



ENVIRONMENTAL LAW AND JUSTICE CLINIC • SCHOOL OF LAW

April 24, 2001

Via Facsimile and First Class Mail

Carol S. Allen, Air Quality Engineer  
Permit Services Division  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109

Ted Hull, Air Quality Engineer  
Permit Services Division  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109

Re: Public Comment on Title V Proposed Major Facility Review Permit for  
Browning-Ferris Industries of California Inc., Facility #A2266, and Guadalupe  
Rubbish Disposal Company, Facility #A3294

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Dear Ms. Allen and Mr. Hull:

The Golden Gate University School of Law's Environmental Law and Justice Clinic ("ELJC") is a public-interest legal clinic that provides legal services and education on environmental justice issues to San Francisco Bay Area residents, community groups, and public-interest organizations.

Our Children's Earth ("OCE") is an organization dedicated to protecting the public, and specifically children, from the health impacts of pollution and other environmental hazards and to improving environment for the public benefit.

ELJC and OCE hereby submit joint comments on the Bay Area Air Quality Management District's proposed Title V Major Facility Review Permit for Browning-Ferris Industries of California, Inc. ("Browning-Ferris") and Guadalupe Rubbish Disposal Company ("Guadalupe"). We appreciate the invitation of District staff for public comment and the work District staff put into the draft permit. Our specific concerns about the draft permit are set forth below.

I. Failure to Include a Statement of Basis

Title V regulations require the permitting authority to provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory and regulatory provisions). 40 C.F.R. § 70.7(a)(5). The permitting authority shall send this statement to U.S. EPA and any other person who requests it. Id. This statement is often referred to as a "statement of basis" or "introduction." Each Title

V permit must be accompanied by a document that satisfies 40 C.F.R. § 70.7(a)(5). According to a report by an EPA staff member, “this statement is an explanation of why the permit contains the provisions that it does and why it does not contain other provisions that might otherwise appear to be applicable. The purpose of the statement is to enable EPA and other interested parties to effectively review the permit by providing information regarding decisions made by the permitting authority in drafting the permit.” John Cabreza, Memorandum to Region 10 State and Local Air Pollution Agencies, Region 10 Questions & Answers #2: Title V Permit Development. The proposed permits fail to include this section, or one similar to it, and instead sets forth in a general manner the governing law while leaving out altogether the factual basis for the draft permit conditions. On April 18, in a phone conversation with District air quality engineer, we confirmed that the District does not indeed issue statements of basis or other comparable document in either its proposed permits or relevant engineering reports. We believe this omission by the District violates Part 70 requirements. In addition, the lack of this statement makes public participation during the public comment period difficult because the public is not provided with the District’s rationale for the proposed permit conditions. ELJC and OCE ask that the two proposed Title V operating permits be accompanied by statements that comply with 40 C.F.R. § 70.7(a)(5).

## II. Ensuring Compliance and Enforceability

To be enforceable, a permit condition must provide a clear explanation of how the actual limitation or requirement applies to the facility and make it possible to determine whether the facility is complying with the condition. We are concerned that the proposed permit contains language that may render the permit terms potentially unenforceable. For example, language such as “shall keep records ... in a District approved log” is employed several times. In order to ensure enforceability by the public and other interested parties, the permit must either list the recording options that are acceptable to the District (rather than providing that the recording be done in a “District approved log”) or specify exactly what the facility must do to comply with the requirement. ELJC and OCE request that the District either attach a sample log that would be acceptable to the District or otherwise change the proposed permit language to ensure enforceability. If the District attaches a sample, the public would also have an opportunity to comment on its sufficiency.

## III. Monitoring and Record Keeping Provisions

A Title V permit must require the permitted facility to perform monitoring and record keeping that is sufficient to provide a reasonable assurance that the permitted facility is obeying the law. Specifically, all Title V Major Facility Review Permits are legally required to incorporate all applicable record keeping requirements, and, where applicable, records of required monitoring must include the following: 1) The date, time, and place of sampling or measurements; 2) the dates analyses were performed; 3) the company or entity that performed the analyses; 4) the analytical techniques or methods used; 5) the results of such analyses; and 6) the operating conditions existing at the time of sampling or measurement. 40 C.F.R. § 70.6(a)(3)(ii)(A). Reports of all required monitoring must

be submitted at least every six months. Reports are required to identify all instances of deviations from permit requirements and must be certified by a responsible official. District Regulation 2-6-502 and 40 C.F.R. § 70.6(a)(3)(iii)(A).

While the proposed permit contains language requiring the submission of six month monitoring reports and identification of instances of deviations, the proposed permit fails to make clear that monitoring reports are required for all of the conditions for which monitoring is performed.

In other words, language should be included in Section VII that identifies the monitoring reports that are required and included in the six month monitoring reports. We suggest language such as the following: "The source is required to comply with the following monitoring requirements and include such reports in the six month monitoring reports." Such language is necessary to ensure that the District, EPA, permit holder and the public are clear about the monitoring and reporting requirements.

In addition, in Section VII of the proposed permit, a reference should be made to Section IV of the permit. We request that the District add the following sentence: "For a complete list of emission limits, see Section IV."

#### IV. Schedule of Compliance (Browning-Ferris Proposed Permit Only)

All Title V Major Facility Review Permits are legally required to contain a compliance schedule as follows: 1) for applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements; 2) for applicable future requirements that will become effective during the permit term, a statement that the source will comply with such requirements on a timely basis; and 3) a schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance, including a schedule of remedial measures with an enforceable sequence of actions leading to compliance. 40 C.F.R. § 70.6(c)(3) and § 70.5(c)(8)(iii)(A), (B), and (C); District Regulation 2-6-409.10 and 2-6-409.19; District Manual of Procedures (MOP), Volume II, Part 3, 4.5.

The schedule of compliance in the Browning-Ferris provides, in its entirety, as follows:

The permit holder shall comply with all applicable requirements cited in this permit. The permit holder shall also comply with applicable requirements that become effective during the term of this permit.

Browning-Ferris Industries of California Inc., Facility #A2266, Proposed Major Facility Review Permit, Schedule of Compliance, p. 24.

We believe that the District has inadvertently omitted language that it recently had begun to incorporate in the schedule of compliance section. The phrase, "on a timely basis, unless a more detailed schedule is expressly required by the applicable requirement." See 40 C.F.R. § 70.5(c)(8)(iii)(B).

V. Schedule of Compliance (Browning-Ferris and Guadalupe)

OCE requests that the District include a compliance schedule that is specific to the source being issued a permit. For example, Santa Barbara County's Air Pollution Control District in their proposed permit for Venoco Ellwood Marine Terminal used the following language:

- 3.2 Compliance with Applicable Federal Rules and Regulations
- 3.2.7 40 CFR Part 70 (Operating Permits): . . . A full analysis of the EMT (Ellwood Marine Terminal) facility's compliance with the federal Part 70 permitting rules is being made under this permit.

In Venoco's Part 70 permit application 10060 (Forms I and J), Venoco certified compliance with all existing APCD rules and permit conditions. This certification is also required of Venoco semi-annually. Issuance of this permit and compliance with all its terms and conditions will ensure that Venoco complies with the provisions of all applicable Subparts.

Santa Barbara County Air Pollution Control District, Public Draft Permit to Operate No. 8232, Venoco Ellwood Marine Terminal, August 21, 2000, p. 6-7. OCE requests the Bay Area District adopt Santa Barbara County's approach to compliance statements.

As discussed between Helen Kang of ELJC and William deBoisblanc, Director of Permit Services, we understand that the District need not respond to this particular comment, as the District's position has not changed from our previous comments on this matter.

V. Conclusion

ELJC and OCE therefore respectfully request that the proposed permits be rewritten to comply with federal and District regulations.

Thank you for your time and consideration in addressing our concerns. If you have any questions, you can contact us or Helen Kang at (415) 442-6647.

Sincerely,

 Kathryn Lewis, Lynne Saxton / AP

Kathryn Lewis, Lynne Saxton  
Student Clinicians

cc: Amy Zimpfer, Region 9, EPA

Kathryn Lewis and Lynne Saxton are certified students under the State Bar Rules governing the Practical Training of Law Students, working under the supervision of Helen H. Kang, pursuant to the PTLs rules