July 31, 2002

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Subject: Response to comments on Title V permit for Facility A0022-Tosco Refining Company

Dear Ms. Poole:

Thank you for your comments on the Title V permit for Facility A0022-Tosco Refining Company dated April 22, 2002, submitted in your capacity as representative for the Plumbers and Steamfitters Union Local 342. The District is issuing the permit with the following changes. This letter responds to each of your comments, including those that did not result in changes to the permit. The discussion is organized in the same order as your letter starting with page 3. (NOTE: The letter numbers the issues 1 through 5, the discussion orders them 1 through 4).

I. THE CARBON PLANT SHOULD BE PERMITTED AS PART OF THE PHILLIPS RODEO REFINERY.

The comment states that the Facility A0022, Tosco Refining, Contra Costa Carbon Plant, is part of Facility A0016, Phillips 66 Company-San Francisco Refinery for purposes of Title V permitting. The District has obtained maps of the parcels owned by each facility and has determined that the two facilities are contiguous. This is not immediately obvious because the two plants are several miles apart, separated by open space. The District initially assumed that the facilities were not contiguous because the actual operations are separated by several miles. However, as you point out, the property lines for the two facilities are in fact much closer together. If the facility properties are not contiguous, they are at least adjacent, separated only by a railroad line. Moreover, the carbon plant takes most or all of its raw material input from the refinery. On closer examination, the District believes the proximity and nexus between the two facilities is sufficient to render it a single major source for Title V purposes.

Since the District did not consider that the facilities were contiguous at the time that the Tosco Refining permit was proposed, it did not discuss the possible regulatory impacts of this in the statement of basis. The comment recommends that the District should withdraw the proposed permit and re-issue it as part of the proposed Title V permit for Phillips Rodeo Refinery. Because the District finds the regulatory impacts of the single source finding to be minimal, it finds no need to re-propose the permit. Moreover, the District believes the most practical course is to issue separate stand-alone Title V permits to the refinery and the carbon plant. The two permits will take into consideration all regulatory consequences that flow from the finding that the facilities constitute one major source for federal CAA purposes, but would issue at different times, and would designate different responsible officials. EPA guidance allows for this sort of subdivision where it makes practical sense as it does here, given that the two facilities have historically been managed separately. The District has recently taken the same approach in proposing two permits for Valero Refining and Valero Asphalt, which are also contiguous facilities with one owner.

As noted above, the District has re-examined the applicability of all potentially relevant requirements, and has found only one that applies due to the single-source finding. Following is an analysis of the applicability of various requirements that could be triggered at Tosco Refining because the facilities are contiguous. You cite the following as potentially applicable:

40 CFR 60, Subpart J
40 CFR 60, Subpart K
40 CFR 60, Subpart Ka
40 CFR 60, Subpart Kb
40 CFR 60, Subpart QQQ
40 CFR 61, Subpart FF
BAAQMD Regulation 7
BAAQMD Regulation 8, Rules 1, 5, 8, 18, 28
BAAQMD Regulation 9, Rule 10
Refinery MACT

Although the comment does not provide rationale specific to the applicability of any of these standards, the District has examined the applicability of each standard, as well as all potentially applicable District rules, based on available information.

<u>40 CFR 60, Subpart J, Standards of Performance for Petroleum Refineries</u>
This subpart applies to fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices and Claus sulfur recovery plants. Since Tosco Refining does not have any “affected sources,” as defined in Subpart J, the facility is not subject to this subpart.

40 CFR 60, Subpart K, Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978

The applicability for this standard is not affected by the facility's association with a petroleum refinery. The facility has no tanks that are subject to 40 CFR 60, Subpart K.

40 CFR 60, Subpart Ka, Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984

The applicability for this standard is not affected by the facility's association with a petroleum refinery. The facility has no tanks that are subject to 40 CFR 60, Subpart Ka.

40 CFR 60, Subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984

The applicability for this standard is not affected by the facility's association with a petroleum refinery. The facility has no tanks that are subject to 40 CFR 60, Subpart Kb.

40 CFR 60, Subpart QQQ, Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems

Although the facility is associated with a refinery, the facility itself is not a petroleum refinery and does not contain any "affected facilities located in petroleum refineries" as defined in Subpart QQQ, and therefore, it is not subject to 40 CFR 60, Subpart QQQ.

40 CFR 61, Subpart FF, National Emission Standard for Benzene Waste Operations

This standard applies to hazardous waste treatment, storage, and disposal facilities that treat, store, or dispose of hazardous waste generated by chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. The waste streams subject to the provisions of this subpart are any streams containing benzene-containing hazardous waste. Tosco Refining does not produce benzene-containing hazardous waste, and therefore, is not subject to 40 CFR 61, Subpart FF.

Refinery MACT, 40 CFR 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

Although the facility is associated with a refinery, the facility itself is not a petroleum refinery, and therefore, it is not subject to 40 CFR 63, Subpart CC. Moreover, the facility does not have petroleum refining process units as defined in 40 CFR 63.641, and does not have any related emission points listed in 40 CFR 63.640, paragraphs (c)(1) through (c)(7).

Refinery MACT, 40 CFR 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants For Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

Although the facility is associated with a refinery, the facility itself is not a petroleum refinery, and therefore, it is not subject to 40 CFR 63, Subpart UUU. Moreover, the facility does not have any catalytic cracking units, catalytic reforming units, or sulfur recovery units.

BAAQMD Regulation 7

Regulation 7 is included in Section III, Generally Applicable Requirements, but is not triggered until the APCO receives odor complaints from ten or more complainants within a 90-day period. The applicability for this standard is not affected by the facility's association with a petroleum refinery.

BAAQMD Regulation 8, Rule 1, Organic Compounds, General Provisions

Regulation 8, Rule 1 is included in Section III, Generally Applicable Requirements. The applicability for this standard is not affected by the facility's association with a petroleum refinery.

BAAQMD Regulation 8, Rule 5, Organic Compounds, Storage of Organic Liquids

The facility is not subject to Regulation 8, Rule 5 because it has no tanks that contain organic liquids with a vapor pressure over 0.5 psia except for the tanks at the gasoline dispensing facility, S-24, which is subject to Regulation 8, Rule 7, Organic Compounds, Gasoline Dispensing Facilities. The applicability for this standard is not affected by the facility's association with a petroleum refinery.

BAAQMD Regulation 8, Rule 8, Organic Compounds, Wastewater (Oil-Water) Separators

The facility is not subject to Regulation 8, Rule 8 because it has no oil-water separators. The applicability for this standard is not affected by the facility's association with a petroleum refinery.

BAAQMD Regulation 8, Rule 18, Organic Compounds,

The facility is not subject to Regulation 8, Rule 18 because it does not handle organic gases or liquids and therefore has no equipment that could have leaks of organic compounds.

BAAQMD Regulation 8, Rule 28, Organic Compounds,

The facility is not subject to Regulation 8, Rule 28 because it does not handle gaseous organic compounds, does not have pressure relief valves, and is not a petroleum refinery, although it is associated with a petroleum refinery.

BAAQMD Regulation 9, Rule 10

Regulation 9-10 does not apply to the carbon plant. Regulation 9-10 requires that NOx emissions from refinery boilers, steam generators, and process heaters, on a refinery-wide basis, must be below 0.033 pounds NO x per million BTU of heat input. The District has determined that none of the combustion devices at Phillips Carbon are boilers, steam generators, or process heaters. As a result, they are not included in the refinery-wide average for determination of compliance.

A boiler or steam generator is defined in 9-10-202 as "Any combustion equipment used to produce steam or heat water." The rotary kilns at Phillips Carbon are used to calcine coke; off-gases from calcining are sent to the pyroscrubbers, where organics and sulfur compounds are oxidized fully. Until 1983, the hot gases from the pyroscrubbers were vented directly to the atmosphere. The kilns and pyroscrubbers were not designed with any intention to produce steam or heat water.

In 1983, the facility installed heat recovery equipment. The hot stack gases were used to make steam, which generates electricity in a steam turbine.

In closing this section, you state that the San Luis Obispo Air Pollution Control District "recognized the applicability of the Petroleum Refinery MACT standard to the Santa Maria coke calcining plant when it issued a Title V permit to the Santa Maria refinery." To the extent that the comment asserts that the Petroleum Refinery MACT has been applied to coke calcining operations at the Santa Maria refinery, the District believes this statement is incorrect. The District's understanding is that the Santa Maria coke calcining operation does not have activities that are subject to the MACT.

Title VI, Ozone Depleting Compounds

You do not mention Title VI in this section of the comments. Instead, you mention it in Section II.B. The facility is subject to this standard due to its association with the refinery. Although it does not store or use 50 pounds of refrigerant, the refinery does. The Title VI requirements will be added to Section III of the Title V permit for the carbon plant.

II. THE PROPOSED TITLE V PERMIT DOES NOT ASSURE COMPLIANCE WITH APPLICABLE REQUIREMENTS

A. The Plant Should Have Obtained a PSD Permit in 1983, But Did Not

The comment includes a somewhat detailed narrative description of changes at the facility, occurring circa 1983, that you believe should have undergone PSD review and permitting. It goes on to assert that "the District must incorporate each of these requirements (including the terms of any new NSR permits) into the proposed Title V permit before the Title V permit will assure compliance with

all applicable requirements." In partial support of your argument, you cite a 1995 EPA guidance that addresses precisely this topic.

The District is not taking a position at this time as to whether this account of past PSD violations is accurate. The District has not had time or resources to investigate the issue subsequent to receiving this comment. In any case, the District disagrees with your position that the Title V permit may not be issued until these issues are resolved. The flaw in this logic is evident from the phrasing of the comment itself, in that the applicable requirements with which you believe the permit must assure compliance do not exist. The 1995 EPA guidance cited in support of your position and the very language from that guidance cited, supports the District's position. EPA's 1995 guidance endorses the view that the Title V permit should issue even though there has not been a thorough investigation and correction of all past preconstruction permitting violations.

Moreover, while the facts described may, upon further investigation, ripen into an enforcement response and subsequently a PSD review process, experience with enforcement of past PSD violations shows that an enforcement investigation, followed by a PSD permitting process, would likely not occur quickly. The Title V permit does not provide any sort of shield against enforcement for past PSD violations, so an enforcement investigation would not be in any way hampered by issuance of the Title V permit. The result of following your recommendation would be merely to delay effectiveness of the Title V permit during the pendancy of what could be a lengthy investigation and enforcement process. This, in turn, would delay the benefits of that permit (e.g., increased monitoring and reporting, public access to the resulting information, citizen enforcement). The District therefore believes that the Title V program would not be well-served by delaying issuance of the permit in this situation.

B. The Permit Does Not Incorporate All of The Requirements of Existing Permits or All Applicable District Regulations

The comment questions why the permit does not contain Sources S41, S42, Sodium Carbonate Storage Silos, and A14, A15, Dry Sorbent Injection Systems. Thank you for pointing out this error. The facility was issued an Authority To Construct (A/C) for these sources and abatement devices on February 6, 2001. The sources have been built and will be included in the final permit. We do not consider this a substantive change to the permit since the emissions impact of these sources is small, calculated at 0.118 ton PM10/year, and the facility is already subject to the applicable requirements that will appear in the permit for these sources.

You note that the Title VI, Ozone Depleting Compounds, should have been cited in the permit. The requirements for ozone-depleting compounds need only be cited if the facility has 50 pounds of refrigerant or more, per EPA. This

is one case where association with the refinery will make the facility subject to a requirement to which they would not be subject otherwise. The Title VI requirements will be added to Section III of the carbon plant permit, as they are in the refinery permit.

The facility is not subject to the following rules because they do not conduct any operations that are subject to these rules:

- Regulation 8, Rule 4, General Solvent and Surface Coating Operations
- Regulation 8, Rule 15, Emulsified and Liquid Asphalts
- Regulation 8, Rule 19, Surface Coatings of Miscellaneous Metal Parts and Products
- Regulation 8, Rule 40, Aeration of Contaminated Soil and Removal of Underground Storage Tanks
- Regulation 8, Rule 47, Air Stripping and Soil Vapor Extraction Operations

Exempt source S-13, Asphalt Storage Tank, contains a heavy oil (Stevaal 150) that is used as a dedusting agent. It does not contain asphalt. It is a heavy oil that is applied to the product through a spray system in the product screw conveyors. The purpose is to facilitate clean handling of the product. The exempt source will be re-named S-13, Dedust Storage Tank, in the District's databank to reduce confusion. Thank you for your comment.

You state that the following generally applicable requirements are missing from the permit:

- Regulation 7, Odorous Substances
- Regulation 8, Rule 51, Adhesive and Sealant Products
- Regulation 11, Rule 2, Hazardous Air Pollutants, Asbestos Demolition, Renovation, and Manufacturing
- Regulation 12, Rule 4, Sandblasting

This is not correct. The above rules are cited in Section III of the permit, Generally Applicable Requirements.

The following rule will be included in Section III in case the facility does any exempt solvent cleaning that is subject to the rule:

- Regulation 8, Rule 16, Solvent Cleaning Operations

The facility does not have any permitted sources that are subject to the rule.

C. The Permit Does Not Incorporate Applicable Acid Rain Program Requirements

You assert that the Title V permit is flawed by not applying Acid Rain requirements to the facility because it has the potential to sell more than 219,000 Mw-hrs of gross electric output over a 3-year period, and because the District has not obtained records proving that it has not. Part 72 applicability is based on actual, not potential, sales of electricity. The District believes it is

highly unlikely, given its electricity-producing capacity, that the facility meets the Part 72 applicability threshold for sales, and therefore has not required the production of records. Other than asserting a sufficient potential to meet this threshold, and pointing out that a facility with similar operations and electricity-selling capacity did meet this threshold, you have not suggested a reason to question this initial judgment. The District has obtained information from the facility indicating that, for a recent three-year period, 1998-2000, annual sales of electric power were 153,000 to 156,000 MW. This figure correlates well with the capacity of the steam generating, which the District understands to be approximately 25 MW. This figure is approximately 70% of the applicability threshold, and supports our view that a more thorough investigation into applicability is not warranted .

D. The Permit Does Not Incorporate Applicable New Source Performance Standards

The District included an extensive discussion of the applicability of Subpart Da of the Standards of Performance for New Stationary Sources in the Statement of Basis. The determination that the facility was not subject was based in large part on EPA's 1983 determination that petroleum coke is not a fossil fuel for the purposes of the standard. Whether petroleum coke is a "fossil fuel" as defined in the NSPS is a close question, potentially subject to more than one reasonable interpretation. Since the NSPS is an EPA-promulgated regulation, it is appropriate to give significant weight to EPA's interpretation of that standard. However, for a standard such as the NSPS that focuses on applying pollution control technology at the time a facility modifies its operations, the important interpretation is the one that was in effect at the time a modification occurred. The District believes EPA's 1983 interpretation is reasonable and supportable, and therefore that the regulated community was justified in relying upon it. That EPA held the interpretation for 16 years further supports this. The NSPS is manifestly not a "retrofit" standard, and it would be unfair to the facility to require it to retrofit to install controls required by subparts D and Da due to a change in EPA's interpretation that occurred 16 years after the modification.

III. THE PROPOSED TITLE V PERMIT DOES NOT INCLUDE ADEQUATE ENFORCEABILITY, MONITORING, OR RECORDKEEPING REQUIREMENTS.

You assert four "generic" comments on practical enforceability. First, you assert a need for additional specification of the regulatory basis for permit conditions. The District has attempted to strike a balance such that the reader can find the regulatory basis for permit conditions, without overly cluttering the permit with regulatory references. The District believes the basis for requirements in the permit is readily discernable, and has supplied specific

references where it is not. You do not provide specific examples of requirements for which the regulatory basis cannot be discerned.

Second, you believe that the use of the phrase "above conditions" is unclear, but do not cite an example. The District is unaware of an example of this that renders a permit condition not practicably enforceable. Nevertheless, specific references have been added to improve clarity.

Third, regarding your assertion of insufficient measurement requirements, and the specific example offered, the permit places the burden on the operator to support its records with appropriate measurement data. For instance, part 9 of Condition 10438 requires the operator to record petroleum coke throughput. If the operator fails to keep records demonstrating petroleum coke throughput, it would be in violation of the permit. See further discussion below under conditions 10438 and 17540.

Fourth, you object to imposition of qualitative requirements such as "good working conditions" and "ensure proper operations." Conditions such as these have a long history of use in air pollution regulation. Such requirements are imposed where, for whatever reason, more specific prohibitions are not possible or practical. Lacking the information needed to impose a more specific directive, agencies sometimes impose qualitative requirements that are designed to be flexible. These more qualitative standards provide a regulatory tool that may be invoked for situations that cannot be predicted.

The District acknowledges that such a qualitative standard is not practically enforceable in the sense that the operator may be readily cited for failure to comply. Its utility lies, not in its use as an enforceable limit, but in its value as a tool to encourage compliance.

Because such conditions are too vague to meet EPA's definition of "enforceable as a practical matter," they are being designated as not federally enforceable. Because they are still of value in improving compliance, they will be retained as state-only requirements.

Part III. Generally Applicable Requirements

The comment takes issue with the District's finding that the permit is sufficient to assure that sources exempt from District permits will comply with generally applicable requirements. It states that these exempt sources are undefined, and that the District must demonstrate that exempt sources will not violate the generally applicable requirements.

As explained in the statement of basis, sources exempt from District permitting are described by class, and more specifically by emissions potential thresholds that exclude the smallest emissions points at a facility. This approach to

permitting, applied historically by the District, is based on the recognition that the resources to be invested in compliance monitoring are limited and that there would be diminishing returns to monitoring, recordkeeping, and reporting designed to assure compliance by every emissions point with every requirement. Accordingly, the Title V permit is written based on what the District believes to be an intuitively reasonable assumption – that the possibility that the smallest emissions points do not pose a significant threat to violation of the most general standards and therefore do not warrant imposition of specific monitoring, recordkeeping, and reporting. The District maintains that it is reasonable to assume that, for instance, solvent degreasers, even when considered collectively, will not cause a violation of a 20% opacity standard, and that to require monitoring, recordkeeping, and reporting to verify this would be a misallocation of resources. Moreover, the type of analysis the comment presumably calls for to support this approach would itself be wasteful. The District believes this approach, which is consistent with EPA guidance and with how other agencies have approached Title V permitting, is simply a common sense way to focus resources on real air pollution concerns.

The foregoing explanation does not mean that smaller sources should or do go unregulated. Many District regulations apply to small emissions sources, such as valves and flanges, and these regulations typically impose rigorous monitoring, recordkeeping, and reporting requirements by which compliance can be verified. Nor does it mean that the District will not respond to reasonable requests to explain why a particular requirement does not apply. In responding to this comment, the District is merely explaining why it is neither practical nor necessary in the Title V permit to craft detailed provisions addressing how the most generally-applicable District regulations apply to the smallest emissions units.

The permit lists the generally applicable requirements. The District is always open to re-evaluation of this approach where specific concerns are presented. Where there is a significant likelihood that exempted sources may violate a generally applicable requirement, the permit can be revised to better assure compliance.

Condition 136, parts 5a, 5b, 5d, and 5g:
The comment appears to confuse the word “condition” and the phrase “the above conditions.” Section C.VII of the Statement of Basis explains that each permit condition is identified with a unique numerical identifier, up to five digits. The parts of the condition are also identified numerically, so that each part has a unique identifier, such as “Condition 136, part 5a.” The recordkeeping in part 5 of Condition 136 refers to the monitoring in part 3. Parts 5a and 5b will be amended to say “…as prescribed in part 3 of this condition.” instead of “…as prescribed in Condition No. 3.” In every other case, where a condition states “…the above condition…”, it refers to the unique condition that contains the phrase. The District believes the permit is clear in this regard.

Condition 136, part 5h:
Condition 136, part 3, requires a continuous emission monitor to measure the concentration and mass emission rate of SO2. For most combustion devices, the flowrate can be determined by measuring the fuel input and calculating the flowrate. In this case, the amount of coke that is burned is unknown. Therefore, a flow monitor is necessary to determine the mass emissions. The facility has installed a flow monitor and part 5h requires records of the flowrate. However, there is no explicit condition that requires the owner/operator to measure the flowrate. An explicit requirement to measure the flowrate will be added to part 3 and the recordkeeping requirement in part 5h will be changed to hourly to match the mass emission rate records.

Condition 136, part 5c:
You state that the facility is not required to maintain records of natural gas usage. The facility does use fuel meters to measure natural gas usage. Condition 136, 3a will be added to require use of the meters to record natural gas usage.

Condition 136, part 6:
You state that a condition requiring that the permit holder keep the baghouses in "good operating condition" is unenforceable. See response in Section III under fourth "generic" comment.

Condition 136, parts 8 and 9; Condition 10438, parts 4 and 5; Condition 10439, parts 4 and 5; Condition 17539, part 4:
You state that the pressure drop monitoring ought to be tied to an emission limit or process rate. The requirements for which pressure drop monitoring is imposed are the opacity, grain loading, and process weight requirements of Regulation 6. In Section VII of the permit, the monitoring is cross-referenced to these limits. However, Regulation 6 does not impose periodic monitoring on all sources that are subject to the regulation. Therefore, it is not proper to use Regulation 6 as a basis.

"Cumulative Increase" was used because it is a condition imposed by the APCO that limits a source's operation to the operation described in the permit application pursuant to BAAQMD Regulation 2-1-403. The operation described in the permit application would be an operation that complies with the requirements of Regulation 6. A more proper basis is Regulation 2-1-403, which allows the District to impose monitoring to ensure compliance, or Regulation 2-6-409.2, which requires periodic monitoring in the permit, or Regulation 2-6-503, which allows the District to impose monitoring to determine emissions. The basis will be changed to Regulation 2-6-409.2.

Pressure drop monitoring is a standard method of monitoring baghouse performance. If the pressure drop is too high, the bags are plugged. If the

pressure drop is too low, it is likely that a bag or bags are ripped. Operating within a defined range ensures that the baghouse is operating properly, and that the emissions limit is therefore being met. The pressure drop is measured with a manometer, a device that measures the difference between the high pressure on the upstream side of the baghouse, and the lower pressure on the downstream side of the baghouse.

If a facility has not been required to monitor the pressure drop in the past, it is inappropriate to determine the pressure drop range before the permit holder installs the manometers. After the manometers are installed, the permit holder will observe the pressure drop range during normal operation, and determine the pressure drop range. Since a normally operating baghouse will easily comply with Regulation 6-301 and 6-310, pressure drop monitoring is sufficient to assure compliance.

You state that part 9 requires that the pressure drop be monitored at all times. This assumption does not reflect the intended operation. The manometer will be operating at all times, but the pressure drop will only be observed and recorded once per week. This is periodic monitoring, not continuous monitoring. The permit condition will be amended to reflect the intended operation.

Condition 136, part 10; Condition 10438, part 6; Condition 10439, part 6; Condition 17539, part 5; Condition 17540, part 1:
You state that EPA Method 9 is incompatible with the District particulate standard. The District concurs and the EPA method will be deleted from these conditions.

Condition 10438, Part 7; Condition 10439, Part 7; Condition 17539, part 6:
You state that the condition requiring an annual inspection of the baghouse to ensure proper operation is too vague to be meaningful or enforceable. The inspection requirement is intentionally vague. Baghouses vary in their configuration of hardware, and the District lacks the engineering expertise and specific knowledge to prescribe a detailed method for inspection of a particular unit. Some aspects of baghouse inspection, such as checking the integrity of the fabric, are obvious and need not be prescribed. The pressure drop monitoring required in the Title V permit should be sufficient to provide a reasonable assurance of compliance. The annual inspection requirement is an additional measure of assurance, and is being retained in the same form as proposed. Given that other methods are in place to detect a malfunction of the baghouse, it is in the facility's interest to conduct the inspection in as thorough a manner as possible.

Condition 10438, Part 9; Condition 17540, part 3:
You state that there is no requirement to measure throughput of coke at the sources subject to this condition, and that the phrase "per source" is not

definitive enough to be enforceable. The permit requires that the facility keep records of coke throughput for each "source," which are clearly defined in the permit. The District knows of more than one valid method for recording coke throughput. For instance, the facility may weigh the material, multiply conveyor capacity times hours of use, use manifest records, or count truck deliveries. There may be other methods the District does not know of. Accordingly, the permit gives the facility discretion to choose the method. If the facility chose a method that did not accurately reflect actual throughput, or if it failed to keep the raw data, the recordkeeping requirement would be violated.

IV. THE DISTRICT FAILED TO ALLOW FOR MEANINGFUL PUBLIC REVIEW ON THE PROPOSED PERMIT

The comment asserts that the District failed to provide meaningful public review of the proposed permit. In support, you cite 40 C.F.R. § 70.7(h)(2) for the proposition that a permitting authority must provide access to all supporting materials, and go on to assert that "supporting materials," in this case, must include the facility's NSR permit files located at the District. As explained below, the District believes that public review of the proposed permit was adequate.

Although the comment applies the language of Part 70, and in particular section 70.7(h)(2), the more appropriate governing provision is District Rule 2-6-412.2 which, in the District program approved by EPA pursuant to Title V, corresponds to 40 C.F.R. § 70.7(h)(2), and requires that the public notice for a proposed Title V permit list, among other things, "a District source for further information." The difference in language is minor. However, regarding both 2-6-412.2 and Section 70.7(h)(2), it is important to note that both provisions describe the required content of a **public notice**, and neither describes the types of information that must be made available during the public comment period. The District agrees that public review during the comment period must be meaningful, and that this entails access to relevant supporting materials during the comment period. Where opinions appear to diverge is over what constitutes relevant supporting materials.

The comment recounts in detail your efforts to access the District's NSR files during the public comment period, but offers little explanation for why you believe those files are important to review of the Title V permit. Because the District believes this issue is resolved based on the latter point, it will not discuss the former, the facts of which are not fundamentally disputed. However, your description of what information you believe you needed is somewhat unclear, and requires the reader to make certain inferences.

The comment states that without immediate (i.e., from the first day of the comment period) access to the District's NSR permit files, it cannot be

determined whether "(1) all applicable requirements from a facility's existing NSR permits have been included [in the Title V permit], and (2) all applicable requirements that are *not* identified in the facility's existing NSR permit have been included [in the Title V permit]" (emphasis in original). Addressing the second point first, this articulates a non sequitur. Presumably, the reference there is to requirements that, by their nature, do not normally find their way into District NSR permits, and that are normally found elsewhere. Though no examples are provided, the District assumes an example might be a recently-promulgated federal emissions standard. Obviously, efforts to verify inclusion of such requirements in the Title V permit would not require access to permit files if those requirements are not normally found there.

The first point deserves more discussion. There, the comment appears to be advancing at least one of the following arguments: (1) you needed to review the NSR permit files to verify whether all terms of all existing NSR permits were accurately incorporated into the Title V permit; (2) you needed to review the NSR permit files to determine whether any requirements should have been found applicable that have not been; (3) you needed to review the NSR permit files to determine whether, as an original matter, the NSR permits were properly determined and issued. The District will respond to each in turn.

1. Accurate Incorporation of Existing District Permits

A member of the public seeking to determine whether all terms of all District permits[1] have been incorporated into the Title V permit can easily obtain access to these. The terms of all existing District permits that were issued by the District are maintained in an electronic database. The District permits are incorporated into the Title V permit with an explanation of any changes that are made by the District in this process. The Statement of Basis for the Tosco Carbon Title V permit explains this method of incorporating District permits in text that is standard to all District Title V statements of basis.

By contrast, District permits files contain documents that explain the origin and history of the permit. If a District permit derived from an application for permit to construct, the permit file will typically include the application, documents relevant to the District's evaluation of the application, and may also contain one or more historical versions of the actual permit. Any version of the most recent version of the District permit found in the file would be a printout of, and therefore identical to, the permit that was incorporated into the proposed Title V permit.

[1] The comment uses the acronym "NSR" permit as shorthand for any type of preconstruction permit (e.g., NSR, PSD) issued by the District. District-issued preconstruction permits become denominated as "operating permits," or simply "District permits," once the facility is constructed and operating. In contrast to Title V permits, which address all operations at a facility, "District permits" typically pertain to a discrete operation within a facility. For simplicity, "District permit" will be used in this discussion to refer to any permit, other than a Title V permit, issued by the District.

From this it follows that a member of the public seeking only to determine whether all terms of all District permits were incorporated into the proposed Title V permit would gain no better information reviewing the District permit files than from reviewing the text of the proposed Title V permit itself.

This statement assumes that the District has faithfully and accurately transferred a copy of the electronic files that constitute the applicable District permits into the electronic file that constitutes the proposed Title V permit. A member of the public may legitimately want to verify that this has been done correctly. Relevant to the comment, the District offers two observations. The first is that a presumption of agency regularity and integrity is appropriate here. In other words, it should be presumed that the District will perform this ministerial act correctly. While such a presumption should not be absolute, it should be strong enough to conclude that extraordinary and questionably relevant procedures – such as immediate access during the comment period to all District permits files for a plant – should not be requisite to a conclusion that public review was meaningful.[2] The second point is that if after Title V permit issuance it is determined, by whatever means, that a District permit condition was inaccurately or incompletely incorporated into the proposed Title V permit, this would be grounds for finding a "material mistake" in the issuance of the permit, and so would be cause for mandatory permit reopening under either District Rule 2-6-415.3 or 40 C.F.R. §70.7(f)(1)(iii).

2. The Title V Permit as an Opportunity to Determine Whether Additional Requirements Apply

A member of the public could claim an interest in access to information to determine whether requirements other than those described as applicable in the proposed Title V permit should apply. It should be noted at the outset that there is considerable difficulty in defining this set of information, and, even if that could be done, it may be impossible as a practical matter for the District to produce it. Information relevant to determining applicability varies widely, and may include considerations such as the type of operation, start date for a unit, unit size, capacity, the type or quantity of materials used, or the quantity and characteristics of emissions. The information examined by the District in determining applicability often reflects a balance of the likelihood a requirement may apply and the effort that would be required to obtain relevant information. Apart from these situation-specific considerations, there is generally no requirement that the District record the basis for its determinations that requirements do not apply. As a result of the forgoing, information relevant to a

[2] Relevant to this point, the comment on page 25 of the letter cites an instance where a public comment on a District Title V proposed permit has led to identification of previously overlooked emissions, issuance of a new District permit for that source of emissions, and revision of the proposed Title V permit. This was not a case of the District overlooking or mistranslating a previously issued District permit.

determination that a particular requirement does not apply may or may not exist in District files.

Other than where a shield is provided, there is no requirement under Title V for the District to affirmatively demonstrate why certain requirements are not applicable. The understanding of the District is that the uniform practice among Title V permitting authorities is to provide a rationale in connection with the Title V permit that addresses requirements that do apply and how compliance is being reasonably assured, and is not to address why every requirement that might apply, does not. A member of the public may request any information he or she believes is in the possession of the District, including information relevant to determining whether additional requirements may apply. Pursuant to the Public Records Act, the District will respond to any request that describes an identifiable agency record.[3] However, since a justification for non-applicability is not required under Title V, it should follow that the public comment period is not flawed because the permitting authority does not provide access to a set of information that explains why requirements other than those in the permit do not apply.

As noted, different considerations arise when a non-applicability shield is provided. A finding under 2-6-233.1 should be supported by adequate rationale. Conceivably, there could be a situation where failure to provide access to supporting information for such a finding undercuts the meaningfulness of public review. The District does not read the comment to assert that this has occurred here. The importance of the non-applicability shield to this discussion is primarily what it implies for the situation where no such shield is provided. For that situation, issuance of the Title V permit in no way impedes the ability to later reach a determination that a requirement applies, and even to enforce that requirement outside of the Title V permit. This is consistent with the idea that, apart from an explicit non-applicability shield, determinations that other requirements do not apply are not necessarily at issue in Title V permit, and the public comment period is not flawed by lack of contemporaneous access to a set of information that a member of the public deems relevant to such determinations.

3. The Title V Permit as an Opportunity to Review Previous Permitting Decisions

The comment can also be construed as also raising a third argument – that access to the District permit files is necessary for a meaningful public comment period because the public must be able to review whether permit decisions from

[3] It bears emphasis that the District in no way denies the public's right to gain access to information under the PRA. What the District responds to here is the argument presumably put forth by this comment that some set of information relevant to non-applicability should have been provided at the commencement of the public comment period.

the past were appropriately made. The District's response is that although the public may raise issues regarding past District permitting decisions, and even may do so contemporaneous with the issuance of a Title V permit, issues regarding past permitting decisions are irrelevant or, at most, tangential to the determinations at issue in the Title V permit. It follows that the ability to review materials that a member of the public deems necessary to evaluate past permitting decisions is not essential to a meaningful public comment period on a Title V permit.

As fairly described in the comment, the purpose of the Title V permit is to "incorporate all federally applicable requirements for a source into a single permit." See, CAA § 504 ("Each permit. . . shall. . . assure compliance with applicable requirements"); 40 C.F.R. § 70.6(a)(1). Issuance of the Title V permit is not intended to be an exercise in questioning the basis of existing requirements, such as previously issued permits. The question of whether and to what extent past permitting decisions can be revisited is complex. What is clear, however, is that the Title V program exists for a different purpose. It should be equally clear, then, the public comment period on the Title V permit is not flawed by virtue of a failure to allow sufficient time or records access to reassess previously issued permits that are applicable requirements in the Title V permit.

Indeed, to conclude otherwise would be to posit that Congress intended the unachievable. The comment complains that "two days is not an adequate time to review a voluminous and complex set of permitting files, such as the files for the Carbon plant." One could credibly claim that such a review could not be adequately completed in 30 days – the period for public comment required in Title V and Part 70 and, notably, the normal period for public comment on a single, stand-alone preconstruction permit. The District acknowledges that a thorough review of past permitting decisions for a facility such as the Tosco Carbon plant is a daunting task for any public reviewer. Yet the Title V program is populated nationally by hundreds of facilities on the order of complexity of the Tosco plant, which itself is of only moderate complexity compared to the typical petroleum refinery or chemical plant. What this illustrates is not that the public comment period on the Tosco Title V permit was inadequate, but that the comment attempts to shoehorn into the Title V public comment period an exercise that was never intended for it.

The District will not address here, because it does not need to, the question of whether a past permitting decision can be challenged long after the permit is final. The more important point, for present purposes, is that the answer to this question does not change substantially upon issuance of the Title V permit. Just as importantly, the opportunity to determine, long after the fact, that a modification should have gone through preconstruction review, should remain

the same even after a Title V permit issues.[4] This is because Title V permits issued by the District do not provide a broad shield against discovery and enforcement of preconstruction permitting violations. This analysis pairs naturally with the preceding discussion regarding what constitutes essential supporting materials during the Title V public comment period. The irrelevance of past permitting decisions to the validity of the Title V permit means the ability to revisit those past permitting decisions (or past modifications) even after Title V permit issuance remains undiminished.

By the same logic, the ability to revisit past permitting decisions or past modifications does not somehow ripen only when a Title V permit is proposed. This raises a further point regarding your claims. The District permit files that you deem essential to your review of the Title V permit were available for review in the weeks and months prior to the issuance of the Title V permit. To the extent it was necessary to revisit past permit decisions, it have would have been possible to identify the District permits applying the facility that would become the applicable requirements in the Title V permit and to request access to those files at any time. The files for these permits could have been requested far enough in advance to allow time for the District to produce them and resolve any issues regarding confidential or trade secret information. The District therefore believes that you must take some responsibility for the inopportune timing of your access to District files on the Tosco Carbon plant.

The District values public involvement in its permitting decisions. Public involvement enhances the integrity and accountability of the process regardless of whether pertinent comments are offered on a particular permit. Quite often, public comments result in significant changes to permits. The example raised in the comment regarding the Gaylord Container Title V permit is apt. There, Adams & Broadwell, representing a labor union, identified an engineering study indicating that the equipment associated with the primary activity at a facility – paper production – was a significant source of emissions. Since there was no District permit for this operation, and since the study brought forth was previously unknown to the District, it is doubtful that, as you suggest, the "comment and subsequent correction would not have occurred without access to the facility's underlying NSR permit files." Nevertheless, this is clearly an instance of public involvement leading to a more informed permitting process.

The District is continually working to facilitate and improve the public's access to District records, and would like to find ways to reduce its response time to Public Record Act requests. However, the District in this instance did not fail to provide sufficient access to relevant materials during the public comment period on the Tosco Carbon plant Title V permit.

[4] See the preceding response regarding alleged past PSD violations, and discussion of EPA guidance on this point.

V. CONCLUSION

You state that the District should correct the deficiencies described above and re-issue an amended draft Permit for public review.

Response: The corrections that we have to the permit in response to your comments do not rise to the level of importance that requires a new public notice. The permit will be issued as revised.

Thank you for your constructive comments. Several corrections to the permit have been made as a result of them. If you have any questions about this response, please call Steve Hill at (415) 749-4673.

Sincerely,

Bill deBoisblanc,
Director, Permit Services

SAH:BFC:bfc

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