ emissions to supplement inoperable monitors is narrowly construed and fails to address a broader need for monitoring of facilities with substantial unmonitored emissions and for operations during non-steady state flow conditions, which are far more widespread than BAAQMD acknowledges. Each refinery is a complex facility with hundreds of emissions sources, many of which are not effectively monitored. Moreover, the BAAQMD proposal regarding SO₂ emissions does not consider other emissions. For example, BAAQMD has refused to provide a list of NO_x and CO sources accompanied by a discussion of the applicability of BAAQMD policies to each source of these pollutants, as requested by CBE. BAAQMD also dismisses CBE's request for thorough monitoring of SO₂ as well as ammonia, particulates and other toxic pollutants and, instead, suggests tracking these pollutants only on an undefined "as needed" basis.

21 The Consolidated Responses ignore CBE's request for a listing of emissions from what are defined as "insignificant sources" at the Chevron refinery. CBE's concerns mirror those previously expressed by the California Air Resources Board during the rulemaking process for BAAQMD's Title V program. BAAQMD has not responded to CBE's specific requests for

22 information about stack discharge points, fuels and operating schedules, pollution control equipment and compliance monitoring devices, installation and modification dates, and detailed data about process production rate and throughput capacities for these sources.

23 The list of exempt sources cited in the Consolidated Responses does not adequately address CBE's request for sufficient information to support BAAQMD's proposed policy to exempt many storage tanks from the Title V permit. In addition, the Consolidated Responses fail to

24 explain how the proposed variance procedures would work to provide the legal authority supporting implementation of these procedures, despite CBE's request.

VIII. Monitoring Remains Insufficient.

The Air District's approach to monitoring does not conform with the requirements of Title V.

The District has determined that, with few exceptions, additional monitoring to assure compliance with all applicable requirements does not need to be imposed in the draft Refinery Permits. The District states in the revised Statements of Basis ("SOB") for the refineries that

although Title V calls for a re-examination of all monitoring, there is a presumption that these factors [used by the District to develop monitoring] 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.

See Shell SOB at 52; Valero SOB at 14; Tesoro SOB at 30; Chevron SOB at 18-19; ConocoPhillips SOB at 16-17 (emphasis added).

First, 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." *Appalachian Power Co. v. Environmental Protection Agency*, 208 F.3d 1015, 1019 (D.C. Cir. 2000). By its own admission, the Air District has failed to place monitoring requirements on sources where historically there has been no monitoring.

Second, the District created and relies upon a 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." See Consolidated Responses at 17; see also *id.* at 55. The District claims it reviewed all monitoring in the draft Refinery Permits for sufficiency and determined that, with very few exceptions, the monitoring is sufficient. See *id.* However, the District has no legal basis for such a presumption, which is not authorized by either Title V, its implementing regulations, or BAAQMD Regulation 2-6-503. 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.

26

Public interest commenters have identified specific requirements for which adequate monitoring is either absent from the draft Refinery Permits or insufficient to assure compliance with applicable requirements. Until sufficient monitoring is incorporated into refinery Title V permits, they should not be finalized.

In some cases, existing monitoring is adequate on its face and the District need not explain how it was derived—such as is the case with CEM monitoring. However, it does not follow that the

27 District does not have to explain its CEM equivalency determination in the Statements of Basis for the draft Refinery Permits. *See Consolidated Responses at 17-18.* Providing a general policy regarding CEM equivalency as an Appendix to each Statement of Basis, does not provide sufficient source by source analysis to determine if the monitoring is sufficient.

28 CBE's first round of comment letters specifically identified pressure relief valves, refinery vessel depressurization, abatement devices, and numerous "miscellaneous operations" which are substantial sources of refinery waste gases, hydrocarbons, and precursors of various toxic pollutants. BAAQMD's Consolidated Responses ignores CBE's specific request for an explanation and correction regarding the proposed separation with respect to federal enforceability in the regulation of pressure relief valves.

The Consolidated Responses state that monitoring for Pressure Relief Devices (PRDs, including Pressure Relief Valves or PRVs) is adequate, and suggests that ongoing rulemaking procedures are the proper venue for evaluating this issue. The District implies that monitoring is not cost-effective. However, the South Coast Air Quality Management District (SCAQMD) adopted a regulation requiring monitoring of PRDs, demonstrating the feasibility of monitoring PRDs.

The District failed both in the previous rulemakings and in the Title V permit to address deficiencies in PRD monitoring that were identified by the District itself in a previous staff evaluation. (*See CBE's First Round of Refinery Title V Comments*). For example, the District found that: "None of the refineries had a reliable system to identify or track lifts. The emissions from PRV lifts are probably underreported because these valves are not instrumented and emissions quantifications for lifts is not required These detection methods are not definitive and clearly indicate many PRV lifts likely go undetected." BAAQMD, Rule Effectiveness Study on PRVs, 11/15/95. The District Title V permits include the requirements of BAAQMD Regulation 8 Rule 28 which requires, among other things:

"8-28-304 Repeat Release – Pressure Relief Devices at Petroleum Refineries: *After the next scheduled turnaround following July 1, 1998, any petroleum refinery source that has at least one reportable Release Event from a pressure relief device in organic compound service, including those in parallel service, in any consecutive five calendar year period shall meet the following conditions:*

304.1 Within 90 days of the first Release Event from a pressure relief device, [emphasis added] the facility shall conduct an additional, separate Process Hazard Analysis and meet the Prevention Measures Procedures specified in Section 8-28-405; and conduct a failure analysis of the incident, to prevent recurrence of similar incidents. Within 120 days of the first Release Event, the facility shall equip each pressure relief device of that source with a tamperproof telltale indicator that will show that a release has occurred since the last inspection. The Process Hazard Analysis shall include an evaluation of the cost-effectiveness and technical feasibility of control devices to remedy the incident. This evaluation of control devices shall include, but shall not be limited to, the following: (1) installing additional flare gas compressor recovery capacity and (2) venting the pressure relief device that caused the Release Event to existing vapor recovery or disposal systems, and

304.2 Within one year of the second Release Event from a pressure relief device [emphasis added] in organic compound service on the same source, including those in parallel service, the facility shall vent all the pressure relief devices that vent the second Release Event, including those in parallel service, to a vapor recovery or disposal system with at least 95 percent by weight organic compounds control efficiency, and the control system shall be properly sized per manufacturer's recommendations to handle the material from all devices it is intended to serve.

The five calendar year period of this section shall begin at the time that the District receives Prevention Measure Plan as specified in Section 8-28-304.1.

(Adopted December 17, 1997; Amended March 18, 1998)"

Unfortunately, it is virtually impossible for the District to determine whether any facility meets any part of the above terms because the District cannot determine whether one, two, or a hundred PRD lifts have occurred. After the valve lifts and closes, no BAAQMD inspector can later tell the difference unless the occurrence is self-reported by the refinery. In fact, during the refinery Further Studies carried out mainly in 2002 by the BAAQMD, the District evaluated whether it was possible to determine after the fact, whether a PRD release has occurred using refinery records, such as records of a pressure drop. The District determined that it could not tell after the fact and independently whether a PRD release had occurred. For all these reasons, it is clear that the above excerpted requirements for controlling emissions from PRDS in Regulation 8 Rule 28 (which are part of the Title V permit requirements) are unenforceable, and monitoring requirements are grossly deficient to assure compliance.

Since the following SCAQMD Rule 1173 requires it, monitoring PRDs is feasible. SCAQMD Rule states:

“(h) Atmospheric PRD Requirements for Refineries and Chemical Plants

- (1) *The operator shall monitor atmospheric PRDs located on process equipment by one of the following options:*
- (A) *Install tamper proof electronic valve monitoring devices capable of recording the duration of each release and quantifying the amount of compounds released on twenty percent of the atmospheric process PRD inventory, with at least one in each crude distillation unit, coker unit and fluid catalytic cracking unit. The operator shall install the electronic valve monitoring devices during the first turnaround after December 31, 2003; or*
 - (B) *Use of electronic process control instrumentation that allows for real time continuous parameter monitoring, starting July 1, 2004, and telltale indicators for the atmospheric process PRDs where parameter monitoring is not feasible. The telltale indicators shall be installed no later than December 31, 2004.”*

29

The District must add a similar requirement to the Title V permit to assure compliance with compliance with Rule 8-28 and ensure that the District can determine the number of releases due to PRD lifts. At a minimum, the District should include the terms of the SCAQMD regulation above in the permit requirements, and in its PRD regulation.

30

The Consolidated Responses also fail to explain why its “miscellaneous operation” rule in Regulation 8-2 was not properly applied and monitored. This rule should be applied, as it has been in the past, to sources without specific limits in order to “reduce emissions of precursor organic compounds from miscellaneous operations.” Nowhere in the Consolidated Responses does BAAQMD respond, as CBE requested, to the contradictions between the maximum allowable capacities set forth for specific sources and apparent non-compliance with the 15 pound/day limit from the multitude of unmonitored Miscellaneous Sources at the Chevron refinery. By simultaneously improperly narrowing application of its rules to smaller sources and limiting monitoring for larger sources, BAAQMD seemingly is seeking to ensure that substantial amounts of emissions will not be regulated or monitored.

31

Despite CBE's request for explanations of the basis for proposed blanket exemptions for vaguely defined "non-normal" or "non-routine" operations at the Chevron refinery, no explanation or clarification is provided in the Consolidated Responses. Both monitoring and emissions limits are needed to avoid the large releases of emissions which occur during these periods. The Air District ignores CBE's specific suggestions regarding appropriate monitoring devices during these conditions.

IX. BAAQMD Admits Extensive Errors in the Proposed Title V Permits Which Improperly Change Existing Permit Conditions.

In response to CBE's detailing of extensive errors in Chevron's Title V application materials, BAAQMD's Consolidated Responses admit numerous factual errors. The errors identified by CBE and other commenters can be reasonably assumed to be the tip of an iceberg, since CBE and other members of the public lacked either the technical resources or full access to information required to find all errors. Nevertheless, BAAQMD fails to recognize a systematic pattern of errors that shows that BAAQMD did not exercise adequate regulatory oversight and proposes to act on the proposed refinery Title V permits.

In addition, the emission factors used for some of the permit limits are too low. For example, the following table, which is taken from Chevron's latest Title V permit as appendices to the Bubble Permit, shows how emissions will be calculated:

APPENDIX I, TABLE F, HYDROCARBON EMISSIONS FROM UNLOADING OF CRUDE OIL OR PRODUCTS (from page 355 of the Chevron Title V permit):

Commodity	Hydrocarbon Emissions (lbs/MBBLs of Commodity)
1. Crude Oil	71.4 (Barges) 42.0 (Vessels)
2. Gasoline, Naphtha, Orthoxylene, Benzene, Cumene, BA-3, BA-1	168.0 (Barges) 101.0 (Vessels)
3. Jet, Diesel, TKN, Mixed Cutter, Alkane	0.21
4. Fuel oil, Bunker, Lubes, Charge Stock, Gas Oil Resid, 8 cut, Palc, Polymers	0.0017

Unfortunately, the information contained above is contradicted by studies that the District has performed and compiled. According to District tests, emissions from categories 3 and 4 above are much higher. The District has compiled source tests that have indicated emissions up to 5 lb/thousand barrels for these categories of cargoes.

The BAAQMD provided CBE with the attached document tabulating marine vapor recovery tests of jet fuel, fuel oils, gas oils (the products listed in categories three and four above). (*See Bay Area Air Quality Management District, Tabulation of Marine Vapor Recovery Tests, MVR Historical Tabulation BB.xls, Attachment 2*). This document shows tests of unregulated cargoes. Out of 20 samples, 10 emitted 2 lbs/thousand barrels or more (up to 8.01 lbs/1000 bbls), one emitted almost 2 lbs/1000 bbls, and 8 emitted more than 1 lbs/1000 bbls. Only two

samples were below 1 lb/1000 bbls. Cargoes testing greater than 2 lbs/1000 barrels included not only jet fuel, but also products considered to be heavier, such as fuel oil and gas oil.

32 The same problem exists on page 352 of the Chevron Title V permit: all of the emissions estimates below 1 lb/1000 bbls are again, grossly contradicted by the compiled source testing, indicating extreme underestimations of these emissions. Calculations using the methods provided in the current Title V proposal will result in emissions up to three hundred times too low. To provide an accurate permit, the District must review this issue, as well as other emissions calculations methods provided in these newly-attached appendices to the permit. The calculations and data must be compared with new data that the District has compiled. These new compilations of data indicate that not only marine loading, but also tanks, flares, and many other sources have much higher emissions than previously estimated.

33 In addition, CBE's first round of Title V comments documented discrepancies between standards and other measurements in the draft Title V permit.⁸ For example, Chevron's flares have a 90% minimum efficiency requirement that is contradicted by many studies which the District has in its possession, which show that flare efficiency can go down to 50%. CBE documented this problem in the attached comments previously submitted to the District. (*See* BAAQMD Proposed Flare Monitoring Regulation 12 Rule 11, 4/17/03, To Alex Ezersky, BAAQMD, from Julia May, CBE, Attachment 3). This problem was also documented in other comments submitted to the District. (*See* J. Phyllis Fox, Ph.D, April 16, 2003, Comments on Regulation 12, Miscellaneous Standards of Performance, Rule 11, Flare Monitoring at Petroleum Refineries Draft April 7, 2003, Attachment 4). The District must rectify the discrepancies between Title V inventory, standards, and measurements.

Also tellingly, the Consolidated Responses admit over twenty specific instances of omissions of existing and appropriate permit conditions that CBE had identified that had not been included solely in Chevron's proposed Title V Permit. Again, the incomplete information that BAAQMD made available to CBE about conditions on Chevron's permits means that many more existing permit conditions likely have been omitted from Chevron's proposed Title V Permit. The same themes equally apply to the other four proposed refinery Title V permits, because there is also a plethora of similar deficiencies in these permits.

BAAQMD's errors and omissions demonstrate that CBE's concerns that the Title V permitting process is substantively changing operating conditions are well founded. Issuance of refinery Title V Permits in these circumstances would be inappropriate.

34 X. The Permit Shields are Deficient.

In response to CBE's request for a clear explanation about how and when a "permit shield" would be applied, the Consolidated Responses essentially provide no explanation and refers CBE back to BAAQMD's original unclear explanation.

⁸ CBE incorporates those be reference.

Conclusion

The Draft Permit fails to comply with the spirit, intent and requirements of Title V, BAAQMD Reg. 2-6, and the BAAQMD Manual of Operating Procedures.

Very truly yours,

William Rostov
Holly Gordon
Staff Attorneys

Julia May
Lead Scientist
Communities for a Better Environment

cc: Ed Pike
Suma Peesapati
Marcie Keever