BEFORE THE ADMINISTRATOR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF PROPOSED TITLE V PERMIT ISSUED TO CHEVRON PRODUCTS COMPANY FOR ITS PETROLEUM REFINERY LOCATED IN RICHMOND, CALIFORNIA

ISSUED BY THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT

BAAQMD Application No. 16461

Plumbers and Steamfitters Union Local 342, Heat and Frost Insulators/Asbestos Workers Local 16, the International Brotherhood of Electrical Workers Local 302, the Boilermakers Union, Local 549 and the Laborers Union Local 324, Petitioners

PETITION REQUESTING THE ADMINISTRATOR TO OBJECT TO THE PROPOSED ISSUANCE OF THE PROPOSED TITLE V OPERATING PERMIT FOR CHEVRON'S RICHMOND REFINERY

INTRODUCTION

The Clean Air Act's Title V program exists to provide a "comprehensive state air quality permitting system" and to create a permit that "assures compliance by the source with all applicable requirements," 40 C.F.R. 70.1(a); 40 C.F.R. 70.1(b). Chevron's proposed Title V permit defies this purpose both by its plain terms and by its omissions. The Permit fails to include all applicable requirements and distorts many of the requirements it does include. By accepting Chevron's incomplete and inaccurate application without performing its own compliance investigation, the
permitting agency turned a blind eye to other applicable requirements, such as preconstruction review, thereby issuing an inadequate Title V permit to the company.

Under the Clean Air Act § 505(b)(2), 42 U.S.C. § 7661(d) (b)(2), Petitioners hereby request that the Administrator object to the Bay Area Air Quality Management District’s (“BAAQMD” or “District”) issuance of a proposed Title V Major Facility Review Permit (“Proposed Permit”) to Chevron Products Company (“Chevron”) for its refinery in Richmond, California. The EPA received the proposed Title V permit from the BAAQMD on August 13, 2003. EPA’s 45-day review period of the permit ended on September 26, 2003, making this petition timely because it is filed within sixty days of the expiration of EPA’s 45-day review period. See Clean Air Act § 505(b)(2). Under the Clean Air Act, the Administrator must render a decision granting or denying this petition within sixty days after it is filed. Id. This petition is based on issues petitioners raised during the public comment periods for the draft and proposed permits.

PETITIONERS

Petitioners Plumbers and Steamfitters Union Local 342, the International Brotherhood of Electrical Workers Local 102, the Boilermakers Union Local 549, Heat and Frost Insulators/Asbestos Workers Local 16 and the Laborers Union Local 324 (collectively, “the Unions”) construct and maintain commercial, residential and industrial projects, primarily in the vicinity of Contra Costa County. They are concerned with sustainable land use and development in Contra Costa County. Poorly operated and environmentally detrimental projects may jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there. Continued degradation can, and has, caused construction moratoria and other restrictions on growth in the County that, in turn, reduce future employment opportunities. Additionally, workers themselves live in the communities that suffer the impacts of environmentally detrimental projects. Union members breathe the same polluted air that others breathe and suffer the same health and safety impacts. Finally, union members are concerned about projects that carry serious environmental risks without providing countervailing

http://yosemite.epa.gov/R9/AIR/EPSS/NGF/v0c49a10c792e66f82565b720076b4a32311%203934fa60046556d700866c74 (1324a-040)
employment and economic benefits to local workers and communities. Therefore, Petitioners and
their members have a strong interest in enforcing environmental laws such as the federal Clean Air
Act? ("CAA" or "the Act").

APPLICANT — CHEVRON PRODUCTS COMPANY

Chevron operates a petroleum refinery in Richmond, California ("Refinery"). The refinery
emits a variety of pollutants, including, but not limited to, volatile organic compounds ("VOCs"),
nitrogen oxides ("NOx"), and sulfur dioxide ("SO2"). The emissions from the Chevron Refinery have
varying levels of toxicity and concentrations, and include some of the most toxic chemicals known to
science. The Refinery is a major facility required to obtain an operating permit under Title V of the
1990 Clean Air Act Amendments, the Federal Operating Permit Program and District's Regulation 2,
Rule 6 - Major Facility Review.

GROUND FOR OBJECTION

Petitioners request that the Administrator object to the proposed Title V permit for the Chevron
Richmond Refinery because, as explained below, it does not meet the requirements of 40 C.F.R., Part
70. In particular, the EPA has identified numerous applicable requirements that are not included in the
permit. Petitioners have identified numerous applicable requirements that are not included in the
permit, and various other inaccuracies and inconsistencies must be corrected before a final permit may
be issued by the BAAQMD.

A. THE EPA HAS IDENTIFIED APPLICABLE REQUIREMENTS THAT ARE
NOT INCLUDED IN CHEVRON'S PROPOSED TITLE V PERMIT,
CREATING A NON-DISCRETIONARY DUTY TO OBJECT

Under the Clean Air Act "If any permit contains provisions that are determined by the
Administrator as not in compliance with the applicable requirements of this chapter, including the
requirements of an applicable implementation plan, the Administrator shall . . . object to its
issuance." Clean Air Act, § 505(b)(1) (emphasis added). The Second Circuit Court of Appeals

\footnote{42 U.S.C. § 7401 et seq.}

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recently held that when there is a demonstration of noncompliance with Title V regulations, the
"Administrator shall issue an objection." *NYPIRG v. EPA*, 321 F.3d 316, 333 (2003); see also Clean
Air Act § 505(b)(2) (emphasis added); see also 40 C.F.R. § 70.8(c) (EPA's own regulation, which
states that the EPA "will object to the issuance of any proposed permit" if the EPA determines it
violates an applicable requirement). In the *NYPIRG* case, the petitioner's claim that the public notice
procedure was flawed formed an adequate basis to force the EPA to object to the permit. *NYPIRG v.
EPA*, 321 F.3d at 332-333. In response to the EPA's claim that the inadequate public notice
procedure constituted "harmless error" — a determination the agency claimed to be within its
discretion — the Court explained that "this argument blurs the important distinction between the
discretionary part of the statute (whether the petitioner demonstrates non-compliance) with the non-
discretionary part (if such a demonstration is made, objection must follow)." *NYPIRG v. EPA*, 321
F.3d at 333. In short, when the EPA finds that a proposed permit fails to comply with Title V, the
agency must issue an objection to that permit. *Id.*

The most important mandate of Title V is that permits issued under its authority contain "all
applicable requirements." 40 C.F.R. 70.1(a); 40 C.F.R. 70.1(b). Here, the EPA has identified
numerous provisions in Chevron's proposed Title V permit that are not in compliance with applicable
requirements for the refinery. See Exhibit A, "EPA Review of Three Proposed Refinery Title V/
Major Facility Review Permits." Specifically, the EPA found many significant inconsistencies and
omissions in Chevron's proposed Title V permit. Although the EPA's attached comments (Exhibit 1)
provide an in-depth discussion of inadequacies in the Proposed Permit, a summary of some of the
issues raised in those comments is provided below. Petitioners do not waive any issues raised in the
EPA's comments by failing to mention them below, but merely highlight some of the most egregious
omissions:

(12345/640)
1. Combustion Units

The EPA found that the permit does not include all applicable requirements for combustion units. Specifically, the daily throughput limit for S-4044, as listed on page 40 is inconsistent with the current limit for that source. See Exhibit A, Enclosure C, p.1.

2. Cooling Towers

The EPA found that the permit does not include all applicable pollution control and monitoring requirements for cooling towers. Specifically, the Proposed Permit does not subject Source 43:29 to the requirements of other cooling towers and does not provide an explanation for this inconsistency. See id. Furthermore, sources 4018, 4179 and 4074 are improperly omitted from "the applicable requirements on page 138" of the Proposed Permit. See id. Finally, the Proposed Permit improperly exempts certain cooling towers from monitoring requirements without providing reliable emissions data and calculations revealing the compliance status of those units. See id at p.1-2.

3. Emissions Caps

In its comments, the EPA found that the permit contains confusing and otherwise inappropriate language with respect to emissions caps. See id at 2. For example, although the burning of fuel oil is prohibited, the EPA noted that the Proposed Permit improperly contains conditions for burning fuel oil.

See id at 2. The EPA further notes that the monitoring provisions for sources subject to the cap are unclear. See id at 3.

4. Flares

The EPA found that the permit contains an improper flare exemption from BAAQMD Regulation 8-2, thereby failing to include all applicable requirements. See id at 3. The EPA also found that the permit fails to identify parts 1 and 2 of condition 186:36 as federally enforceable and fails to indicate whether source S-6004 is in operation. See id at 3.

5. Fluid Catalytic Cracking Unit

The EPA found that the permit improperly omits 6 separate new source performance standard ("NSPS") requirements for source S-4285. See id at 3.

6. Permit Shield

The EPA found that federal regulations 40 CFR 60.482-7(g) and 40 CFR 61.242-7(g) are

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improperly subsumed by BAAQMD Regulations in the Proposed Permit. Finally, Table IX-A-2
improperly identifies applicable subsumed requirements as “non-applicable requirements.” Id at 4.

7. Storage Tanks

The EPA found that for storage tanks subject to NSPS, the frequency specified for inspections of
the secondary seal rim is not consistent with federal requirements calling for inspections on an annual
basis, that the Proposed Permit fails to indicate that several sources are subject to Condition #20773,
and that the permit contains a discrepancy in listing the requirements that apply to Cluster 02. See id at
4. Furthermore, the permit fails to identify conditions 4233, 12580 and 18137 as federally enforceable.
Finally, various monitoring requirements for storage tanks are improperly omitted or inaccurately and
inadequately described in the permit. See id at 5.

8. Sulfur Treatment Emissions

The EPA found that the Proposed Permit improperly fails to indicate that the requirements for 9-
1-313, 9-1-313.2, 1-422 and 1-522.7 for units S-4227, S-4228 and S-4229 are federally enforceable.
See id at 5.

9. VOC Component Fugitives

The EPA found that Chevron’s Proposed Permit mischaracterizes or lacks applicable
requirements from 40 CFR Part 60, Subpart A, from 40 CFR Part 63, Subpart A, from 40 CFR Part 61,
Subpart FF, from 40 CFR Part 60 Subpart QQ, from 40 CFR Part 60 Subpart VV, and from 40 CFR
Part 61, Subpart V, among others. See id at 5-7, 8-9.

For gasoline dispensing facilities, the EPA found that the permit contains improper ambiguity
in determining the applicability of 40 CFR Part 63 Subpart CC to source 9304. The EPA further found
that the Proposed Permit improperly omits the applicable requirements of 40 CFR 63 Subpart Y for
sources 4315, 9321, 9322, 9323, 9324, 9325, and 9326. Next, compliance with BAAQMD Reg. 8.44-
505 was improperly omitted from the Proposed Permit as an applicable requirement for loading
terminals. According to the EPA’s own findings, the federal enforceability of condition 8869 is
improperly ambiguous in the Proposed Permit.

Finally, the Proposed Permit improperly omits and mischaracterizes monitoring for fugitive
sources.

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10. General Concerns

The EPA has provided a list of general comments on the Proposed Refinery Title V permits for the San Francisco Bay Area. These general concerns include, but are not limited to: failure to mark all federally enforceable requirements as federally enforceable, failure to impose the correct applicable requirements for flares, failure to include the monitoring required for flares, failure to include applicable MACT requirements in the proposed permits and the improper inclusion of permit shields in the proposed permits. See Exhibit 1, Enclosure A, p. 1-4

In light of the EPA’s explicit findings of failure to include all applicable limits, the agency had a non-discretionary duty to object to Chevron’s Proposed Permit by the end of its 45-day review period, September 26, 2003. Clean Air Act, § 505(b)(1); see also 40 C.F.R. § 70.8(c); see also NYPiRg v. EPA, 321 F.3d at 333. Because the EPA failed to perform this non-discretionary duty, Petitioners submit this petition to request that EPA cure this deficiency and object to the permits now.

B. BY THE DISTRICT’S OWN ADMISSION, CHEVRON’S PERMIT IS NOT IN COMPLIANCE WITH TITLE V, REQUIRING OBJECTION BY THE EPA

The Clean Air Act states that the EPA “shall issue an objection within [60 days] if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter.” See Clean Air Act, § 505(b)(2); 42 U.S.C. § 7661(d)(b)(2). As explained below, Petitioners and other commenters demonstrated that Chevron’s Proposed Permit is not in compliance with the requirements of the Clean Air Act during the public comment period provided by the District. In response, the District actually admitted to the existence of some inadequacies while ignoring most of the issues raised by Petitioners. Based on the District’s admissions alone, the EPA must object to Chevron’s Proposed Permit. See id.

While the District did address some of the issues raised by Petitioners and other commenters in the Proposed Permit, the vast majority of Petitioners’ concerns remain uncorrected. For that reason, Petitioners incorporate by reference all the issues raised during the public comment period as the basis for this petition. Two sets of comments submitted by Petitioners in response to the draft and proposed permits are attached to this letter as Exhibits 2 and 3. Comments submitted by Communities for a Better Environment and Our Children’s Earth are incorporated into this petition by reference and
attached hereto as Exhibits 5-8.

Although the various comments provide an in-depth discussion of inadequacies in the Proposed Permit, a summary of some of the issues raised in those comments is provided below. Petitioners do not waive any issues raised in the prior comments by failing to mention them below, but merely highlight some of the most egregious omissions.

1. The District Admits that Chevron’s Permit Is Not Supported By a Complete Application

EPA’s regulations provide specific criteria for determining the adequacy of a facility’s application. See, generally, 40 C.F.R. § 70.5(c). Those informational requirements include, but are not limited to, a list of all sources in the permit application, stack discharge points, description of fuels, fuel use, raw materials, production rates and operating schedules, detailed information on air pollution control equipment and monitoring devices, dates when emission sources and air pollution control equipment were last installed and modified, calculations, input assumptions to the calculations and sufficiently detailed process production rate and throughput capacities which would be required to support other quantitative aspects of the facility’s application, emission estimates from all significant sources, and a compliance statement. See id. In its Response to Comments on the Draft Permit (Exhibit 4, p. 9-11), the BAAQMD admits that Chevron failed to comply with these application adequacy requirements. The agency dismisses commenters’ concerns related to permit adequacy simply by stating that an incomplete application does not affect the adequacy of the permit. Of course, as explained by our September 22, 2003 comments, attached as Exhibit 3 application adequacy requirements are separate and independent provisions of the Title V program that demand strict compliance.

Next, under the implementing regulations for Title V, applicants must certify the accuracy of the information contained in their applications. 40 C.F.R. § 70.5(d). Petitioners discussed the refinery’s failure to provide legally compliant certifications in their draft permit as a problem that renders Chevron’s application legally inadequate. See Petitioners’ September 22, 2003 Comments, Exhibit 3. This defect has not been cured.

Finally, as explained in Petitioners attached comments, the public process for the permit war...
fondamentally flawed. Specifically, in violation of 40 C.F.R. § 70.7(h)(2), the District refused
Petitioners access to all documents relevant to the permitting action. And, in violation of 40 CFR §
70.2 and 40 CFR § 70.8(c)(3), the District failed to provide the public and the EPA with a copy of the
Permit it proposes to make final. Instead, the District merely provided the public with a draft of the
permit, which is subject to change, according to the EPA’s own admission: “We understand that the
District intends to propose additional refinery Title V permit revisions in the near future, and we will
continue working cooperatively with the District during these revisions.” See Exhibit 1, September
26, 2001 letter from Gerardo C. Rios to Mr. Steve Hill. These flaws in the public process are
strikingly similar to the NPJAIRG case where the petitioner was denied an adequate opportunity to
request a public hearing. The EPA’s admission of this flaw was sufficient to require the agency to

2. The District Admits that the Permits Do Not Incorporate The Correct HAP
Standard

The District’s Responses admit that under BAAQMD Rule 2-6-210, the significance thresholds
for Hazardous Air Pollutants (HAPs) is 400 pounds per day, but that the permits incorrectly lists the
significance threshold for those pollutants at 1000 pounds per day. Exhibit 4 at 9. As a result of this
mistake, the District failed to require the listing of all significant sources of HAPs in Chevron’s
Proposed Permit. The Responses fail to provide an explanation for this inconsistency and further fail
to correct this mistake. This District-admitted inconsistency with Title V means that the EPA must
object to Chevron’s permit. See Clean Air Act, § 505(b)(2); 42 U.S.C. § 7661(d) (b)(2).

3. The District Admits that the Proposed Permit Does Not Assure
“Continuous Compliance,” In Violation of Title V

Part 70 creates a legal distinction between continuous compliance and intermittent compliance.
As part of the requirements for compliance certification, Part 70 permits must include the “status of
compliance with the terms and conditions of the permit for the period covered by the certification,
including whether compliance during the period was continuous or intermittent.” 40 CFR 70.6
(c)(5)(C). Non-continuous compliance therefore affects the compliance status of the source under Part
70.
Furthermore, the courts have made clear that Title V requires continuous compliance. "[Title
V's] monitoring and testing requirements ensure that sources continuously comply with emission
standards." *Utility Air Regulatory Group v. Environmental Protection Agency*, 320 F.3d 272, 275
(D.C. Cir. 2003) (emphasis added). In its Response to Comments, the District admits that
"[c]ompliance by the refineries with all District and federal air regulations will not be continuous."
See Exhibit 4, p.15. The District further states that the Proposed Permit can assure only "reasonable
intermittent compliance" with the applicable requirements for the refinery, rather than consistent
compliance with applicable requirements. See id. Because the District admits that the Proposed
Permit does not ensure continuous compliance with emission standards, the EPA must object to the
Proposed Permit for failing to include all applicable requirements.

C. PETITIONERS HAVE SHOWN THAT CHEVRON'S PERMIT IS NOT IN
COMPLIANCE WITH TITLE V, REQUIRING OBJECTION BY THE EPA

1. The Proposed Permit Does Not Cure Chevron's Failure to Obtain All
Legally-Required Preconstruction Review Permits

According to the EPA's own interpretation of its Title V regulations:

Under 40 CFR § 70.1(b), "all sources subject to Title V must have a permit to operate
that assures compliance by the source with applicable requirements." Applicable
requirements are defined in 40 CFR § 70.2 to include: "(1) any standard or other
requirement provided for in the applicable implementation plan approved or
promulgated by EPA through rulemaking under Title I of the [Clean Air] Act . . . ."
Such applicable requirements include the requirement to obtain preconstruction
permits that comply with preconstruction review requirements under the Act, EPA
regulations, and State Implementation Plans ("SIPs"). See generally CAA § §

In the Matter of Pacific Coast Building Products, Order Responding to Petitioner's Request That the
Administrator Object to the Issuance of a State Operating Permit, p.7 (December 10, 1999) (emphasis
added).

As Petitioners discussed in their attached comments, there are at least 40 sources at the
Chevron refinery that have dramatically increased their emissions without the necessary New Source
Review permits, just one category of preconstruction review required by the Clean Air Act. These
preconstruction review anomalies must be resolved in Chevron's Title V permit. Rather than
investigate and resolve Chevron's failure to obtain the required preconstruction review permits, the
District simply responded with the following: "there is no advantage to holding the Title V permit in
abeyance while compliance issues are investigated and resolved." Exhibit 4 at 6 (emphasis added).
Of course, the advantage would be that a proper permit would comply with the law and would require
Chevron to install the proper pollution control technology - one of the fundamental goals of the Clean
Air Act. As explained in Petitioners' attached comments, resolution of those compliance issues is a
basic condition of permit adequacy under the Clean Air Act. 40 C.F.R. § 70.5(c)(8)(ii)(C).
Petitioners therefore reiterate the need to resolve all areas of noncompliance with the preconstruction
review provisions of the Clean Air Act identified in their attached comments on Chevron's draft and
proposed Title V permit.

2. The Proposed Permit Does Not Assure Compliance with the Clean Air
Act's New Source Review Requirements

Under the Clean Air Act's Title V program the District must create a permit that "assures
compliance by the source with all applicable requirements." 40 C.F.R. 70.1(a); 40 C.F.R. 70.1(b). As
Petitioners mentioned in their original comments attached to this petition, the District offers
"thresholds" for grandfathered units that are baseless. Oddly, the language in the Proposed Permit is
ever more ambiguous than the language contained in the draft permit. In the draft permit, the
thoroughput levels were meant to be presumptive limits, thereby providing at least some level of
predictability with respect to enforcement action. Still, as Petitioners explained in their original
comments, the unjustified increases in throughput levels trigger the Act's New Source Review
("NSR") provisions, since they carry the potential for significant emission increases from the
refineries. Because the District failed to impose NSR requirements associated with the increased
throughput levels, those comments still stand.

3. In Violation of Title V, The Proposed Permit Does Not Assure Compliance
With Regulation 9-10

According to District records, Chevron has experienced a pattern of excess emissions from
sources subject to Regulation 9-10. See Exhibit 9. Emission limits for NOx contained in District
Regulation 9-10 are "applicable requirements" for purposes of Title V under the EPA's approved

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definition of “applicable requirements” in the District’s Title V implementation program. See District
Regulation Reg. 2-6-202 (stating that “Applicable Requirements” include “air quality requirements
with which a facility must comply pursuant to the District’s regulations, . . . .” Emphasis added.) The
EPA approved this definition of “applicable requirements” into California’s State Implementation Plan
on December 7, 2001 (66 FR 63503). SIP provisions are enforceable under Title V. 40 C.F.R. § 70.2.

In violation of Title V and the Clean Air Act, the Proposed Permit does not reveal Chevron’s
pattern of non-compliance with Regulation 9-10 nor create a schedule of compliance for these
noncompliant units discussed in Exhibit 9. See 40 C.F.R. § 70.6(c)(3) and 40 C.F.R. § 70.5(c)(8).

Although this issue was not specifically raised in the comments submitted during the public
comment period for the Proposed Permit, Petitioners just learned of these episodes of noncompliance
in November of 2003, when the District released the public records demonstrating such
noncompliance. Petitioners had requested the aforementioned documents during the public comment
period, but the BAAQMD failed to produce the documents until this month. Thus, despite the exercise
of reasonable diligence and through no fault of their own, Petitioners were not aware of these episodes
of noncompliance during the public comment period, and it was impossible to raise them at that time.
In light of this impossibility, it is appropriate to raise these issues for the first time in this petition
under the Clean Air Act. See Clean Air Act § 505 (b)(2) (42 U.S.C § 7661(d)(b)(2).)

4. **EPA Most Object Based on Deficiencies Raised By Other Commenters**

During the public comment period on the draft and proposed permits, Communities for a Better
Environment and Our Children’s Earth submitted comments detailing deficiencies in both versions.
Commenters and the District provided the EPA with copies of those comments during the public
comment period. Petitioners incorporate all issues raised in those comments, attached hereto as
Exhibits 5-8, as independent grounds for this petition.
CONCLUSION

Based on the significant deficiencies in Chevron's Proposed Permit as discussed above, Petitioners respectfully petition the EPA to perform its non-discretionary duty to object to the Permit.

Respectfully submitted,

Dated: November 24, 2003

ADAMS BROADWELL JOSEPH & CARDOZO
A Professional Corporation

By: [Signature]
Daniel L. Cardozo
Richard T. Drury
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Attorneys for Petitioners Plumbers and Steamfitters Union Local 342, Heat and Frost Insulators/Asbestos Workers Local 16, the International Brotherhood of Electrical Workers Local 302, the Boilermakers Union Local 549 and the Laborers Union Local 324