

December 16, 2004

Adrienne Bloch
Communities for a Better Environment
1611 Telegraph Avenue, Suite 450
Oakland, CA 94612

Subject: Comments on reopening of Title V permit for Facility A0016,
Conoco Phillips Refinery

ALAMEDA COUNTY

Roberta Cooper
Scott Haggerty
(Chairperson)
Nate Miley
Shelia Young

Dear Ms. Bloch:

CONTRA COSTA COUNTY

Mark DeSaulnier
Erling Horn
Mark Ross
Gayle Uilkema
(Secretary)

Thank you for your comments on the above reopening of a Title V permit, dated April 14, 2004.

The District has made some changes in response to comments. The details are in the District response, contained in Attachment A. The response refers to your comments by number. A copy of your letter that numbers the comments is enclosed in Attachment B.

MARIN COUNTY

Harold C. Brown, Jr.

The District has decided to issue the permits. All comments have been posted on the District's website. The final permit, final statement of basis, and all final responses to comments will be posted shortly. The web address is:

http://www.baaqmd.gov/pmt/title_v/public_notices.asp. If you have any questions, please call Steve Hill, Manager, Permit Evaluation, at: 415-749-4673.

NAPA COUNTY

Brad Wagenknecht

SAN FRANCISCO COUNTY

Chris Daly
Jake McGoldrick
Gavin Newsom

Again, thank you for your comments. If you have any questions about this action, please call me, at (415) 749-4673.

SAN MATEO COUNTY

Jerry Hill
Marland Townsend
(Vice-Chairperson)

Very truly yours,

SANTA CLARA COUNTY

Erin Garner
Liz Kniss
Patrick Kwok
Julia Miller

Brian Bateman,
Director of Engineering

SOLANO COUNTY

John F. Silva

Attachments
SAH:myl

SONOMA COUNTY

Tim Smith
Pamela Torliatt

P:\general\titlev\Refineries\Rev 1\Response letters\Response to CBE comments on Conoco Phillips.doc

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

Attachment A

The District has prepared the following responses to the comments contained in this letter.

Each comment consists of 1) a suggestion for action or change, and 2) the argument, if any, supporting the suggestion.

The comments identified by the District have been numbered. Refer to the attached copy of the original comment letter for the comment numbers.

	Response
1.	The District assumes that the page 1 references to "Chevron" are meant to refer to ConocoPhillips. The District has made appropriate revisions in response to public comment. The District has solicited comments on the proposed changes to the permit, and has also invited comment on aspects of the December 1, 2003 initial permits that were not previously proposed. Comments beyond these two areas that were submitted on this revision are untimely. The District responds to all comments that are timely and are "incorporated by reference" by referring to its previous responses to those comments.
2.	The District agrees that clarity is one important goal of the Title V permit. Accuracy, however, is another. Some applicable requirements are inherently complex, and it is generally not the role of the Title V permit to change applicable requirements.
3.	This comment misrepresents the record. The District has evaluated all comments and has corrected errors that have been brought to its attention. The example cited by the comment does not represent an "error" in the permit. The Title V permit accurately reflects the compliance-demonstration methodology that was specified by the underlying NSR permit. CBE's comment was based on the incorrect belief that new understanding of emission characteristics invalidate past permit decisions. In short, CBE mischaracterizes a disagreement with an invalid comment as an unwillingness to address a valid comment.
4.	See response to comment 16.
5.	See response to comment 12.
6.	See response to comment 14.
7.	See response to comment 17.
8.	See response to comment 17.
9.	See response to comment 18.
10.	See response to comment 16.
11.	See response to comment 16.
12.	Increased throughput at a facility does not physically modify a flare. Replacement of burner tips do not physically modify a flare, unless the flare's capacity is increased by the change. Unless facility changes increase the flare's potential to emit, or cause the emission of any air pollutant not previously emitted, the flare has not been modified.
13.	The District has no evidence to indicate that S-296 has been modified.
14.	The NSPS requires notice when a modification occurs. Absent a record of noncompliance, the District does not believe it appropriate to add additional notice requirements in the Title V permit. It should be noted however that District regulations already require the suggested notification. See 2-1-301, 2-1-233, and 2-1-234.
15.	A listing of sources associated with each flare has been added to Table IIA in the Title V Permit.
16.	Based upon information provided by the facility, S-296 is not subject to NSPS subpart J because it has not been modified since the applicability date. Based upon information provided by the facility, S-398 is subject to NSPS subpart J, but available information does not contradict the facility's assertion that gases vented to the flare qualify for the exemption in section 40 CFR 60.104(a)(1). The intent of the permit is to reiterate the exemption as stated in § 60.104(a)(1). If gases are combusted that do not qualify for the exemption, then § 60.104(a)(1) will apply.

17.	<p>S-296 is not subject to NSPS. No change has been made. S-398 is subject to NSPS. Although both §60.11 and §60.18 are listed as generally applicable requirements in Table IV, it makes sense to include §60.18 in the source-specific requirements for S-398, and this requirement has been added. § 60.11 is so vague as to provide no useful guidance to anyone for compliance. Nevertheless, it, too, has been added to source-specific tables.</p>
18.	<p>40 CFR §60.8 does not apply to regulation 6-301. It applies to requirements contained in NSPS subpart J that are subject to compliance evaluation through source-testing. Compliance with an opacity standard such as that in 6-301 is not measured through a source test, but rather through visual observation. The District has established separate conditions to provide a reasonable assurance of compliance with 6-301.</p>
19.	<p>The Statement of Basis explains the District's reasoning for establishing these conditions limiting flow of gas to the flare. As explained in more detail in the SOB, the conditions reflect, based upon the best available information, the design capacity for the flares, and thus help ensure proper operation. The conditions do not conflict with any other requirement because they do not displace any other requirement that may apply. They serve a specific purpose, but not to the exclusion any other regulatory restriction that applies to the flares. For instance, condition 18255 would not affect the applicability of the District's NSR program if, hypothetically, NSR review were triggered at a lower gas flow rate than is described in that permit condition.</p> <p>The comment states that "[t]he District still has not demonstrated that the flares function at a ninety percent efficiency rate." Direct measurement of flare control efficiency is not feasible. Therefore another form of analysis must be used to support any conclusion regarding flare efficiency. The Statement of Basis explains the District's reasoning for its conclusion. The comment neither offers a specific criticism of this reasoning nor proposes an alternative method. The comment also states "the District does not even include conditions in the permit that would increase the likelihood that [refineries] would meet the ninety percent rate." However, the District has done exactly this by establishing "proper operation" permit conditions.</p>
20.	<p>The flaring limit in Condition 18255 has been revised to refer to "refinery gas" to make it clear that the limit is for refinery gas combusted at the flares rather than a limit on combusted products emitted from the flares.</p>
21.	<p>The permit condition does not purport to limit actual emissions. No clarification is necessary.</p>
22.	<p>See response to comment 20.</p>
23.	<p>Since periodic monitoring (per 40 CFR 70.6) is the only type of monitoring authorized by Title V, the District interprets this comment to be advocating additional periodic monitoring at flares. Periodic monitoring may be appropriate in relation to an applicable requirement. 8-2-301 is not applicable to flares because of the exemption found in 8-1-110.3. 8-1-110.3 is not an applicable requirement, it is an applicability threshold, and the District has explained why it is not met for flares at these refineries (i.e., why the flares are exempt per 8-1-110.3). Therefore periodic monitoring relevant to Regulation 8 is not an issue at flares. Periodic monitoring has been established relative to the opacity standard in 6-301.</p>
24.	<p>The basis for the flare capacity is provided in the SOB (Section 2.0: "Flare Monitoring Conditions"). The effort to establish flare capacity limitations reflective of "proper operation" is new, and determining a limit that is accurate may require that some adjustments be made. It is unclear what the comment means in urging a "comprehensive, integrated" Title V review. In this respect, the comment is too vague for a response. The comment's suggestion that former capacity limitations, on flares and elsewhere, should be restored is not supported by rationale for why the former limits should be considered more accurate.</p> <p>The capacity of S-300 in Table II-A has been increased from 56,000 to 81,000 bbl/day as a result of modifications permitted through Application 5814, as noted in Appendix B of the Statement of Basis, Section 1.1. The evaluation for Application 5814 is attached to the Statement of Basis.</p>

	<p>The capacity of S-305 in Table II-A was increased from 25,243 to 25,300 bbl/day between a draft of the initial Major Facility Permit and the initial issuance of the Major Facility Permit. This capacity is not proposed to change in Revision 1 of the Major Facility Permit.</p> <p>S-319 is a grandfathered source. Beginning with the issuance of the Title V permit and continuing with Revision 1 to that permit, the District has attempted in the face of scant relevant information to set an accurate baseline for purposes of 2-1-234.3. There is no original "data form" or other documentation on file for S-319, and this source has never been evaluated in a permit application. However, some data is available. The District source database has a maximum throughput value for S-319 of 20.7 thousand gallons per hour (11,800 bbl/day). This value appears in the annual permit renewal questionnaire dated April 13, 2002 (page 16-25) and the previous questionnaire dated April 11, 1998 (page 16-56). These are the two most recent questionnaires that include this source. The basis for this data is unknown. A lower maximum throughput (7,600 bbl/day) was assigned in Table II-A of the initial Title V permit, but that limit now appears to have been without a factual basis. ConocoPhillips, in its appeal of the Title V permit, asserted that the true capacity of S-319 is 9,600 bbl/day. This value is lower than the value of 11,800 bbl/day found in the District source database. The 9,6000 bbl/day was included in Table II-A of Revision 1 of the Title permit. The annual throughput limit in Condition 20989 in Revision 1 of the Title V permit was set to a value of 3.51E6 bbl/yr to correspond to 9,600 bbl/day multiplied by 365 day/yr since the refinery has the theoretical ability to operate longer than 12 months between major turnarounds. This value is lower than the value of 4.32E6 bbl/yr that appeared in the initial Title V issuance, and which corresponds to the maximum throughput rate of 11,800 bbl/day.</p>
25.	The District believes that its analysis is valid and its conclusion to not require periodic monitoring for gas-burning combustion devices is sound.
26.	Title V monitoring requirements must be tied to applicable requirements. The comment did not identify any applicable requirements for which proposed monitoring was inadequate.
27.	The requested document does not exist. The comment's reference to "applicability of District policies" is unclear.
28.	The comment misstates the record. Emissions from pressure relief valves, marine loading, and cooling towers are all regulated. The comment appears to refer to prior comments advocating revision of Regulations 8-28, 8-44, 8-2. Such comments – which go to the substance of applicable requirements -- are not appropriately made in this Title V context.
29.	It is not clear from the comment what additional monitoring is suggested. No changes have been made to the permit. The reference to an "amendment to statute" is also unclear.
30.	It is not clear from the comment what applicable requirement is being discussed and what additional monitoring is suggested. No changes have been made to the permit.
31.	It is not clear from the comment what applicable requirement is being discussed and what additional monitoring is suggested. No changes have been made to the permit.
32.	To the extent this comment attempts to characterize the District's rationale for imposing monitoring on flaring relative to 6-301, the comment is inaccurate. The District has exercised judgment (both in developing the flare monitoring rule and in the Title V context) regarding the value of monitoring such events, and has determined that is in the public interest that, instead of conducting a visual inspection of a flare during the first few minutes of an event, refinery staff should be working to end the flaring event. The fact that the flaring event occurred must be reported—recurring problems will not evade scrutiny. If the event creates a significant community impact, the facility may be cited for nuisance (and the decision to spend manpower ending the event instead of watching the flare is even more appropriate). These balancing judgments made in the context of developing the flare monitoring rule are appropriately transferred to the determination being made here, i.e., what monitoring is appropriate for determining compliance with 6-301 during flaring events. Balancing the likelihood of detecting a violation against monitoring costs and, additionally here, the benefit of allowing refinery staff to address the cause of any opacity problem, the District concludes that the monitoring frequencies that were proposed are appropriate.
33.	It is not clear from the comment what applicable requirements are discussed and what

Response to CBE comments on Conoco Phillips (4/14/04)

	additional monitoring is suggested. No changes have been made to the permit.
34.	As explained in the statement of basis, the District has determined that additional monitoring is not necessary to assure compliance. These engines are emergency engines, and their use is limited.
35.	The District considered imposing monitoring requirements for gas-fired heaters and boilers, but, as explained in the statement of basis, determined that no monitoring is necessary to assure compliance.
36.	It is not clear from the comment what additional monitoring is suggested, or why. No changes have been made to the permit.
37.	<p>The District considered and responded to, but did not agree with, CBE's suggestion, made during the initial Title V issuance, to require submittal of log data in addition to the monitoring reports required by federal law.</p> <p>As noted in the District's response, Title V requires the operator to submit a report of logged data every six months. Title V does not require the operator to submit the logged data itself, but rather requires the operator to keep such records onsite for at least 5 years. Receipt of all logged data would be impractical for the District.</p>
38.	6-305 addresses visible particles. It does not address plume opacity. It is better characterized as "filterable particulate" rather than "opacity." The "type of limit" column is for purposes of sorting requirements, and has no regulatory impact whatsoever. The requirements of 6-305 were not changed in any manner.
39.	The District has responded directly to comments suggesting submittal of all monitoring data. See, e.g., response to comment 35.

VIA E-MAIL AND U.S. MAIL

Julian Elliot
Bay Area Air Quality Management District
939 Ellis Street San Francisco, CA 94109
jelliot@the district.gov

Re: Comments on Draft Major Facility Review Permit for ConocoPhillips San Francisco Refinery, Facility A0016

Dear Mr. Elliot:

Introduction

Even on its third try, the Air District (“District”) has failed to get Chevron’s Title V permit right. The District has either ignored or dismissed most of the comments submitted by CBE’s and the other public commentators. Consequently, CBE incorporates by reference the comments previously submitted on Chevron’s Title V permit and the petition submitted to the U.S. Environmental Protection Agency. ¹CBE also joins in the April 2004 comments submitted by GoldenGate Environmental Law and Justice Clinic on Chevron refinery and the other four Bay Area refineries.

1

This comment letter addresses the changes to Chevron’s Title V permit issued in December 2003, for which there was no public comment, and the proposed permit issued in February 2004. CBE’s previous comments stand.

¹See CBE Comments to proposed ConocoPhillips’ Title V permit, September 27, 2002; CBE Comments on draft Major Facility Review Permits, September 22, 2003; CBE Petition to EPA on Issuance of Title V Permit, November 24, 2003; GoldenGate Environmental Law and Justice Clinic Comments on Proposed Major Facility Permits, September 27, 2002; GoldenGate Comments on Draft Major Facility Review Permits, September 22, 2003; Adams Broadwell Joseph and Cardozo Comments on Proposed Title V Permit for the Phillips Rodeo Refinery, September 27, 2002; Adams Broadwell comments on Bay Area Refinery Title V Permits, September 22, 2003.

The Proposed Permit Does Not Accomplish Title V Public Participation Goals

The purpose of Title V is to provide the public, government, and industry with clear requirements in one document. Unfortunately, the organization of this document does not accomplish Title V's purpose of providing clarity and access. CBE has spent weeks at a time reviewing the various drafts of ConocoPhillips' Title V permit and associated documents. Even on this third round, the organization of this permit is extremely difficult to follow. On many issues, it was necessary to review several different tables and appendices to determine what regulatory requirements, monitoring, and emission calculations applied to a particular source. The large, repetitive, yet conflicting permit has instead forced the public to spend substantial time simply identifying what the District intends. It was necessary to arrange discussions with District staff to decipher the proposed permit. While CBE appreciates the clarifications that staff did provide us, the Title V permit itself must be clear to avoid future disputes in interpreting permit conditions.

2

The District has admitted extensive errors in the proposed Title V permits, such as improperly changing existing permit conditions, but will not correct those errors². Meanwhile, the District proposes to limit its responses to public concerns on changes made in the most recent proposed permits.³ This is unacceptable and makes a mockery of public process. The District should correct the proposed permit based on past public comments and heed the comments that follow.

3

FLARES

The Title V Permit Fails to Include Federally Enforceable Flare Provisions

ConocoPhillips operates two flares at its San Francisco refinery in Rodeo: S-296 and S-398. The District has exempted S-296 from new source performance standards (NSPS), altogether. The District has exempted S-398 from 40 CFR Subpart A and Subpart J requirements, and has replaced some Subpart J requirements with condition 18255.⁴ In fact, Subpart A and Subpart J should apply to both flares.

4

NSPS Applies to Flare S-296

The District has exempted S-296 from NSPS rules reasoning that the flare was constructed prior to 1973 and has not been modified. But the District's conclusion does not hold because the District's interpretation of "modification" is overly narrow, and because, even under the District's narrow interpretation, ConocoPhillips has modified its refinery flare.

²See CBE Comments on draft Major Facility Review Permits, September 22, 2003, page 17; *see also* Response to Comments, August 2003, February 2004.

³Public Notice - Notice Inviting Public Comment, (that the Bay Area Air Quality Management District is reopening the Major Facility Review Permit for the ConocoPhillips – San Francisco Refinery) Dated: February 24, 2004.

⁴Statement of Basis for ConocoPhillips Refinery, February 2004, page 27.

A modification is:

any physical change in, or change in the method of operation of, an existing

facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.⁵

A change to a source to which the flare is attached, such as an increased throughput, would physically modify the flare and potentially increase the amount of hydrocarbons or any of a host of other air pollutants emitted to the atmosphere. But according to the District, a modification occurs only when the flare burner tip is replaced.⁶ The District's interpretation of "modification" is unreasonably narrow. It is generally accepted that a flare consists of more than just a burner tip.

The typical flare system consists of (1) a gas collection header and piping for collecting gases from processing units, (2) a knockout drum (disentrainment drum) to remove and store condensables and entrained liquids, (3) a proprietary seal, water seal, or purge gas supply to prevent flash-back, (4) a single- or multiple-burner unit and a flare stack, (5) gas pilots and an ignitor to ignite the mixture of waste gas and air, and, if required, (6) a provision for external momentum force (steam injection or forced air) for smokeless flaring.⁷

In designing a flare, important considerations include, among others, reliable burning, hydraulics, liquid removal, air infiltration, and flame radiation.⁸ All of these considerations translate into parts that must be included in a flare, such as burner pilots, pilot ignitors, pilot monitors, flame stabilizers, relief valves, knock out drums, and liquid seal.⁹ Not all of these changes will qualify for the "replacement" exemption under the modifications rule. The District's position is untenable and the Statement of Basis fails to contemplate other flare modifications that trigger NSPS.

Moreover, CononcoPhillips has replaced the burner tip to S-296.¹⁰ Hence, based on the District's own reasoning, both flares should be subject to NSPS requirements. Additionally, the District should include a condition in the Title V permit that requires the refineries to notify the District when flares tips are replaced and/or when the refinery makes any other flare modification.¹¹

5

6

⁵ 40 CFR § 60.2.

⁶ Statement of Basis for ConocoPhillips Refinery, February 2004, page 18.

⁷ Environmental Protection Agency, *AP 42 Emissions Factors*, Chapter 13.5.1., Industrial Flares (attached as Appendix 1).

⁸ *Flare System Design – What is Important?* John Zink Company, 1998 (attached as Appendix 2).

⁹ *Id.* at 4-8.

¹⁰ Email from Valerie Uyeda, ConocoPhillips Environmental Department, to Julian Elliot, BAAQMD Engineer, Re: Flare Flowrates for S-296, January 23, 2004 (attached as Appendix 3).

¹¹ See 40 CFR 270.42(a)(b).

ConocoPhillips' Flares Are Subject to NSPS Subpart A

The proposed permit should reflect that both of ConocoPhillips flares are subject to the general requirements set forth in NSPS Subpart A, particularly 40 CFR 60.18 and 60.11. The former

7

section is a general requirement that describes design and operation requirements for control devices that are used to comply with Parts 60 and 61. Subsection (b) of 40 CFR § 60.18 specifically applies to flares. The District appears to have omitted the requirements to S-296 because it claims that the flares are not subject to NSPS requirements at all. This has been shown to be in error. Therefore, the general requirements should apply.

The District has not explained why S-398 is exempt from Subpart A. In fact, 40 CFR § 60.11 applies even when the flare is exempt from the Subpart J, 60.104(a)(1). The provision in 40 CFR § 60.11 requires that:

[A]t 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.

ConocoPhillips' Title V permit should include a federally enforceable permit requiring that it flare based on good air pollution control practices, as described above. The refinery flares regularly, based on a random sampling from last year's flaring events. ConocoPhillips flared seven days in June 2003 for a variety of reasons, including shutdowns, startups, valve leaks, hydrocarbon leaks, a condensate pot leak, and shutdown for DCS card failure. Out of the five flaring events in July 2003, three were a result of a unit upset, while two resulted from a malfunction. And the list goes on. EPA has clearly said that regular flaring does not constitute good practices. Why an air District would want to exempt an oil refinery from a best practices rule is a mystery. Nevertheless, the regulation must be included in the permit.

8

The District'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 the District regulation 6-301 requirements.

9

ConocoPhillips Flares Are Subject to NSPS Subpart J

The permit still improperly exempts ConocoPhillips' two flares from NSPS Subpart J – Subpart J effectively limits the release of SO_x to the atmosphere by limiting H₂S gas combustion within the flare. It is unclear why the District exempts S-398 from this rule. Regardless of the reason, the District exempts the *flare*, itself, from the regulation instead of exempting *flaring* resulting from upset conditions. But 40 CFR § 104 regulates flares, not flaring, and internally creates an exemption for upset gas flaring. That section states in pertinent part that, “[t]he *combustion in a flare* of process upset gases or fuel gas that is released to the flare as a result of relief valve leakage or other emergency malfunctions *is exempt* from this paragraph.” Thus, the District cannot justify exempting flares from this rule.

10

¹² See EPA Enforcement Alert, Vol. 3 No. 9, October 2000.

¹³ 40 C.F.R. § 104(a)(1).

The District states that flare S-398 only burns upset gas.¹⁴ But the District provides no basis for this assumption. The District itself has identified, in its BAAQMD flare Technical Assessment Document and during flaring workshops, including one held on March 2,4 2004, categories of non-emergency flaring that includes flaring associated with planned Startup & Shutdown, and routine flaring used to eliminate

waste gases in a non-emergency context. The conclusion in the proposed permit also contradicts EPA's finding that regular flaring occurs at refinery flares, and that regular flaring does not constitute an emergency.

[T]he malfunction/upset exemption under NSPS Subpart J applies only to extraordinary, infrequent, and not reasonably preventable upsets. Additionally, the malfunction/upset cannot be the result of poor maintenance or careless operations. Once you determine the cause of a malfunction/upset, you should work to correct the root cause in order to prevent it from occurring again. Each time that is done, malfunctions/upsets should become less frequent.¹⁵

The flaring data that ConocoPhillips and other refineries have submitted to the District reveals that flaring is not infrequent. Therefore, the District must include Subpart J as an applicable requirement for the refinery's flares, including the H2S limit.

11

Recommended Action:

1. *Indicate in the Statement of Basis that the flare burner has been replaced on S-296 and include NSPS requirements in the Title V permit for this source.*
2. *Ascertain whether ConocoPhillips has made other flare modifications on S-296 and provide the basis for any determination.*
3. *Include a condition in the Title V permit requiring that ConocoPhillips notify the District when flares tips are replaced and/or when the refinery makes any other flare modifications.*
4. *Describe what refinery source each flare is attached in order to further determine flare modifications and NSPS applicability.*
5. *Include Subpart J, 40 CFR § 60.104 as an applicable requirement for both flares because ConocoPhillips' flares are not exempt from this rule.*
6. *Add 40 CFR § 60.11 and 60.18 as an applicable requirement to both flares.*

12

13

14

15

16

17

¹⁴ Statement of Basis for ConocoPhillips Refinery, February 2004, page 29.

¹⁵ Letter from John B. Rasnic, Director Manufacturing, Energy and Transportation Division Office of Compliance, Environmental Protection Agency, to Phillip E. Guillemette, Director for the Environmental Affairs, Koch Refining Company LP, December 2, 1999, page 5 (attached as Appendix 4). *See also*, EPA Enforcement Alert, Vol. 3 No. 9, October 2000.

7. Include 40 CFR § 60.8 to the NSPS applicable flares to ensure compliance with 6-301.

18

The Miscellaneous Operations Rule Should Apply to the Refinery Flares

The permit does not apply the miscellaneous operations rule to flares. Consequently, the flares are not subject to any District rule that limits emissions. The District still has not demonstrated that

the flares function at a ninety percent efficiency rate, qualifying as exempt from rule 8-2. Adding insult to injury, the District does not even include conditions in the permit that would increase the likelihood that ConocoPhillips, or the other refineries, would meet the ninety percent rate.

Recommended Action: Include the miscellaneous operations rule, 8-2-301, as an applicable Title V permit requirement.

19

The Permit Appears to Contain Flare Emission Limits for Which No Basis Is Provided

The proposed permit included a condition at the end describing that appeared to limit flaring emissions without any basis for the emission limit chosen. The condition states, in pertinent part,

The owner/operator shall not flare more than 1.69 E 6 pounds per hour of vent gas (total) as defined in Regulation 12-11-210 at flares S-296 and S-398. [Regulation 8-1-110.3; 2-1-403]¹⁶

Neither the permit nor the Statement of Basis provides a rationale for these numbers and the intent is unclear. These high value numbers imply that emissions limits have been set for each of these flares, but they have not been formally set. Moreover, if these limits are construed as emission limits, they are so high as to be effectively no limit at all. They also conflict with the Miscellaneous Operations 15lb/day limit, which the District should enforce for these sources.

The instruction, "The owner/operator shall not flare more than 1.69 E 6 pounds per hour of vent possibly be construed to limit the pounds of gases emitted to the air by the flare. At minimum, this ambiguity must be resolved before the permit is issued.

20

While it would be appropriate to set limits to ensure that flares are not used at throughput levels higher than their design allows, the excerpted condition appears to go well beyond this. It appears to set up fake permit emission limits which are significant. Even if these limits are meant as gases within the flare, some portion of which are destroyed in the flame, these still result in significantly high emissions.

Whether construed in lbs/hr per day, or tons per day, this permit could allow significant emissions. Moreover, these numbers have no apparent basis, conflict with other District requirements.

¹⁶ConocoPhillips' proposed Title V permit, February 2004, page 278, Condition 18255.

Recommended Action:

1. Clarify in the permit and SOB that condition 18255 does not set actual emissions limits for the flares or describe the basis for setting such limits.

21

2. Resolve the ambiguities in condition 18255 by clarifying whether the “vent gas” limit refers to the amount of gases inside the flare or the amount emitted to the air.

22

The Permit Must Include Effective Flare Monitoring

The District admits that broader use of flaring for routine purposes could occur without being monitored. The District also acknowledges that violations could occur if more gas is flared than the flare is rated for, but concludes that these violations would be temporary and offset by safety considerations. The District wrongly places primary reliance for this conclusion on a 90 % reduction of hydrocarbon destruction efficiency standard, which refinery flaring has demonstrated to be incorrect, and on application of either three-minute monitoring by a trained observer (after a thirty-minute wait following the inception of an incident) or the “no visible emissions” standard. The District’ mock Q & A section in Appendix C about the effectiveness of flare monitoring does not address the scenarios presented in CBE’s prior comment letters which showed contradictions between allowable capacities and emissions based solely on flaring. By simultaneously improperly narrowing application of its rules to smaller sources and limiting monitoring for larger sources, the District seemingly is seeking to ensure that substantial amounts of emissions will not be regulated or detected.

Recommended Action: Add 40 CFR 60.18 as an applicable requirement to both flares.

23

CBE Is Concerned That ConocoPhillips Has Used the Title V Permitting Process to Increase Capacity

This latest version of ConocoPhillips’ permit increases the listed capacity for both flares, S-296 and S-398, without a stated basis. ¹⁷This is improper. The District may not change flare capacity through the Title V process without the comprehensive, integrated review that the Title V permitting process is meant to enable.

The District has improperly increased the capacity of other sources in addition to the flares. In response to ConocoPhillips’ permit appeal, the District, increased the daily capacity for S-319, the gasoline fractionating unit in Table II-A, from 7,500 to 9600 bbl. The District made similar increases to several other sources, such as the S-305 prefractionator, and S-300, the delayed Coker. The District attributes these increases to “corrections.” The District’s pattern of allowing incremental increases in capacity at large industrial sites is an issue of great concern to CBE.

Recommended Action: Replace the flare capacity in the proposed permit with the original capacity listed in the permits. Do the same for S-319, S-305, and S-300.

24

¹⁷ConocoPhillips Proposed Permit, February 2004, pages 129-130, 287-288.

REPORTING AND MONITORING

The District Continues to Ignore Monitoring for Many Sources of Emissions

A primary substantive change to monitoring in ConocoPhillips' revised Title V Permit was incorporation of new the District "NOx Box" permit conditions consistent with Rule 9-10. However, the District's rationale for not monitoring for particulate matter whenever sources use gaseous-fired combustion simply because complaints have not been made, is unacceptable.

The District proposes global exemptions from monitoring for particulates for all gaseous-fired combustion sources. The District asserts that no monitoring is necessary because no visible emissions are normally associated with these sources and thus, presumably, the amount of particulates is not worth its attention. The District also presents a corollary rationale that particulate monitoring is unneeded so long as there is "no nuisance particulate fallout."

Recommended Action: Include monitoring for particulate matter even when gaseous-fired combustion is used because reliance on community complaints is not affirmatively protective and because the exemption from monitoring does not provide necessary assurances.

25

The District Must Incorporate Monitoring Previously Requested

CBE and other commenters identified additional sources for which monitoring is needed in its September 2002 and September 2003 comment letters. The District continues to ignore the need for monitoring of additional sources of substantial emissions at the ConocoPhillips refinery.

18

Specific additional monitoring is needed as follows:

(1) The District'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 the District acknowledges;

26

(2) The District has refused to provide a list of NOx and CO sources accompanied by a discussion of the applicability of the District policies to each source of these pollutants, as repeatedly requested by CBE;

27

(3) The District acknowledged in its August 2003 Responses that concerns about several unregulated emissions sources identified by CBE and other commenters had merit---such as from pressure relief valves, marine loading emissions, and cooling towers---but continues to defer consideration of effective regulation to an unspecified future rather than taking present corrective actions;

28

¹⁸ For a detailed explanation for the need for this additional monitoring, see CBE Comments to proposed ConocoPhillips' Title V permit, September 27, 2002; and CBE Comments on draft Major Facility Review Permits, September 22, 2003.

(4) The Title V Permit does not consider or propose *monitoring of emissions which occur associated with refinery startup, shutdown and malfunction*, supposedly based on an EPA administrative amendment to statute. The District's reliance on this amendment, itself, contradicts the District's stated position that it relies solely on the

29

“plain meaning” of the federal Clean Air Act statute;

- (5) The District fails to *provide additional regulatory monitoring for upsets or other than normal, routine operations* because it presumes that refineries will take prompt, corrective actions; 30
- (6) The District claims that there is no need to *impose monitoring for particulates, sulfur, and ammonia* except on a demonstrated, as-needed basis because it assumes its general regulations are adequate; 31
- (7) The District assumes that *short flaring events (less than 15 minutes)* are self-corrected, not recurring, and not a significant source of emissions; 32
- (8) The District does not address needs for *additional monitoring of storage tanks, valves and fittings* because it presumes that requirements that refineries notify the District of service changes and existing enforcement provide adequate protection; 33
- (9) The District neglects *monitoring of internal combustion engines for opacity and fine particulates* because of the use of low-sulfur, low aromatic diesel fuels in California; 34
- (10) The District deems *monitoring for opacity and fine particulates for steam heaters and boilers* as inappropriate because this is solely a California law requirement rather than a federal requirement; 35
- (11) The District neglects *monitoring for opacity and fine particulates for asphalt plants* because it presumes that mist eliminator devices are not likely to fail; 36
- (12) Even where monitoring is proposed, the District does not address CBE’s request that specific reporting requirements include *regular submittals of log data* to the District to facilitate public inspection and, instead, the District appears to allow monitoring records to be inaccessible at the refinery itself. 37

The Permit Must Clarify Measurement Standards

CBE is also concerned that citations to Reg. 6-305 have been changed from “opacity” standard to “FP” (filterable particulate) standard. There are different ways to measure FP; for instance, EPA assumes that all filterable particulate is PM10. The District does not describe how it will measure FP, creating an ambiguity in the permit, and potentially loosening the applicable standard. The Permit should either return to the opacity standard, or define how FP is to be measured.

Recommended Action: Replace the FP standard in the proposed permit with the opacity standard, or define how FP is to be measured. 38

The Permit Still Does Not Specifically Delineate Reporting Requirements

The Air District still fails to address CBE’s comments about the need to specifically delineate ¹⁹reporting requirements and log data submittals. As discussed in CBE’s first round, and referenced in CBE’s second round of comments, the monitoring, recordkeeping and reporting requirements in the proposed permits are inadequate to

assure compliance and public review of ²⁰the compliance. Title V regulations set clear requirements for monitoring, recordkeeping, and reporting. The Clean Air Act requires each permit to “set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms ²¹and conditions.” The Permit must contain enough detail to so that it will be a comprehensive, stand-alone document.

Most glaringly, the Permit still fails to specifically delineate reporting requirements, an issue that CBE has consistently commented on with no direct response from the District. The 2004 Statement of Basis attempts to address this problem by stating that,

[t]he permits must contain all applicable requirements (as defined in the District Regulation 2-6-202), monitoring requirements, recordkeeping requirements, and reporting requirements. The permit holders must submit reports of all monitoring at least every six months and compliance certifications at least every year.²²

Although General Permit Condition F (Monitoring Reports) requires the refinery to submit monitoring to the District at least once every six months, the lack of a specific directive with each record keeping requirement in the Draft Permit creates ambiguity. This ambiguity could result in the facility arguing that very few items must be reported to the District and then withholding 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.” The permit should not be finalized until this change is incorporated.

Recommended Action: Specifically delineate reporting requirements and log data submittals for each source.

39

CONCLUSION

CBE requests that the District make the changes described above and in the attached documents to the proposed Title V permit. The District seems to operate on the premise that what happens

¹⁹ See CBE Comments on draft Major Facility Review Permits, September 22, 2003, page 6.

²⁰ 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”).

²¹ Clean Air Act § 504(c)

²² Statement of Basis for ConocoPhillips Refinery, February 2004, page 3.

at large urban oil refineries is more of a concern to the corporate ownership than to those who bear the burden of toxic pollution namely, the people who live and work in and around the refinery. The District’s assumption is fallacious. It is time that the District take public comment on these Title V permits more seriously and create more stringent, not more lax, refinery rules. The permit must not be issued in its current form.

Very truly yours,

Response to CBE comments on Conoco Phillips (4/14/04)

Adrienne Bloch
CBE Staff Attorney