

December 12, 2003

Jack Broadbent  
Air Pollution Control Officer  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109

Re: Finding of Cause to Reopen Title V Operating Permits Issued to: Chevron Products Company (Richmond, California); ConocoPhillips Company (Rodeo, California); Shell Oil Products US (Martinez, California); Tesoro Refining and Marketing Company (Martinez, California); Valero Refining Co. (Benicia, California)

Dear Mr. Broadbent:

The purpose of this letter is to notify you of EPA's finding, pursuant to our authority under 42 U.S.C. section 7661d(e) and 40 C.F.R. section 70.7(g)(1), that cause exists to reopen the following Title V operating permits that BAAQMD issued on December 1, 2003:

- Chevron Products Company (Facility #A0010)
- ConocoPhillips Company -- San Francisco Refinery (Facility #A0016)
- Shell Martinez Refinery, Shell Oil Products US (Facility #A0011)
- Tesoro Refining and Marketing Company (Facility #B2758 and Facility #B2759)
- Valero Refining Co. -- California (Facility #B2626)
- Valero Benicia Asphalt Plant (Facility #A0901)

EPA has determined that BAAQMD did not follow the procedures required by 42 U.S.C. section 7661d(a)(1)(B), 40 C.F.R. part 70 ("part 70"), and BAAQMD's approved part 70 program because BAAQMD did not submit a proposed permit to EPA as required by 7661d(a)(1)(B), 70.8(c), BAAQMD Rule 2-6-411, and BAAQMD's Manual of Procedures Vol. II, Part 3, section 6.1.2. This failure may have resulted in deficiencies in the content of the permits. In such circumstances, the Clean Air Act and part 70 authorize a permitting authority to reopen and revise a permit to assure compliance with all applicable requirements. 42 U.S.C. § 7661d(e); 40 C.F.R. § 70.7(f)(iv).

As you know, prior to issuing the permits to the above-referenced facilities, BAAQMD followed a concurrent public and EPA review process.<sup>1</sup> On August 5, 2003, BAAQMD initiated

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<sup>1</sup>A concurrent review process is one in which public and EPA review occur at the same, or nearly the same time, as opposed to a sequential review process in which public review occurs first, followed by EPA review.

a public comment process and sent permits to EPA for review.<sup>2</sup> The public comment period ran from August 5, 2003 until September 22, 2003;<sup>3</sup> EPA's 45-day review period commenced upon receipt of the permits on August 13, 2003 and concluded on September 26, 2003.

Generally, a concurrent review process is consistent with both EPA and BAAQMD regulations. In this case, however, BAAQMD made several significant changes to the permits in response to the public comments. BAAQMD did not re-submit new proposed permits to EPA, which is inconsistent with part 70's requirement that permitting authorities submit to EPA a "proposed permit." See 40 C.F.R. §§ 70.8(c), 70.2. The nature and extent of the changes made to the permits that EPA received on August 13, 2003 effectively rendered them draft permits, as opposed to proposed permits. Therefore, EPA has determined that BAAQMD must submit to EPA for a 45-day review period proposed permits that include the changes made in response to public comment.

According to 40 C.F.R. section 70.7(g)(2), BAAQMD has 90 days to submit to EPA a proposed determination in response to this notification. We believe that 90 days is a reasonable time frame for BAAQMD to submit a new proposed permit to EPA. At a minimum, we request that BAAQMD's proposed determination address the following issues:

1. the date by which BAAQMD will notify the permittees that the District is reopening the permit, as required by 70.7(f)(3); and
2. the date by which BAAQMD will submit a new proposed permit to EPA for a 45-day review period.

EPA has also determined that the reopening of these permits will require that EPA have another opportunity to object to them during its 45-day review period. Subsequently, the public will have 60 days after the conclusion of EPA's 45-day review period in which to petition the Administrator to object to the permits.

In addition, based on communications with your staff, it is our understanding that BAAQMD intends to modify the permits in the near future. We believe it would be possible to coordinate EPA review of these modifications with the review initiated by this reopening process and we encourage BAAQMD to contact us to discuss this option further.

If the District does not take steps to reopen the permits, EPA has authority under 42 U.S.C. section 7661(e) and 40 C.F.R. section 70.7(g)(5) to terminate, modify, or revoke and

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<sup>2</sup>BAAQMD also allowed public comment from June 26, 2002 to September 27, 2002 and held a public hearing on July 29, 2002.

<sup>3</sup>On or about September 12, 2003, BAAQMD extended the public comment period from September 15, 2003 to September 22, 2003.

revise the permits.

We look forward to working with the District during this reopening process. If you have any questions about this letter or the reopening process, please call me or have your staff contact Ed Pike at (415) 972-3970 or have your attorney call Kara Christenson at (415) 972-3881.

Sincerely,

Deborah Jordan  
Acting Director, Air Division

cc: Adams, Broadwell, Joseph & Cardozo - Daniel Cardozo, et. al.  
California Air Resources Board - Mike Tollstrup  
Chevron Products Company - Jim Whiteside  
Communities for a Better Environment - Will Rostov  
Conoco-Phillips Company - Willie W. C. Chiang  
Golden Gate University - Marcie Kever, et al  
Shell Martinez Refinery - Aamir Farid  
Tesoro Refining and Marketing Company - J. W. Haywood  
Valero Refining Company - John U. Roach