BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

ConocoPhillips
to operate a petroleum refinery
located in Rodeo, California

Facility # A0016

Issued by the Bay Area Air
Quality Management District

PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO THE ISSUANCE OF THE PROPOSED TITLE V PERMIT FOR THE CONOCOPHILLIPS REFINERY IN RODEO

INTRODUCTION

Pursuant to Clean Air Act § 505(b)(2) and 40 C.F.R. § 70.8(d), Communities for a Better Environment ("CBE") hereby petitions the Administrator of the United States Environmental Protection Agency ("US EPA" or "EPA") to object to issuance of the proposed Title V Operating Permit for the ConocoPhillips Petroleum Refinery in Rodeo, California ("ConocoPhillips Refinery"), Facility #A0016.

The Bay Area Air Quality Management District ("BAAQMD" or "District") submitted the proposed Title V permit for US EPA's review on August 5, 2003.[1] US EPA received the proposed Title V permit on August 12, 2003 and its 45-day review period ended on September 26, 2003. This petition is timely filed within 60 days following the conclusion of US EPA's 45-day review period as required by Clean Air Act § 505(b)(2). The Administrator must grant or deny this petition within 60 days after it is filed.[2] In compliance with Clean Air Act § 505(b)(2), this petition is based on objections to the proposed Title V permit that were raised during the public comment periods.[3]

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[1] *See* Letter to Jack Broadbent, Director, Air Management Division, US EPA Region 9, from William Norton, Executive Officer, Air Pollution Control, BAAQMD, August 5, 2003. Available at http://www.baaqmd.gov/pmt/t5/Refinery2003/A0016EPA8-5-03.pdf (last visited October 31, 2003).
[2] *See* 42 U.S.C. § 505(b)(2).
[3] The proposed Title V permits were first issued by the District in June, 2002, and public hearings were held in July, 2002. The District made changes to the draft permit, reissued the draft permit in August, 2003, and held another public comment period. Petitioner submitted comments on the draft Title V permits on September 30, 2002 and September 22, 2003. These comments are attached as Appendices 1 and 2 for reference.

Rodeo is a community that bears a disproportionate share of environmental hazards from the ConocoPhillips Refinery and other industrial activities. The community surrounding the refinery is comprised primarily of low-income people and people of color. For example, the Bayo Vista housing project is home to low-income residents, who are predominantly people of color, female heads of household, and disabled heads of household. Other community facilities within close proximity of the refinery are the Hillcrest Elementary School, the Bayo Vista Headstart Day Care Center, and several homes (including the Bayo Vista Housing Project, a duplex, and a single-family residence). The demographics of schoolchildren at Hillcrest Elementary School and the Bayo Vista Headstart Day Care Center reflect that of the surrounding community.

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

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

The Title V comments submitted by CBE to BAAQMD on September 30, 2002 and again on September 22, 2003 clearly demonstrate that the permit is not in compliance with the Clean Air Act and related regulations. These examples of non-compliance are further discussed below. Based on this non-compliance, EPA must object to the permit.

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

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

[4] *New York PIRG v. Whitman*, 321 F.3d 316, 334 (2nd Cir. 2003).
[5] *Id.* at 323.
[6] *Id.* at 334.
[7] US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003. For all references to this letter please refer to Appendix 3.

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

SUMMARY OF OBJECTIONS

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

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

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

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

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

E) The treatment of flares is incomplete.

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

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

A. INCOMPLETE PERMIT APPLICATION AND INADEQUATE PUBLIC PROCESS

The District issued the permit based on an inadequate permit application in violation of 40 C.F.R. § 70.7(a)(1)(i), which states that "[a] permit . . . may be issued only if . . . [t]he permitting authority has received a complete permit application for a permit." However, despite this clear language, the District does not deny the validity of the permit application inadequacies, but instead claims that "[i]nadequacies in the permit application do not necessarily invalidate the permit. The requirement to submit a complete permit application is an obligation on the facility . . . Whether the facility has met its obligation to submit a complete permit application does not predetermine whether the District can meet its obligation to issue an accurate permit . . . The District could

[8] *See* infra pgs.6-7 for a more detailed discussion.

spend a vast amount of time and effort working with the facility to perfect its application, but this would be an exceedingly inefficient allocation of resources, particularly when the legal risk for application incompleteness fall [sic] upon the facility, not the District."[9]

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

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

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

The difference between the information provided in the permit application and the information in the permit makes it next to impossible for the public to adequately review the permit. The public has little information about changes at the refinery that may have occurred between 1996 and the present that, for example, could affect the permit's applicable requirements. Further, the public has no method of determining whether the permit includes all relevant information because the only reference the public has is an out-of-date and unreliable permit application. Unless the updates to the applications are

[9] BAAQMD Consolidated Responses to Comments on Refinery Title V permits, July 25, 2003, pg. 9 ("Consolidated Responses"). For all references to the Consolidated Responses please refer to Appendix 4.
[10] 40 C.F.R. § 70.7(h)(2) (emphasis added).
[11] 40 C.F.R. § 70.7(h)(3) (emphasis added).
[12] CBE had to piece together what constituted the pertinent information through a broad public records request.

provided to the public with the permit, or the District thoroughly explains the differences between the original application and the permit in the Statement of Basis, the application and the permit do not meet the minimum requirements of Part 70 and the permit should not be finalized in its current form.

In addition, the permit application is missing several required pieces of information. The permit application fails to list insignificant sources at the refineries. BAAQMD Rule 2-6-405.4 requires every source to be in the permit application even if they are exempt or insignificant. During the rulemaking for BAAQMD's Title V program, the Air Resources Board ("ARB") commented that BAAQMD's rules failed to adequately address insignificant activities.[13] In response to ARB's concern, BAAQMD stated that "[t]he District requires a listing of all sources in the permit application (Section 2-6-405.4) whether significant or insignificant."[14] BAAQMD's failure to require the correct listing of every source is in direct contradiction to its statements to ARB.

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

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

- Comprehensive information on stack discharge points required under 40 C.F.R. §§ 70.5(c)(3)(ii) & (vii). This information should include stack descriptors, stack heights and discharge conditions necessary to conduct air quality modeling to ensure attainment and maintenance of National Ambient Air Quality Standards ("NAAQS") and calculation of Prevention of Significant Deterioration ("PSD") increment consumption.

- Detailed information on fuels, fuel use, raw materials, production rates and operating schedules as required by 40 C.F.R. § 70.5(c)(3)(iv).

- Detailed information on air pollution control equipment and compliance monitoring devices as required by 40 C.F.R. § 70.5(c)(3)(v).

- Detailed information on the dates when emission sources and air pollution control equipment were last installed and modified, as required by 40 C.F.R. §

[13] Staff Report on Proposed Amendments to BAAQMD Regulation 2, Rule 6, Major Facility Review, April 17, 2001, at p. 12, ARB Comment #7. Attached as Appendix 5.
[14] *Id.*, Response to ARB Comment #7.

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

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

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

Finally, the District's submission of the "proposed" permit to US EPA on August 5, 2003 was not in compliance with Clean Air Act § 505(a)(1)(B) and 40 C.F.R. § 70.8(c). The District is required to "provide to the Administrator a copy of each permit proposed to be issued" and the Administrator is required "to object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements" of 40 C.F.R. § 70 or the Clean Air Act.[15] A "proposed permit" is "the version of a permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with 70.8."[16] In contrast, a "draft permit" is "the version of a permit for which the permitting authority offers public participation."[17] In other words, a draft permit indicates revision, whereas a proposed permit indicates final review.

The District submitted essentially identical draft/proposed permits to US EPA on August 5, 2003 and to the public on August 15, 2003. Although US EPA has indicated that some renderings of concurrent review are valid,[18] these actions by the District are not in compliance with the Clean Air Act or related regulations. The District is required to "submit any information necessary to review adequately the proposed permit."[19]

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[15] 42 U.S.C § 505(a)(1)(B); 40 C.F.R. § 70.8(c)(1).
[16] 40 C.F.R. § 70.2.
[17] 40 C.F.R. § 70.2.
[18] 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.
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> Questions and Answers on the Requirements of Operating Permits Program Regulations (July 7, 1993) § 7.6 #1 (emphasis added).

[19] 40 C.F.R. § 70.8(c)(3)(ii).

Public comments were due on September 22, 2003 and US EPA's 45-day review period concluded on September 26, 2003 – a disparity of a mere four days. The improper concurrent review period resulted in violations of the Title V public participation requirements. First, the permit submitted to EPA was not a final proposed permit, as it did not contain revisions by BAAQMD based on the submitted public comments. Second EPA admitted that it did not have adequate time to review all five refinery permits that were submitted at the same time and were hundreds of pages each, nor did it have time to review the comments submitted by the public during its 45-day review period.[20] EPA stated that "EPA has received substantial comments from the public and the refineries earlier this week that we were not able to review in the few days prior to the end of our review period."[21] EPA also stated that "[w]e were unable to review the proposed Title V permits for Conoco-Phillips Company and Shell Martinez Refinery due to the short review period."[22] As a result, US EPA submitted a subsequent letter to the District on October 31, 2003, well after the close of the public comment period and the close of EPA's 45-day review period, offering comments on the Conoco-Phillips and Shell Martinez refineries.[23]

US EPA's review of a proposed permit is intended to be the final step prior to the issuance of a final permit; either EPA objects or approves the permit. However, it is clear that the District and US EPA view this as an "evolving document that will be updated over time" rather than an adequate final permit as required by Title V.[24] US EPA stated in its October 31, 2003 letter that "[w]e recommend that the District include as many of the changes we are requesting as possible in the initial Title V permits, and make the rest of the recommended changes as soon as possible."[25] The District's submission of a draft permit to US EPA and US EPA's ad hoc attempt to remedy a clearly inadequate permit is not in compliance with the Clean Air Act.[26]

B. INADEQUATE SCHEDULES OF COMPLIANCE

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

[20] In fact, the District spent 7 years (1996-2003) preparing the proposed permit and 9 months (October, 2002-July 2003) preparing a combined response to the public comments for all 5 refineries. Just 45 days to review the proposed permits *and* the public comments is inappropriate under Title V.
[21] US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003, Enclosure A, pg. 3.
[22] *Id.*
[23] US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, October 31, 2003. For all references to this letter please refer to Appendix 6.
[24] Consolidated Responses, pg. 5
[25] US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, October 31, 2003.
[26] *See* 42 U.S.C. § 505(b)(2); *see also New York PIRG*, 321 F.3d at 334.

requirements." However, the facility is out of compliance with many of the permit requirements. Therefore, the permit must contain a compliance schedule.[27] In particular, "[s]uch a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements."[28] In addition, the permit must include "[a] schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation."[29]

However, despite these clear requirements, and despite the District's admission that the public "comments described evidence of particular instances of non-compliance,"[30] the permit was issued without a compliance schedule. In fact, the District suggested that issuing the permit without addressing the non-compliance issues was entirely appropriate under Title V. The District responded to the allegations of non-compliance by stating that "there is a balance to be achieved between delaying the permit issuance to address significant compliance issues versus putting those issues aside . . . so that the permit can go into effect. In general, the District approaches this balancing exercise with a bias towards issuing the Title V permit while using other enforcement authorities to address the compliance issues . . . If compliance concerns progress to the point where additional Title V permit terms are warranted, those terms can be added later on."[31] Simply stated, the District does not have the discretion to read compliance requirements out of the statute and Title V requirements.[32]

In particular, the District improperly excludes compliance with NSR rules from the Title V permit. "The District takes the position that the preconstruction review rules themselves are not applicable requirements, for purposes of Title V."[33] The District also asserts that EPA itself does not view preconstruction permitting rules as applicable requirements. The District's position is unfounded and incorrect. The District's SIP, the C.F.R., and EPA rulings and correspondence all unequivocally establish that Title V does require Title V permits to apply preconstruction review rules.

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

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

NSR is an air quality requirement, codified in the District's regulation 2-2-101. It applies to all new and modified sources subject to BAAQMD regulation 2-1-301, authority to

[27] 40 C.F.R. § 70.5(c)(8)(iii)(C).
[28] 40 C.F.R. § 70.5(c)(8)(iii)(C).
[29] 40 C.F.R. § 70.5(c)(8)(iv).
[30] Consolidated Responses, pg. 4.
[31] Consolidated Responses, pg. 5.
[32] The District is being disingenuous; the District waited 7 years to issue this permit and now they are claiming that they did not have enough time to address the non-compliance.
[33] Consolidated Responses, pgs. 6-7.

construct requirements. Since the District regulations require facilities to comply with NSR, these preconstruction review rules must be incorporated in the Title V permit.[34]

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.[35]

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.[36] 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").[37]

The District's claim that preconstruction review rules are not applicable requirements for purposes of Title V is clearly erroneous. In fact, the facilities must comply with the preconstruction review rules by formulating appropriate schedules of compliance. The District's claim that "there is no advantage to holding the Title V permits in abeyance while compliance issues are investigated and resolved"[38] violates federal law. Since the District improperly excluded these requirements from the Title V permit, the permit is not in compliance with appropriate laws and EPA must object.

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

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[34] *See also* 42 U.S.C. § 7503.
[35] 40 C.F.R. § 70.2 (emphasis added).
[36] *See Pacific Coast,* pg. 6.
[37] *Pacific Coast,* pg. 7.
[38] Consolidated Responses, pg. 6

Unexplained Increases in Firing Rates

ConocoPhillips administratively increased the maximum firing rate of several pieces of equipment at the refinery, alleging that firing rates had previously been underreported.[39] The increase in firing rates could be due to debottlenecking. Although these administrative increases may have caused significant emission increases, the District has allowed them to occur without requiring appropriate NSR review under CAA § 111, and related regulations and BAAQMD rule 2-2.

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

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

Throughput Limits

The permit contains improper throughput limits for grandfathered sources. The method for determining these throughput limits is not in compliance with the Clean Air Act's NSR rules. In fact, the District has engaged in an exercise of creating improper emission limits that result in misleading and inappropriate presumptions for NSR for these sources. The District improperly adopted these throughput limits using administrative permits changes that had the sole purpose of creating new permit conditions for the refinery's Title V permit.[40] Rather than comply with the requirements of Title V and simply collect all of the existing permit conditions that apply to the refinery and place them in a Title V permit, the Air District engaged in a program of creating new limits; these limits on grandfathered sources are wholly inappropriate and should be deleted from the Title V permits.

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

> [t]hese [throughput] limits are generally based upon the District's review of information provided by the facility regarding the design capacity or highest

[39] These comments are based on comments submitted by Adams Broadwell. *See* Adams Broadwell's comments: September 30, 2002 regarding the ConocoPhillips refinery, pgs. 40-41, attached as Appendix 7, and September 22, 2003, pg. 15, attached as Appendix 8, for a more detailed discussion of these issues.

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

> documented capacity of the grandfathered source. To verify whether these limits reflect the true design, documented, or "bottlenecked" capacity . . . of each source is *beyond the resource abilities of the District* in this Title V process. Moreover, the District *cannot be completely confident* that the facility has had time or resources necessary to provide the most accurate information available in this regard."[41]

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

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

In addition, a separate table must specifically identify each grandfathered source. The identity of grandfathered sources will aid the public in determining when grandfathered sources are being modified. The public will be able to simply look at a future permit application and easily determine if it is modifying a source that has been grandfathered. This information is important in assessing the applicability of federally enforceable NSR.[42]

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

The following issues also require schedules of compliance:

Unconditional Order of Abatement

The Statement of Basis explains that the "schedule of compliance for this permit . . . contains the text of an ongoing 'unconditional order of abatement.'"[43] Despite this order of abatement, the BAAQMD Compliance and Enforcement Division found the Refinery to be in compliance.[44] This is contrary to the experience of the Refinery's neighbors. The Refinery in fact has been out of compliance many times with nuisance

[41] Statement of Basis, pg. 15. (Unless otherwise noted, the Statement of Basis refers to the Statement of Basis issued in August, 2003.)
[42] CBE notes that BAAQMD added a table of Grandfathered Sources for the Chevron permit. BAAQMD has failed to maintain uniformity in its oil refinery Title V permits.
[43] Statement of Basis, pg. 12.
[44] *Id.* at 13.

odor problems and has had a major release since this unconditional order was issued. The District needs to identify additional requirements for monitoring, limiting, and preventing these problems, and should incorporate these requirements into an appropriate schedule of compliance for the Title V permit.

Source Specific Emissions[45]

Refinery sources S-352 through S-357 consist of 3 turbines and 3 duct burners. The permit imposes several NOx limits for these sources. Among others, it requires all of these sources to meet a NOx limit of 167 tons/yr.[46] The District's emissions inventory[47] indicates that these six sources emitted 214 tons of NOx in 2001. Thus, the Refinery violated this limit and may still be in violation of this limit.

Refinery sources S-400 is a wastewater sump, S-324 is an oil/wastewater separator, and S-1007 is a dissolved air flotation unit. The permit imposes a condition requiring "no detectable VOC emissions" from these sources.[48] However, for 2001, the District's emissions inventory shows 15,750 lbs of VOC emissions from S-400, 57,960 lbs of VOC emissions from S-324, and 6.624 lbs of VOC emissions from S-1007. Clearly theses sources are emitting VOCs at detectable levels.

The permit prohibits emissions from the Unicracking Unit (S-307) as follows: VOC "emissions streams with 15lb/day and 300 ppm total carbon on a dry basis prohibited."[49] In 2001, the District's emissions inventory indicates that S-307 had average daily VOC emissions of 468 lbs. Neither the permit, Statement of Basis, nor the emissions inventory identify total carbon emissions from this unit.

The refinery is not in compliance with all applicable emission limits; schedules of compliance must be added to the permit where necessary.

Emissions Inventory

In response to comments that find non-compliance history based on exceedances of the refinery's reported emissions inventories, the District claims that "[b]ecause the emissions inventory functions as a macro tool the District does not subject emissions inventory figures to analysis sufficiently rigorous to ensure credibility relative to compliance with applicable requirements."[50] Yet, the District uses emissions inventory estimates for purposes of establishing exemptions from emissions limits. The District must take a consistent position. If emissions inventory data is not sufficiently accurate for purposes of Title V permitting, then it cannot be included in the refinery's permit

[45] These comments were taken from Adams Broadwell's comments submitted to BAAQMD on September 30, 2002. Attached as Appendix 4.
[46] Draft permit, pg. 275.
[47] *See* emissions inventory discussion below.
[48] Draft permit, pgs. 342-44.
[49] Draft permit, pg. 351.
[50] Consolidated Responses, pg. 16.

application and may not be used for establishing any permit conditions, including exemptions.

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

> 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.[51]

In addition, the Clean Air Act requires that the submission of nonattainment plans include "a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants."[52] The Bay Area is in nonattainment for ozone; therefore, accurate emissions inventories are required. Emissions inventory data must either be corrected in the refinery's permit application or accurate data must be offered in its place.

Flaring[53]

The refinery experienced a flaring incident on July 10, 2002, during which the District estimates that 480 to 720 tons of hydrocarbons and 20-28 tons of sulfur dioxide were emitted to the atmosphere.[54] The District issued NOVs for this incident. It is not clear whether the District has resolved these and all other outstanding NOVs with the Refinery, which, at a minimum, it must do before the Refinery can be considered "in compliance." Further, the District must identify the root cause of this and other compliance problems at the refinery and impose a schedule of compliance that requires the refinery to implement the process or operational changes necessary to avoid such incidents in the future.

[51] BAAQMD Manual of Procedures, Volume II, Part 3, p.3-7, 3-8 (May 2, 2001).
[52] 42 U.S.C. § 7502.
[53] These comments were taken from Adams Broadwell's comments submitted to BAAQMD on September 30, 2002. Attached as Appendix 7.
[54] BAAQMD, Incident Report, Plant A0016, updated 7/18/02. Attached as Appendix 9.

C. INADEQUATE MONITORING

Title V of the Clean Air Act and related regulations requires "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit" and that "[e]ach permit issued . . . shall set forth inspection, entry, and monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions."[55] Despite these requirements, the District erroneously concluded that including monitoring in a Title V permit is discretionary based on a balancing test of their own making, rather than a clear requirement.

The District stated in the Statement of Basis that "although Title V calls for a re-examination of all monitoring**,** there is a presumption that these factors [used by the District to determine whether monitoring is necessary] have been appropriately balanced and incorporated in the District's prior rule development and/or permit issuance. It is possible that, where a rule or permit requirement has historically had no monitoring associated with it, *no monitoring may still be appropriate in the Title V permit if, for instance, there is little likelihood of a violation***.** Compliance behavior and associated costs of compliance are determined in part by the frequency and nature of associated monitoring requirements. As a result, the District will generally revise the nature or frequency of monitoring only when it can support a conclusion that existing monitoring is inadequate."[56]

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."[57] By its own admission, the District has failed to place monitoring requirements on sources where historically there has been no monitoring.

In addition, the District created and relies upon its own presumption that existing monitoring is adequate. According to the District, "a presumption of adequacy for existing monitoring is appropriate because the District has traditionally applied the same factors to assessing monitoring that are called for by Title V."[58] The District claims it reviewed all monitoring in the permits for sufficiency and determined that, with very few exceptions, the monitoring is sufficient.[59] However, neither Title V nor its implementing regulations authorize such a presumption. To the contrary, Title V specifically authorizes and requires the imposition of new monitoring requirements on a facility to assure compliance with permit conditions and other applicable requirements.

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[55] 42 U.S.C. §504(c); 40 C.F.R. § 70.6(a)(3)(i)(B).
[56] Statement of Basis, pgs. 14-15 (emphasis added).
[57] *Appalachian Power Co. v. Environmental Protection Agency*, 208 F.3d 1015, 1019 (D.C. Cir. 2000).
[58] Consolidated Responses, pg. 17.
[59] *See id.*

Emission Limitations

For all of the following pollutants/sources of pollutants, the permit cites no monitoring requirements:

> A large number of refinery sources, including boilers,[60] furnaces,[61] heaters,[62] combustine turbines and duct burners,[63] and sulfur plants,[64] have federally enforceable limits for opacity and/or filterable particulate ("FP") pursuant to BAAQMD regulations 6-301 and 6-310, respectively.[65]
>
> Gasoline dispensing facilities have federally enforceable limits for VOCs pursuant to BAAQMD regulations 8-7.[66]

Since the permit does not contain adequate monitoring requirements to assure compliance with the applicable required limits, EPA must object to the permit.

Fugitives

EPA inspections have identified much higher leak rates for refinery valves (including for Bay Area refineries) than were reported by the refineries.[67] EPA found an average leak rate of 5%, compared to 1.3% reported by these refineries. EPA estimated the emissions from the unreported leaks at over 80 million lbs/year of VOCs emissions, including 15 million pounds of toxics.

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

Of the ten companies for which investigations were completed, two were San Francisco Bay Area refineries. Despite this finding, BAAQMD insists that no more monitoring is necessary for valve leaks. A monitoring regime must be put in place that assures compliance with Reg. 8-18-300.

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[60] Draft permit, pgs. 304-05.
[61] Draft permit, pgs. 336, 338, 340-41.
[62] Draft permit, pgs. 297-98, 300-02, 307-14, 316-26, 328, 331-32, 334.
[63] Draft permit, pg. 354, 357.
[64] Draft permit, pg. 361-62.
[65] In the Statement of Basis, pgs. 21-22, the District advances a number of alleged reasons for these exemptions. *See* Adams Broadwell's comments submitted to BAAQMD regarding the ConocoPhillips refinery on September 30, 2002, pgs. 12-19, for a more detailed discussion of the inadequacy of these reasons. Attached as Appendix 7.
[66] Draft permit pg. 347.
[67] *See* "Oil Refineries Fail to Report Millions of Pounds of Harmful Emissions," U.S. Representative Henry A. Waxman, November 1999.

Storage Tanks

Storage tanks have federally enforceable limits for VOCs pursuant to BAAQMD regulations 8-5. Therefore monitoring requirements are necessary to assure compliance with these limits. However, the use of "look up" tables and sample analysis as the required type of monitoring is inappropriate – in fact these methods are not actually monitoring. For this rule, the District improperly proposes to use emission factors as a substitute for monitoring.[68]

Pressure Relief Valves

The permit is not in compliance with BAAQMD rule 8-28, particularly sections 301 and 401. In addition, the miscellaneous operations rule[69] applies to repeated pressure relief valve ("PRV") lifts.

As discussed above, valve leaks, including those from PRVs, occur on a frequent basis. Therefore, appropriate limits and monitoring must be added to the permit to comply with BAAQMD rule 8-28-301.

Flares

The Title V permit that BAAQMD submitted to EPA failed to include any flare monitoring requirements. EPA instructed BAAQMD, in its September 26, 2003 letter, to add local BAAQMD regulation 12-11 to flares in the Title V permit.[70] EPA was required to object to the permit at this point based on Clean Air Act § 505(b)(2). Moreover, BAAQMD's revised permit still omits the more stringent federal monitoring rules outlined in 40 C.F.R. § 60.8. Those rules are necessary to ensure compliance with BAAQMD regulation 6-301 requirements contained in the permit.

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

D. INADEQUATE SUBMISSION OF REPORTING REQUIREMENTS

The reporting requirements in the permit are not in compliance with 40 C.F.R. 70.6(a)(3)(iii)(A), which states that "[w]ith respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following . . . [the]

[68] *See* Draft permit, pgs. 374-75, 378, 381, 386, 388-89, 392, 394, 396-97, 399, 401-03, 408, 410.
[69] BAAQMD rule 8-2, discussed in more detail infra pgs. 20-21.
[70] US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003, Enclosure A, pg. 2.

[s]ubmittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports."[71]

In many places in the permit, BAAQMD requires the refinery to maintain logs at the facility for five years, but BAAQMD fails to require reporting of the data collected in these logs every six months, as required by Title V.[72] BAAQMD consistently states that these logs "shall be kept on site and made available to District staff upon request."[73] By itself, this is improper. BAAQMD needs to include the semi-annual reporting requirement in each place in the permit where BAAQMD requires the facility to make the log "available to District staff upon request."

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

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

E. FLARES

ConocoPhillips operates two flares at its Rodeo refinery: S-296 and S-396. In preparing ConocoPhillips' Title V permit, BAAQMD failed to include key federal and state applicable requirements and failed to explain why other rules that are generally applicable to flares, did not apply. The permit does not include the general requirements

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[71] Emphasis added.

[72] *See* ConocoPhillips Draft Permit Condition 383, Title V Permit, p. 262; Condition 476, Title V Permit at 263; Condition 12121, Title V Permit at 274; Condition 12122, Title V Permit at 276; Condition 12124, Title V Permit at 277; Condition 12125, Title V Permit at 277; Condition 12127, Title V Permit at 278; Condition 12129, Title V Permit at 278; Condition 12133, Title V Permit at 279; Condition 16677, Title V Permit at 281; Condition 18251, Title V Permit at 281; Condition 19476, Title V Permit at 288; (This is not an exhaustive list)

[73] *Id*.

of New Source Performance Standards ("NSPS") Subpart A, particularly 40 C.F.R § 60.11 and 40 C.F.R. § 60.18. EPA is required to object to ConocoPhillips' Title V permit in the absence of these federally enforceable requirements.

BAAQMD erroneously asserts that the federally enforceable miscellaneous operations rule is inapplicable to flares, and thus omits the requirement from ConcoPhillips Title V permit.[74] The miscellaneous operations rule limits emissions from all refinery operations not limited by another rule in regulation 8 or 10.[75] Since no other rule in regulations 8 or 10 limit flares, they are subject to the miscellaneous operations rule.

The miscellaneous operations rule provides that "a person shall not discharge into the atmosphere from any miscellaneous operation an emission containing more than 6.8 kg. (15 lbs.) per day and containing a concentration of more than 300 PPM total carbon on a dry basis."[76] A flare fits this description.[77]

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

> Emergency flares are not subject to Regulation 8, Rule 2. Flares are abatement devices controlling emissions from controlled releases from process units, which are subject to Regulation 8-10 (Process Vessel Depressurization) and Regulation 8-28 (Episodic Releases). Because flare emissions are limited by these other regulations, flares do not meet the definition of "miscellaneous source" contained in Regulation 8-2-201.[78]

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

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[74] *See* Consolidated Responses, pg. 35.
[75] BAAQMD Regulations 8-2-201, 8-2-301.
[76] BAAQMD Regulation 8-2-301.
[77] Note that BAAQMD has held the position that emergency flares are not subject to the miscellaneous source rule, but CBE provided evidence in its initial Title V comments that flare use was not in fact restricted to emergency use. BAAQMD also found in its Technical Assessment Document on Flares that non-emergency flaring occurred regularly. In EPA's Enforcement Alert, it too found that flaring was routine and not reserved for emergencies. It wrote:

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

[78] Consolidated Responses, pg. 35.

Regulation 8-28 does not limit flaring either. Regulation 8-28 is designed to prevent episodic emissions and collect information on organic compounds from pressure relief devices on any equipment handling gaseous organic compounds at, *inter alia*, oil refineries.[79] Two standards in this section contemplate flare use. First, the regulation requires that under certain circumstances, pressure relief devices vent to a vapor recovery or disposal system.[80] A flare is a disposal system. Second, the refinery must evaluate installing additional flare gas compressor recovery capacity if a PRD releases repeatedly.[81] Neither of those standards limits flares.

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

Title V requires the responsible agency to "provide a statement that sets forth the legal and factual basis for the permit conditions."[82] BAAQMD failed to provide the basis for its permit conditions and exemptions on critical federal provisions.

Without explanation, BAAQMD exempted ConocoPhillips' flares from federal provisions 40 C.F.R. § 60 Subpart A, 40 C.F.R. § 61, and 40 C.F.R § 63. It is not possible to determine whether the flares should be exempt from any of those sections because neither the permit nor the Statement of Basis lists the equipment to which the flares are attached. Similarly, the Statement of Basis fails to provide the information on which the permit relied on when exempting flares from these provisions.[83]

BAAQMD exempted ConocoPhillips' flares from NSPS Subpart A, and from Subpart J's fuel gas H2S limit requirements without providing information to indicate that they should be exempt. The combustion of process upset gases or fuel gas is exempt from 40 C.FR. § 60.104(1)(a) when those gases are released to the flare as a result of an emergency malfunction. There is no exemption for releases that result from non-emergencies, such as intentional flaring or repeated malfunctions. The ConocoPhillips flare provisions do not include an emergency-only provision. EPA violated 40 C.F.R. § 70.7(a)(5) by approving the Title V permit when it had insufficient information on which to assess the document. Instead, EPA gave the permits a blanket approval, asking BAAQMD to update its Statement of Basis with the correct information.[84]

BAAQMD[85] was required to include these general flare requirements in ConocoPhillips' permit. Section 40 C.F.R. § 60.18 is a general requirement that

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[79] BAAQMD Regulation 8-28-101.
[80] BAAQMD Regulation 8-28-303.
[81] BAAQMD Regulation 8-28-304.1.
[82] 40 C.F.R. § 70.7(a)(5).
[83] *See* Adams Broadwell's comments: September 30, 2002 regarding the ConocoPhillips refinery, pg. 60, Attached as Appendix 7.
[84] *See* US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, October 31, 2003, pg. 8.
[85] Flare 296 was installed in 1969 and is a grandfathered unit, based on ConocoPhillips Plant file. However, subsequent flare modifications would make NSPS applicable.

describes design and operation requirements for control devices that are used to comply with Part 60 (and 61). Subsection (b) specifically applies to flares. In its response to comments BAAQMD simply states, without explanation, that 40 C.F.R. § 60.18 only applies to the Valero flares. The Statement of Basis also failed to provide information on the refinery's compliance with this provision. EPA expressed that it, too, was mystified at this omission and requested BAAQMD to revise its permits.[86] However, EPA is required to object to permits that do not comply with the requirements of the Title V program.[87]

BAAQMD also omitted applicability of 40 C.F.R. § 60.11 and failed to respond to public comments on its applicability. In the NSPS general provision, 40 C.F.R. § 60.11 states that "at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions." BAAQMD did not indicate why this NSPS provision would be inapplicable to any of the flares. In the absence of such an explanation in the Statement of Basis, BAAQMD erred in not applying this requirement. In its Enforcement Alert, EPA stated that "good air control practices" includes corrective action or other ways to reduce probability of recurrences. EPA noted in its comments that BAAQMD should make 40 C.F.R. § 60.11 applicable at each refinery.[88]

In its letter, EPA acknowledged that NSPS Subpart A should be reflected in the permits or that the "Statement of Basis for each permit must document the reasons for each applicability determination."[89] EPA violated the Clean Air Act by not objecting to these omissions because EPA is required to object to permits that do not comply with the requirements of the Title V program.[90] Alternately, EPA was required to object to ConocoPhillips' permit because it did not have the information necessary in the Statement of Basis or permit to ascertain that the District acted properly in exempting the flares from NSPS Subparts A and J.[91]

F. MISCELLANEOUS OPERATIONS RULE

BAAQMD improperly decided not to apply the "miscellaneous operation" rule in Reg. 8-2 to the refinery.[92] BAAQMD is attempting to limit the use of Reg. 8-2 at the ConocoPhillips refinery. BAAQMD attempts to limit use of Reg. 8-2 at the refinery by

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[86] US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003, Enclosure A, EPA General Comments, pg. 1.
[87] *See* 42 U.S.C. § 505(b)(2); *see also New York PIRG v. Whitman*, 321 F.3d at 334.
[88] *See* US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, October 31, 2003, enclosure B, pg. 8.
[89] US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003, Enclosure A, EPA General Comments, pg. 1.
[90] *See* 42 U.S.C. § 505(b)(2); *see also New York PIRG v. Whitman*, 321 F.3d at 334.
[91] 40 C.F.R. § 70.7(a)(5); *see also* US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, October 31, 2003, pg. 9.
[92] *See* Statement of Basis, pg. 9.

conjuring up a "policy justification" rather than applying the plain meaning of the rule. However, one District staffer wrote that "[e]missions occur routinely that are not covered by specific regulations."[93]

BAAQMD states that it "has determined that the definition of 'miscellaneous operation' in Regulation 8-2-201 excludes sources that are in a source category regulated by another rule in Regulation 8, even if they are exempt from the other rule."[94] This determination is contrary to the plain meaning of the rule.

The purpose of the "miscellaneous operation" provision is to "reduce emissions of precursor organic compounds from miscellaneous operations."[95] Regulation 8-2-201 defines a "miscellaneous operation" as "any operation other than those limited by the other Rules of this Regulation 8 and the Rules of Regulation 10." The District has now broadly construed this definition to include sources that are exempt from the remaining provisions of Regulation 8 and Regulation 10.

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

The "miscellaneous operation" must be applied in the permit to the appropriate sources across the refinery,[96] and monitoring must be implemented to assure compliance with this rule. In addition, EPA has already conceded that this is a clear example of non-compliance in the proposed permit. In EPA's September 26, 2003 letter to BAAQMD in regard to the Chevron permit, EPA stated that "[w]e understand the District agrees with us that it is inappropriate to exempt flares from Regulation 8-2 based on a determination that they are exempt from Regulation 8-1. Regulation 8-1, which regulates the storage and disposal of rags, open containers, and the clean-up of spray equipment, is not an appropriate reason for an exemption. Please remove citations to Regulations 8-1-110.3 exempting flares from Regulation 8-2."[97] In other words, EPA has established non-compliance and therefore it is required to object to the permit.[98]

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[93] Email, Harold Lips to Brenda Cabral, Subject: Review of Title V Permit for Chevron, dated April 3, 2002. Attached as Appendix 10.
[94] Statement of Basis, pg. 9.
[95] BAAQMD regulation 8-2-101.
[96] See supra, discussion of flares, pgs. 17-19 and PRVs, pg. 16.
[97] US EPA letter from Gerardo Rios, Chief Air Permits Office, to Steve Hill, BAAQMD Air Pollution Control Officer, September 26, 2003, Enclosure C, pg. 3.
[98] *See* 42 U.S.C. § 505(b)(2); *see also New York PIRG v. Whitman*, 321 F.3d at 334.

G. APPLICABLE MACT STANDARDS

The refineries are "major sources" of Hazardous Air Pollutants (HAPs) because they emit or have the potential to emit 10 tons per year or more of any single HAP or 25 tons per year or more of any combination of HAPs.[99] Therefore they are required to comply with Clean Air Act section 112 National Emission Standards for HAPs (NESHAPS) reflected in the application of Maximum Achievable Control Technology (MACT). Several MACT requirements that apply to the refinery have not been included in the permit and therefore the permit is out of compliance with section 112 of the Clean Air Act and related regulations.[100]

CONCLUSION

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

Dated: November 24, 2003
Respectfully Submitted,

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[99] 42 U.S.C. § 112(a)(1).
[100] *See* comments submitted by Adams Broadwell regarding the ConocoPhillips refinery, September 30, 2002, pgs. 41-51. Attached as Appendix 7.