



Shell Oil Products US

CERTIFIED MAIL

March 27, 2012

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**Subject: Preliminary Comments by the Shell Oil Products US Martinez Refinery
(Plant #A0011) on Proposed Amendments to Regulation 2**

Dear Ms. Lee:

The attachment provides the Shell Oil Products US Martinez Refinery's preliminary comments on the proposed amendments to Regulation 2. This submittal predominantly addresses the proposed changes to Regulation 2 Rule 1 (Permits – General Requirements) and seeks verification and clarification of various comments made by the District at the Workshop and Technical Working Group meetings held February 22, February 28, March 8 and March 20, 2012. Those amendments related to PSD, GHG, PM 2.5 or other Federal EPA requirements are being commented on by the Western States Petroleum Association and the California Council for Environmental and Economic Balance, and Shell also adopts those comments as its own. Shell reserves the right to submit additional comments during the rule development process.

Please contact Gordon Johnson at (925) 313-5131 if you have any questions about this submittal.

Cordially yours,

A handwritten signature in cursive script that reads "Natalie Braden".

Natalie Braden
Manager, Environmental Affairs Department
Martinez Refinery, Shell Oil Products Company US

Attachment

Preliminary Comments by the Shell Oil Products US Martinez Refinery (Plant #A0011) on Proposed Amendments to Regulation 2

General Comment

Shell is concerned that the proposed amendments to Regulation 2-1 that are unrelated to the federal rules changes (PM2.5 et al) include fundamental changes to the existing District permit rules and are not simply clarifications. It appears that these changes will: i) require a significant increase in the number of permits required to be applied for by Shell and the regulated community, ii) add significant expense to potential projects (including environmentally beneficial projects), iii) delay processing times for permits; and, iv) take away vested rights that have been granted to and relied on by Shell in past permits. All of these aspects of the proposed amendments could result in environmentally beneficial projects being delayed, postponed and/or abandoned and have a very real possibility of causing a significant negative impact on the environment, including, but not limited to, a diminished supply of California compliant clean burning gasoline. Specific examples are discussed below and summarized in a table at the end of the document. For all of these reasons, Shell believes that the potential adverse environmental impacts of the proposed amendments should be analyzed in an environmental impact report before they are adopted.

2-1-106 & 2-1-302.2, Limited Exemption, Accelerated Permit Program

New Requirement for Issuance of Temporary Permit to Operate Before Construction is Allowed to Commence

The current rule states that projects that qualify for the Accelerated Permit Program are exempt from the Authority to Construct requirements and may commence construction with the submittal of a certified complete application. Under the revised rule, construction cannot start until a Temporary Permit to Operate is issued by the District upon determination that the application is complete. At the Technical Workshop on February 28th, the District acknowledged that the requirement for a *complete application* (or “*completeness determination*”) in this section is different than a *complete comprehensive review* (or “*complete application*” per Reg 2-1-402) of the application by the District which is normally a very lengthy process.

Shell requests that the difference between these completeness requirements be clarified to avoid unnecessary delays in the Accelerated Permit Program.

Removal of Qualifying Criteria for “Alterations with No Emission Increase” from Accelerated Permit Program

In the current rule, there are three different options for eligibility in the Accelerated Permit Program. These are summarized briefly as:

Option 1

- i. Uncontrolled emissions are less than 10 lbs/day, and
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- ii. Reg 2-5 thresholds are not exceeded, and
- iii. Source not subject to public notice requirements

Option 2 – Replacement of Abatement Device.

Option 3- Alteration with no increase in emissions.

In the proposed rule amendments, Option 3 has been deleted. Consequently, only alterations in which the source's pre-alteration total unabated emissions are <10 lbs/day can qualify for the Accelerated Permit Program. This change virtually eliminates the ability of a refinery to use the Accelerated Permit Program, specifically for emission neutral alterations at sources with pre-existing emissions of greater than 10 pounds. The BAAQMD specifically added Option 3 in the 5/17/2000 Regulation 2-1 revisions to address significant concerns raised by the refining industry about the addition to the rule of the Alteration Permit concept and the new requirement to permit any non-identical change, whether there were emission increases or not. The addition of Option 3 was the result of lengthy discussions with the BAAQMD to develop a workable solution. The removal of this option is a substantive change because it removes the ability of the refining industry to use the Accelerated Program, and is contrary to the past 10 years of permitting practice and interpretation by the District.

There are many occasions in which a refinery might need to use the Accelerated Permit Program for Alterations. For example, during a major maintenance turnaround, a furnace is inspected and a determination is made that a burner needs to be replaced. Identical burners may not be available for installation either because they are no longer available on the market or cannot be acquired immediately. Under the current rule, this project is an alteration (2-1-233.1), and construction would be allowed to commence immediately following submittal of a certified complete application. However, with the proposed changes, this project would not qualify for the Accelerated Permit Program and the applicant would be required to wait until an Authority to Construct is issued, which, based on recent experience, takes an average of 9 months even for projects with no emission impacts. Refinery turnarounds are often identified as a contributing cause of gasoline shortages and resulting high gas prices and are therefore undertaken in the shortest time possible consistent with the safe operation of the refinery (often less than 30 days). Any permitting exercise that extends turnarounds could have significant negative impacts affecting the supply of cleaner burning gasoline.

The Accelerated Permit Program has facilitated the timely construction of emission neutral, emission abatement, and energy efficiency projects which often reduced emissions of greenhouse gas. Some examples are: the installation of ultra low-NOx burners in heaters, reliability improvements in a distillation column to reduce plugging and subsequent flaring and the re-routing of gas oils to reduce SOx emissions. Each of these projects involved sources with unabated emissions > 10 lbs/day. Without Option 3, the Accelerated Permit Program would not be available for such projects and they could be either delayed or abandoned.

In addition, the proposed amendments should make it clear that fugitive emissions exempt under 2-1-128.21 are not considered an emissions increase if a change otherwise qualifies as an Alter project for the purposes of accelerated permitting. This issue was also discussed extensively and

agreed to by District staff during the 2000 rule revisions to allow the use of the Accelerated Permit Program for projects with no emission increase except for the addition of exempt fugitive components.

Shell requests that Option 3 in the regulation not be deleted and that the staff report clarifies that addition of fugitive components exempt under 2-1-128.21 would not prevent an alteration with no emissions increase from using the Accelerated Permit Program.

2-1-233, Alter

The proposed changes to the definition of Alter will dramatically increase the number of permits a refinery will have to obtain. By adding the criteria that a change in throughput or production that may affect air emissions is an alteration and needs a permit, a facility with an existing permit limit that is operating a source at 80% of that limit (e.g. because of a lack of demand or a turnaround) could not increase its operating rates to meet an increase in demand unless it first obtained an alteration permit. This proposed change is contrary to Federal exclusions (see 40CFR 52.21(b)(iii)(f)) which state that throughput changes are not modifications if the change is “*increasing operating hours or production rate (unless restricted by permit).*” The change would impose unworkable operating restraints on a refinery, result in a dramatic increase in the number of permits required, and potentially jeopardize supplies of California compliant clean burning fuels. We do not believe this is the District’s intent.

Shell requests that the District clarify this rule language.

The proposed Alter definition includes:

“The APCO may impose permit conditions in an authority to construct or permit to operate for an alteration to ensure that the change authorized by the authority to construct or permit to operate will not result in a modification under 2-1-234.”

The Alter section has been used historically for projects which do not result in an increase in emissions above permitted limits and for projects that result in a decrease in emissions or are energy saving projects. Examples include emission reduction projects, energy efficiency projects, and projects with no emission impacts. In the last 10 years, permit conditions have not been imposed in permits issued under this section, because the projects did not have emission impacts. Permit conditions should only be required if there is a nexus between a project’s scope and its potential emission impacts. For example an energy efficiency or emission reduction project which clearly has a technical basis supporting such a classification should not require the imposition of permit conditions to “prove” the negative that the project is not a modification. Under any other regulatory context, any condition imposed must be related to a project’s actual or potential impacts. If a facility expects that it will receive constraining and restrictive permit conditions for projects with no increased emission impacts, then it is very likely that such projects would be cancelled or not undertaken to avoid operational constraints that are unrelated to the project and which could be based on unrealistic operating scenarios. This is particularly true when there is no methodology provided for how such conditions would be established.

Shell requests that the definition of Alter be modified to clarify that any conditions imposed must be related to real or potential impacts from a project and that the technical aspects of the change should be taken into consideration prior to imposing permit conditions.

2-234, Modify

The existing definition of Modify states that a project is not a modification if the changes in throughput, method of operation, or physical changes do not result in emissions increases above any applicable permit limit affecting either daily or annual emissions, or throughput or capacity used to estimate the emission level above levels contained in a permit condition, including Major Facility Review (Title V) permit conditions. The proposed amended language limits the exemption from modification to only those permits issued pursuant to Regulation 2-2 or 40 CFR Section 52.21, or limits imposed to avoid Regulation 2-2. No guidance is provided on how to determine if a limit was set to avoid Regulation 2-2. The new language also deletes Title V limits and limits on combined sources (bubble permits) as qualifying for the modification exemption.

Certainty and predictability in permitting are extremely important to Shell and the regulated community. Having a permit limit that allows operation anywhere under the permit limit is essential as refinery operations fluctuate according to product demand. Many of the Shell refinery BAAQMD permit limits, specifically including conditions No. 7618 and No. 12271 of its Title V permit, were issued pursuant to Regulation 2-2 after preparation of an Environmental Impact Report, the application of BACT, and provision of offsets. To provide operational flexibility, the limits imposed by the District are on combined sources (a bubble) and Shell has relied on these permits to operate the refinery and the affected units at any level below the daily and annual combined limits contained in the permits. The District cover letter that accompanied the permit to operate for what is now condition No. 7618 of Shell's Title V permit states that the permit places "...most of the refinery under a "bubble"; for all pollutants except hydrocarbons, this bubble will serve as a baseline for future refinery modifications."

It is of note that the "bubble" limit in condition No. 7618 in particular has onerous provisions for violation of the permit limits the application of which resulted in a 2.8 million dollar fine in 2006. While the penalty provisions will remain, the benefits of the permit would be removed by the proposed new rule. These changes as applied to Shell appear to be an illegal taking of a vested right.

Under the proposed new language, Shell could no longer rely on the "bubble" limits in its existing permits in connection with the modification exemption and the rights granted by the permit would be negated retroactively if the amendments are adopted. Nor could Shell undertake a physical or operational throughput change for any of the sources included in the bubble permit limits if the change would cause an emission increase in emissions from any unit covered by the bubble, albeit below the combined emission limits, without again being subject to BACT and offsets. As a result, the number of future projects or throughput changes that will be deemed modifications will be increased dramatically as well as the expense of such projects. BACT and offset requirements typically add millions, if not tens of millions of dollars to a refinery project. Further, BACT and offset requirements can add at least a year delay to the

issuance of a permit for a project. The increase in expense and the delays will discourage or prevent many projects from being undertaken. As most refinery projects result in a net emission reduction, these amendments could have a significant adverse impact on the environment. Should these amendments be adopted, Shell suggests that they be revised to apply to combined emission limits established after the effective date of the rule amendments only and be clarified to provide that a project will not be deemed a modification if it will not result in the violation of an emission limit contained in a combined source permit.

The District's response to the above issue at the Technical Workshops, was that sources under combined emission limits can rely on Section 2-1-234.2 to avoid being deemed a modification. However, all of the tests of that section are ultimately subjective and their application is at the discretion of the District. Section 2-1-234.2 does not provide the certainty or predictability needed to operate a refinery.

The proposed changes to the definition of Modify are not clear as evidenced by disagreement among staff at the Technical Workshops on their meaning. The rule language must be very clear. We request clarification of the following: ability of a source to use its maximum capacity and not be limited by historical operating levels; ability of sources to continue to convert hourly and daily limits to daily and annual limits; and clarification that when assessing if a change is a modification or not, that permit limits are not required on pollutants that are not germane to the proposed project. Clear rule language and specific examples in the staff report will help both the regulated community as well as District permit engineers.

Summary

Section	Comment
2-1-106, Accelerated Permit Program	Add language is to clarify the difference in the “completed application” definition for the initial project review versus the final permit issuance.
	Do not delete language allowing projects to be considered under the Accelerated Permit Program if they are deemed “Alterations with No Emissions Increase.”
	Document in Staff Report that projects meeting “Alterations with No Emissions Increase” can qualify for the Program even if exempt (under 2-1-128.21) fugitive components are installed as part of the project.
2-1-233, Alter	Clarify the language that requires an Alter permit if there is a change in throughput or production rate.
	Add language to the Alter definition stating that any permit conditions imposed must be related to a project’s impacts and that the actual technical aspects of the change should be taken into consideration prior to imposing permit conditions.

2-1-234, Modify	<p>Do not delete the following paragraph:</p> <p><i>For the purposes of applying this definition, an hourly limit or capacity may be converted to a daily limit or capacity by multiplication by 24 hours/day; a daily capacity may be converted to an annual capacity or limit by multiplication by 365 days per year.</i></p>
	<p>Provide guidance in the staff report and clarification in the rule language on how to determine if a limit was set to avoid Regulation 2 Rule 2. Clarify that permit limits are not needed on every pollutant to use 2-1-234.1 to determine if a change is a modification or not.</p>
	<p>Delete the new language in 2-1-234.1 that prohibits use of combined source permit limits in determining whether or not a modification has occurred.</p>
	<p>Clarify that the intent of 2-1-234.2 is to allow a source to utilize its effective maximum capacity and not be limited by historical operating levels. Delete use of historical operational records as a specific option to determine the maximum operational capacity. If a source wishes to use historical operational records, this can be supplied as “other reliable technical information describing the source’s capacity.” Provide examples in the staff report of design information, engineering specifications, etc.</p>