

June 30, 2003

**Ms. Marcie Keever  
Golden Gate University School of Law  
Environmental Law and Justice Clinic  
536 Mission Street  
San Francisco, CA 94105-2968**

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

**SUBJECT: Response to Comments, dated August 9, 2002, for Proposed  
Major Facility Permit for Valero Benicia Asphalt Plant-  
Facility B3193**

**CONTRA COSTA COUNTY**  
Mark DeSaulnier  
Mark Ross  
Gayle Uilkema  
(Secretary)

**Dear Ms. Keever:**

Thank you for your comment on the proposed permit for the Valero Benicia Asphalt Plant.

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

You correctly note that Title V permits "...shall have a permit to operate that 'assures compliance' with all applicable requirements." You also state that "the permit cannot be finalized because it is deficient..." and identify that the deficiency is that the District has assessed the facility to be in "reasonable intermittent compliance."

**NAPA COUNTY**  
Brad Wagenknecht

The District would like to point out that the Enforcement Division Compliance Report is but one piece of information relied upon by the District in issuing the Title V permit. Compliance reports are signed by the Director of the Enforcement Division, but do not necessarily represent the determination of the District in issuing the Title V permit. Compliance reports are being made available to the public routinely because they are public records and because there has been a routine interest expressed in reviewing them.

**SAN FRANCISCO COUNTY**  
Willie Brown, Jr.  
Chris Daly  
Jake McGoldrick

In issuing a Title V permit, the District must make the findings required in the operating permit program approved by EPA pursuant to its Title V authority. These rules are found in Regulation 2, Rule 6. Regulation 2, Rule 6 does not contain a generalized requirement that permits "assure compliance" with applicable requirements. It does contain a specific requirement at 2-6-409.2.2 that each permit include "testing, monitoring, reporting and recordkeeping sufficient to assure compliance with the applicable requirements." This is the determination the District must make. The Compliance Report prepared by the Enforcement Division informs, but does not constitute, this determination.

**SAN MATEO COUNTY**  
Jerry Hill  
Marland Townsend  
(Vice-Chairperson)

**SANTA CLARA COUNTY**  
Liz Kniss  
Julia Miller  
Dena Mossar  
(Vacant)

**SOLANO COUNTY**  
John F. Silva

**SONOMA COUNTY**  
Tim Smith  
Pamela Torliatt

William C. Norton  
**EXECUTIVE OFFICER/APCO**

On a theoretical level, the comment seems to advance the position that the "assure compliance" standard in Title V means providing an assurance that future violations will not occur. The District knows of no authority supporting this interpretation of Title V, and believes the position is intuitively incorrect. The single largest indicator of whether violations will occur in the future is the actions of the permittee. The single largest disincentive to the occurrence of future violations is the expectation that such violations will be discovered and form the basis of an enforcement action. It follows that even a well-written

permit cannot prevent future violations. A permit can, through imposition of testing, monitoring, recordkeeping, and reporting requirements, be an effective tool for verifying whether violations have occurred and can provide evidence that helps support an enforcement action. Section 2-6-409.2.2, mentioned above, is aimed at accomplishing exactly this. The District believes that if 2-6-409.2.2 is satisfied, then the permit “assures compliance” in the manner intended by Title V.

Attached is a copy of the proposed permit, revised in response to refinery comments, which is being sent to EPA for EPA’s 45-day review. If you have additional questions regarding this permit, please call Brenda Cabral, Air Quality Engineer, at (415) 749-4705.

Sincerely yours,

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William deBoisblanc  
Director of Permit Services

Enclosures

BFC:myl

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