BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of	)	
CITGO Doraville Terminal	)	
Title V Operating Permit Application	)	
No. TV-9613	)	
	)	
	)	Petition No: 04-01-_____
	)	
Proposed by the Georgia Environmental	)	
Protection Division	)	

PETITION TO HAVE THE ADMINISTRATOR OBJECT TO CITGO DORAVILLE'S TITLE V PERMIT

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I. INTRODUCTION

Recent scientific studies claim that air pollution shortens the lives of over one thousand people in Georgia each year. The United States Environmental Protection Agency (US EPA) claims that many more people suffer other adverse health effects caused by the polluted air. There are also significant economic consequences of air pollution. It appears that the air pollution issue is important because it has been in a newspaper. See e.g. May 1, 2001 Atlanta Journal, "Bad air days: Atlanta ranks sixth in pollution."

Interposed between Georgians and the air pollution is the Clean Air Act. In simple terms, the Clean Air Act sets standards for safe ambient air and then requires agencies to issue permits to major stationary sources of air pollution as well as implements regulations for mobile sources. The permits are designed to ensure that aggregate air pollution does not exceed ambient air quality standards. A major component of the Clean Air Act is the Title V permitting program. According to the US EPA:

> The purpose of title V permits is to reduce violations of air pollution laws and improve enforcement of those laws. Title V permits do this by:
>
> 1. recording in one document all of the air pollution control requirements that apply to the source. This gives members of the public, regulators, and the source a clear picture of what the facility is required to do to keep its air pollution under the legal limits.
>
> 2. requiring the source to make regular reports on how it is tracking its emissions of pollution and the controls it is using to limit its emissions. These reports are public information, and you can get them from the permitting authority.

3. adding monitoring, testing, or record keeping requirements, where needed to assure that the source complies with its emission limits or other pollution control requirements.

4. requiring the source to certify each year whether or not it has met the air pollution requirements in its title V permit. These certifications are public information.

5. making the terms of the title V permit federally enforceable. This means that EPA and the public can enforce the terms of the permit, along with the State.

See http://www.epa.gov/oar/oaqps/permits/index.html. However, the Georgia Environmental Protection Division has derailed this purpose by issuing a Title V permit with numerous flaws that are discussed in more detail below.

II. PARTIES

The Sierra Club, a non-profit corporation, is one of the nation's oldest and largest environmental organizations. The Sierra Club has been involved in air pollution issues in Georgia and throughout the nation. The Georgia Chapter of the Sierra Club has over 10,000 members. Sierra Club members live, work, farm, recreate, grow food, own land and structures, and obtain spiritual and aesthetic pleasure from locations that are adversely affected by the air pollution from this facility. In addition, the Sierra Club requires the information that the permittee will submit to EPD pursuant to its final Title V permit in order to conduct its work to clean up the air in Georgia. However, if the permit does not contain complete monitoring and reporting, the Sierra Club will not be able to obtain all of the information that it needs to do its work.

III. PREVIOUS PROCEEDINGS

The US EPA granted final approval of the Georgia Title V operating permit program on June 8, 2000. 65 FR 36398 (June 8, 2000). The Environmental Protection Division (EPD) of the Georgia Department of Natural Resources is the agency responsible for issuing Title V operating permits in Georgia. O.C.G.A. §§12-9-3(12), 12-9-4, 12-9-6(b)(3).

EPD issued a draft Title V operating permit for CITGO Doraville Terminal ("CITGO"). See Ex. 1. EPD granted the public a thirty-day period to comment on this draft permit, which ended on November 20, 2000.[1] See Ex. 2 at 1. Petitioner assumes that EPD issued the CITGO proposed permit to US EPA for US EPA's initial 45-day comment period on the same day EPD issued the draft permit for public comment.

On November 17, 2000, the Sierra Club submitted comments to EPD on the CITGO draft permit. A copy of these comments, including the facsimile confirmation sheet, is attached as Ex. 3. On May 17, 2001, EPD then notified the Sierra Club, through its counsel, that it re-proposed the CITGO permit to US EPA. See Ex. 4. US EPA has confirmed that EPD did re-propose the permit on May 17, 2001. See Ex. 5. A copy of the permit conditions that EPD changed in response to comments of CITGO and Sierra Club is attached at Ex. 6. A copy of the supplement to the Narrative is attached as Ex. 7.

In any event, the public's period to petition the US EPA to object to this permit expires on September 4, 2001. 40 CFR § 70.8(d); see also Ex. 8 at 1 . Thus, this petition is timely.

IV. FACTS

> This facility is a bulk gasoline terminal, which receives product by underground pipeline and dispenses it through a loading rack to trucks where it is delivered to gasoline dispensing facilities (gas stations) and bulk gasoline plants. Emissions from the transfer of gasoline are controlled with a vapor combustor (flare). There are seven large storage tanks at this facility, which store petroleum products. Five of these tanks are equipped with external floating roofs; one with an internal floating roof and the other tank has a fixed roof. There are also three small (13,800, 10,000 and 550 gallon capacities) tanks at this facility.

Ex. 6 at 1, Condition 1.3. The Facility is located in the Metro-Atlanta Ozone Non-Attainment Area. This is a concern because the Facility is a large source of Volatile Organic Compounds (VOCs) which are a precursor chemical to ozone formation. In addition, the Facility emits a substantial amount of hazardous air pollutions.

V. SUMMARY OF THE ARGUMENT

1. The language in CITGO's permit appears to limit what credible evidence can be used to prove a violation. Such a limitation is contrary to the US EPA's "any credible evidence" rule and therefore must be removed and replaced with language that makes clear that any credible evidence can be used.

2. The limitations on sulfur content and Reid Vapor Pressure lack monitoring and reporting sufficient to assure compliance with these standards.

3. The removal of the limit on the quantity of diesel fuel and gasoline additives that can pass through this facility means that the facility is no longer a synthetic minor facility with regards to hazardous air pollution (HAPs) emissions. Therefore, the limits should be put back into the Title V permit.

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[1] November 18, 2000 was a Saturday. Therefore, the public comment period ended on November 20, 2000.

4. The permit cannot allow half a year to be considered "prompt" reporting of violations.

5. The public notice was inadequate as it contained inaccurate information such as only stating that the permit is enforceable by US EPA and EPD with no mention of the fact that it is enforceable by the public. The inadequacy of the public notice dictates that US EPA should require EPD to hold another public comment period after it issues a proper public notice.

VI. ARGUMENT

A. LEGAL BACKGROUND AND STANDARD OF REVIEW

The Clean Air Act is "Congress's response to well-documented scientific and social concerns about the quality of the air that sustains life on earth and protects it from . . . degradation and pollution caused by modern industrial society." Delaware Valley Citizens Council for Clean Air v. Davis, 932 F.2d 256, 260 (3rd Cir. 1991). A key component to achieve the Clean Air Act's goal of protecting our precious air is the Title V operating permit program. Title V permits are supposed to consolidate all of the requirements for a facility into a single permit and provide for adequate monitoring and reporting to ensure the regulatory agencies and the public that the permittee is complying with its permit. See generally S. Rep. No. 101-228 at 346-47; see also In re: Roosevelt Regional Landfill, (EPA Administrator May 11, 1999) at 64 FR 25336.

When a state or local air quality permitting authority issues a Title V operating permit, the US EPA will object if the permit is not in compliance with any applicable requirement or requirements under 40 CFR Part 70. 40 CFR § 70.8(c). However, if the

US EPA does not object, then "any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection." 40 CFR § 70.8(d); 42 U.S.C. § 7661d(b)(2)(CAAA § 505(b)(2)). "To justify exercise of an objection by US EPA to a [T]itle V permit pursuant to Section 505(b)(2), a petitioner must demonstrate that the permit is not in compliance with applicable requirements of the Act, including the requirements of Part 70. [40 CFR] § 70.8(d)." In re: Pacificorp's Jim Bridger and Naughton Plants, VIII-00-1 (EPA Administrator Nov. 16, 2000) at 4.

B. CITGO'S PERMIT IS NOT IN COMPLIANCE WITH APPLICABLE REQUIREMENTS OF THE CLEAN AIR ACT.

1. THE PERMIT APPEARS TO LIMIT CREDIBLE EVIDENCE FROM BEING USED IN AN ENFORCEMENT ACTION.[2]

As emphasized by the US EPA's Credible Evidence Rule, 62 FR 8314 (Feb. 24, 1997), the Clean Air Act (CAA) allows the public, EPD, US EPA, and the regulated facility to rely upon any credible evidence to demonstrate violations of or compliance with the terms and conditions of a Title V operating permit. Specifically, US EPA revised 40 CFR § 51.212, 51.12. 52.30, 60.11 and 61.12 to "make clear that enforcement authorities can prosecute actions based exclusively on any credible evidence, without the need to rely on any data from a particular reference test." 62 FR at 8316. EPD has failed to ensure that no permit condition purports to limit the use of credible evidence. Moreover, EPD failed to include standard language in the permit stating that all credible evidence may be used.

[2] This issue was raised in Petitioner's Comment 2 at pages 2-3, attached as Ex. 3. Therefore, Petitioner has satisfied the requirement of 40 CFR § 70.8(d) that the petition points were raised with reasonable specificity during the public comment period.

a. EPD MUST REMOVE LANGUAGE THAT PURPORTS TO LIMIT THE USE OF CREDIBLE EVIDENCE.

US EPA has made it very clear that Title V permits must contain no language that could be interpreted to limit credible evidence. However, this permit does contain language that could easily be understood as limiting credible evidence. For example, condition 4.1.3. in the permit states that "[t]he methods for the determination of compliance with emissions limits listed under Sections 3.2,3.3,and 3.4 which pertains to the emission units listed in Section 3.1 are as follows:" One could read this provision to stand for the proposition that when a government agency or member of the public takes an enforcement action for a permittee violating its permit, the enforcer can only rely on information from the methods of determination listed in the permit. This position is directly contrary to the Clean Air Act requirements in CAA §§ 113(a), 113(e)(1) and 40 CFR § 51.212, 51.12. 52.30, 60.11 and 61.12 which allow anyone taking an enforcement action to rely on any credible evidence. Therefore, the aforementioned sentence in Section 4.1.3 should be stricken.

Another example of the permit's attempt to limit credible evidence is found in the second sentence of condition 18.17.1. This condition claims to limit the usable evidence to information that is available to EPD. Of course, the public or US EPA may obtain information about a facility from sources other than EPD, such as information from a whistleblower or from people that live near the facility. As such, it is inappropriate to limit credible evidence to exclude such information. Therefore, the aforementioned provision must be removed from the permit. Of course, the preferred option is to simply remove the sentence. A less desirable option is to re-write it to state that "EPD may determine . . .."

Similarly, Condition 6.1.3 of the permit, which states that "failures shall be determined through observation, data from any monitoring protocol, or by any other monitoring which is required by the permit," could be considered to limit the use of credible evidence. To correct the problem, this Condition should include an additional clause requiring reporting of any failure based on any credible evidence, including observation, data from monitoring protocols and other monitoring required by the permit.

EPD claims that Rule 391-3-1.02(3)(a) and Procedures for Testing and Monitoring Sources of Air Pollutants ("Procedures Manual") at Section 1.3(g) remove any limitation on the use of any credible evidence in enforcement actions. Even if these two items stood for the proposition for which EPD offers them, EPD ignores the permit shield provision in the permit. EPD also fails to explain why addressing such a critical issue by incorporation by reference to a testing manual or Georgia state rules make this permit practicably enforceable. Again, it is difficult to see any rationale basis for this approach and EPD has certainly not offered one.

Turning to these two items, Rule 391-3-1-.02(3)(a) is in fact another apparent limit on credible evidence. It states:

> Any sampling, computation and analysis to determine the compliance with any of the emissions limitations or standards set forth herein shall be in accordance with the applicable procedures and methods specified in the Georgia Department of Natural Resources **Procedures for Testing and Monitoring Sources of Air Pollution**.

Rule 391-3-1-.02(3)(a)(emphasis in the original). A straightforward reading of this provision supports an interpretation that would exclude any evidence to determine compliance except evidence obtained through methods set forth in Georgia Procedures Manual. The fact that, with the exception of the undersigned, the only people in

possession of this Procedures Manual are regulated entities, their contracts and a few other government agencies, does nothing to strengthen EPD's position.

Turning to Section 1.3(g), it states:

> Notwithstanding any other provision of any applicable rule or regulation or requirement of this text, for the purpose of submission of compliance certifications or establishing whether or not a person has violated or is in violation of any emissions limitation or standard, nothing in these Procedures for Testing and Monitoring Sources of Air Pollutants or any Emission Limitation or Standard to which it pertains, shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.

Again, even if we assume that this Section supported EPD's position, we would nevertheless have to overcome the seemingly insurmountable due process obstacle that a Procedures Manual cannot overcome the language of a permit with a permit shield provision and a rule that has been promulgated following notice and comment. If we were able to overcome this obstacle, it is nevertheless extremely unclear that Section 1.3(g) helps to remove limitations on the use of credible evidence. The Section states that "nothing in these Procedures . . . or any Emissions Limitation or Standard." Thus, this Section applies to the Procedures Manual and Emissions Limitations and Standards. This Section does not appear to apply to Title V permits or Georgia state rules. Worse yet, the Section does not state that one can use any credible evidence. It only states that one can use any credible evidence to show whether a source would have been in compliance "if the appropriate performance or compliance test or procedure had been performed." Section 1.3(g). Whether the credible evidence one wants to use is the "**appropriate** performance or compliance test or procedure" is anyone's

guess. However, Title V was not created to encourage guessing. Therefore, rather than this morass, US EPA should require EPD to remove the language that appears to limit credible evidence.

b. EPD SHOULD INCLUDE STANDARD LANGUAGE IN ITS PERMITS THAT EXPLICITLY STATES THAT ANYONE CAN USE ANY CREDIBLE EVIDENCE.

US EPA should further require EPD to affirmatively state in the permit that any credible evidence may be used in an enforcement action. US EPA supports the inclusion of credible evidence language in all Title V permits. As explained by the Acting Chief of US EPA's Air Programs branch:

> It is the United States Environmental Protections Agency's position that the general language addressing the use of credible evidence is necessary to make it clear that despite any other language contained in the permit, credible evidence can be used to show compliance or noncompliance with applicable requirements. . . . [A] regulated entity could construe the language to mean that the methods for demonstrating compliance specified in the permit are the only methods admissible to demonstrate violation of the permit terms. It is important that Title V permits not lend themselves to this improper construction.

Letter from Cheryl L. Newton, Acting Chief, Air Programs Branch, EPA, to Robert F. Hodanbosi, Chief, Division of Air Pollution Control, Ohio Environmental Protection Agency, dated October 30, 1998. In fact, US EPA apparently sent a letter in May 1998 specifically directing EPD to amend its SIP to include language clarifying that any credible evidence may be used. See Letter from Winston A. Smith to Ronald C. Methier. Nevertheless, while three years have elapsed since US EPA's request, the permit does not contain the necessary language.

While anyone may rely on *all* credible evidence regardless of whether this condition appears in the permit, EPD should include credible evidence language in the permits and permit template to make the point clear. Specifically, US EPA has recommended that the following language be included in all Title V permits:

> Notwithstanding the conditions of this permit that state specific methods that may be used to assess compliance or noncompliance with applicable requirements, other credible evidence may be used to demonstrate compliance or noncompliance.

Letter from Stephen Rothblatt, Acting Director, Air and Radiation Division, US EPA, to Paul Deubenetzky, Indiana Department of Environmental Management, dated July 28, 1998. We request that US EPA object to this permit and modify the permit to include this provision to clarify the availability of any credible evidence to demonstrate noncompliance with permit requirements.

2. THE GASOLINE MARKETING STANDARD LACKS ADEQUATE MONITORING AND REPORTING.[3]

The permit correctly notes in Condition 2.3.2 that this Facility is required to comply with Georgia's Gasoline Marketing Standards. However, the permit does not contain sufficient monitoring and reporting, which is required by 40 CFR § 70.6(a)(3). Specifically, the permittee must be required to submit information that allows the public to determine if it is a refinery, producer, carrier, importer, whether it's gasoline goes to ultimate consumers in the 45 county area listed in Rule 391-3-1-.02(2)(bbb), whether its gasoline contains denatured, anhydrous ethanol blended fuel at between 9 and 10 percent

(be volume) ethanol, whether it is conducting its sampling at "downstream locations," and if so, the results of that downstream testing, and whether the Division's field testing from the previous calendar year indicates a seasonal arithmetic average below the specified level. The permit also needs to define "continuous movement," as that term is used in Rule 391-3-1-.02(2)(bbb) or provide a sampling frequency for RVP and sulfur.

EPD's response to this comment was particularly unsatisfying. EPD admits that it does not do, nor does anyone else, do any enforcement of this provision. Ex. 7 at 4. EPD further offers the excuse that compliance for this provision is enforced by the Mobile and Area Source Program rather than the Stationary Source Compliance Program. However, Title V does not allow EPD to abdicate its responsibility to determine that this particular major source is in compliance with the law. Therefore, US EPA should object to this permit and re-issue it with the appropriate monitoring and reporting requirements.

3. THE TITLE V PERMIT SHOULD CONTAIN THE PROCESSING LIMITS ON DIESEL AND GASOLINE ADDITIVES.

EPD did not include in the Title V permit the 75,121,032 gallon per year limit on diesel and 66,654 gallon per year limit on gasoline additives. However, EPD claims that the MACT standard does not apply to this Facility because of the throughput limit on gasoline limits HAPs emissions to approximately 9 tons per year, which is below the 10 tons per year major source threshold. However, with the removal of the throughput limits on diesel and additives, it would seem that the facility is no longer a minor source of

[3] This issue was raised in Petitioner's Comment 3 at pages 3, attached as Ex. 3. Therefore, Petitioner has satisfied the requirement of 40 CFR § 70.8(d) that the petition points were raised with reasonable specificity during the public comment period.

HAPs. To retain the minor source status, this permit should include the limits on diesel and additives.

In addition, the limits on diesel and additives are applicable requirements because they were conditions of a preconstruction permit. 40 CFR § 70.2. Therefore, they must be contained in the Title V permit. 40 CFR § 70.6(a)(1).

4. THE PERMIT MUST REQUIRE THE PERMITTEE TO PROMPTLY REPORT ALL PERMIT VIOLATIONS, REGARDLESS OF HOW THEY ARE DISCOVERED.[4]

Condition 6.1.3. requires the permittee to report any failure to meet any emission standard or limitation or any work practice standard or requirement. Generally, this is a positive provision. However, it has two shortcomings. The first is that it limits the use of credible evidence as discussed in Section 1.A. above. It also requires that the permittee only report these violations once every six months. However, 40 CFR § 70.6(a)(3)(iii)(B) requires "prompt reporting of deviations from permit requirements[.]" Id. (emphasis added). While it is true that the regulations do allow the agency discretion in defining "prompt," it is difficult to imagine the six months allowed for reporting deviations not caused by malfunctions or breakdowns as qualifying as a rational definition of "prompt" by any objective fact finder. In 60 Fed. Reg. 36083 (July 13, 1995) US EPA stated: "The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time

period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under Sec. 70.6(a)(3)(iii)(A)." Therefore, the permit should require the permittee to report all deviations within seven days.

5. THE PUBLIC NOTICE INCORRECTLY STATES THAT THE PERMIT IS ONLY ENFORCEABLE BY THE US EPA AND EPD.[5]

The EPD did not undertake the required public participation activities for this permit. Therefore, EPD may not issue the final permit. 40 CFR § 70.7(a)(1)(ii). Rather, US EPA should object to this permit and require EPD to re-notice the draft permit for a new public comment period that follows, at a minimum, the public participation processes specified in the law.

Specifically, 40 CFR § 70.7(h) provides that the permitting authority shall provide "adequate" procedures for public notice. While the Part 70 rules and the Act do not define "adequate," it is apparent that adequate should at least include information that is accurate. EPD failed to meet this standard. For example, EPD's public notice is inadequate because it contains inaccurate information. The public notice stated: "[t]his permit will be enforceable by the Georgia EPD and the U.S. Environmental Protection Agency." See Ex. 9. This statement is incomplete. The permit will also be enforceable by any "person." 42 U.S.C. § 7604(a). "Person" includes an individual, corporation,

[4] This issue was raised in Petitioner's Comment 7 at page 5, attached as Ex. 3. Therefore, Petitioner has satisfied the requirement of 40 CFR § 70.8(d) that the petition points were raised with reasonable specificity during the public comment period.

[5] This issue was raised in Petitioner's Comment 2 at pages 2-3, attached as Ex. 3. Therefore, Petitioner has satisfied the requirement of 40 CFR § 70.8(d) that the petition points were raised with reasonable specificity during the public comment period.

partnership, association, State, municipality, and a political subdivision of a state. 42 U.S.C. § 7602(e). EPD has implicitly conceded this point by modifying its subsequent public notices to acknowledge that the permit is also enforceable by the public. See Ex. 10.

While this oversight may appear insignificant, correcting this misstatement is important for at least two reasons. To begin with, it is inherently important for the government to always provide the public with accurate information regarding implementation of air pollution laws. In addition, EPD has recognized that public involvement in the Georgia Operating Permit program has been very limited. It is only with full and meaningful public participation that we can hope to have clean air here in Georgia. See generally Ashley Schannauer, Science and Policy in Risk Assessment: The Need for Effective Public Participation, 24 Vermont Law Review 31 (1999). In order to involve the public in the Operating Permit program, an important first step is to convince the public that this program is a legitimate means by which the public can participate in the effort to achieve the goal of attaining clean air. If the public is aware of their right to enforce a permit, they are more likely to put effort into ensuring that the permit is adequately protective of the environment. Therefore, US EPA should object to the permit, as a public notice that contains inaccurate information about a critical point is not adequate. The US EPA should require the EPD to re-notice this permit for a new 30-day comment period with a public notice that accurately explains to the public that they, as well as EPD and US EPA, can enforce this permit.

VII. CONCLUSION

For the reasons explained above, pursuant to 40 CFR § 70.8(d) the US EPA should object to this permit and modify it as explained above.

Respectfully Submitted,

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Robert Ukeiley
Georgia Center for Law in the Public Interest
175 Trinity Avenue, SW
Atlanta, GA 30303
Tel: 404.659.3122
Fax: 404.688.5912

Counsel for Petitioner Sierra Club

Dated: August 28, 2001

CC: Acting Regional Administrator, EPA Region 4
Art Hofmeister, EPA Region 4 (w/o attachments)
Congresswoman Cynthia McKinney
Curt Smith, Sierra Club
Jimmy Johnston, EPD (w/o attachments)