BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of the Title V Operating Permit No. AQM-003/00032
Issued to
General Chemical Corporation
to operate a sulfuric acid and inorganic chemical plant located in Claymont, Delaware
Issued by the Delaware Natural Resources And Environmental Control Authority

PETITION REQUESTING THE ADMINISTRATOR OBJECT TO ISSUANCE OF THE TITLE V OPERATING PERMIT FOR GENERAL CHEMICAL CORPORATION CLAYMONT, DELAWARE

Pursuant to Section 505(b)(2) of the Clean Air Act ("Act"), 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), the Clean Air Council ("Council" or "Petitioner") hereby petitions the Administrator ("Administrator") of the United States Environmental Protection Agency ("EPA") to object to issuance of the Title V Operating Permit ("permit") for General Chemical Corporation ("General Chemical"), Permit No. AQM-003/00032. EPA should object to this permit because: 1) the permit does not require an adequate compliance schedule; 2) the permit does not require adequate monitoring or prompt notification; 3) General Chemical has had numerous violations at its facility after the comment period on this permit; and 4) General Chemical has contributed to the nearby Sunoco refinery violations of the Act.

This petition is filed within sixty days following the expiration of the EPA’s 45-day review period, as required by Section 505(b)(2) of the Act. See 42 U.S.C. § 7661d(b)(2). The Administrator must grant or deny this petition within sixty days after it is filed. Id.

In compliance with Section 505(b)(2) of the Act, this petition is based on information made public by the Delaware Natural Resources and Environmental Control Authority ("DNREC") after the close of the public comment period. Petitioner is entitled to base this petition on such information because it would have been impracticable to raise the following objections during the public comment period, and grounds for
such objections arose after the comment period ended. See 42 U.S.C. § 7661d(b)(2).

I. Parties

The Council is a member-supported, non-profit environmental organization dedicated to protect everyone’s right to breathe clean air. Founded in 1967, the Council is the oldest member-supported environmental organization in the Mid-Atlantic region. The Council works through public education, community advocacy, and government oversight to ensure enforcement of environmental laws. The Council has members who live, work, recreate, and breathe air in the state of Delaware and throughout the Mid-Atlantic region.

The Mid-Atlantic Environmental Law Center ("MAELC") represents the Council in this matter. MAELC is a not-for-profit environmental law firm that provides legal services to individuals and public interest organizations in environmental matters. MAELC works to ensure that environmental requirements are met, and that legislation and regulations are adequately implemented by responsible federal, state and local agencies. MAELC is located at Widener University School of Law and works in tandem with students in Widener’s Environmental and Natural Resources Law Clinic.

II. Basis for Objection

The Council requests the Administrator object to the final permit for General Chemical because it does not comply with 40 C.F.R. Part 70 and the Clean Air Act. In particular:

1) In contravention of 40 C.F.R. 70.5(c)(8), General Chemical’s permit does not provide an adequate compliance schedule;

2) General Chemical’s permit does not require adequate monitoring and prompt notification according to 42 U.S.C. § 7661c and 40 C.F.R. Part 70;

3) Several significant violations of the Act have occurred at General Chemical’s facility after the public comment period closed; and

4) General Chemical’s problems have contributed to hazardous releases from the nearby Sunoco refinery.

If EPA determines that a permit does not comply with legal
requirements, it must object to its issuance. See 40 C.F.R. 70.8(c)(1) ("The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements of this part."). The numerous and significant violations discussed herein require the Administrator to object to the permit issued to General Chemical by DNREC.

III. General Chemical Continues to Violate the Clean Air Act, its Consent Agreement, as well as its Permit, in Several Ways.

The following violations occurred after the public comment period ended for General Chemical’s permit. Because the public has had no opportunity to comment on how the permit should reflect these most recent violations, the Administrator should object to General Chemical’s permit.

A. In Contravention of 40 C.F.R. 70.5(c)(8), General Chemical’s Permit Does Not Provide an Adequate Compliance Schedule.

The Code of Federal Regulations ("Part 70") requires Title V permits have a compliance schedule. 40 C.F.R. 70.5(c)(8)(iii). The Act defines a ‘‘schedule of compliance’’ as a “schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.” 42 U.S.C. § 7661(3). The Consent Agreement with DNREC, signed after the close of the Title V comment period, ordered General Chemical to implement a compliance plan. Because the compliance plan required by the Consent Agreement was signed after the public comment period, the public had no opportunity to submit comments regarding such a deficiency in the permit.

The new releases and violations after the public comment period show that General Chemical is not in compliance with the Act. The permit must comply with the federal regulations under the Act, which require a compliance schedule in a Title V permit when a facility is not in compliance, and therefore General Chemical’s permit is required
to include a schedule of compliance. So, the Administrator should object to General Chemical’s permit because it fails to comply with proper legal requirements.

B. Adequate Monitoring Requirements and Prompt Notification Procedures are Needed in the Permit.

Adequate monitoring and prompt notification are essential to a Title V permit because, without these, states and the public cannot know whether a facility is complying with air quality and public health protections. The law is clear in this area, “each permit issued under [Title V] shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.” See 42 U.S.C. § 7661c(c). Moreover, prompt reporting of violations is one of the main objectives of the Act’s facility permitting: potentially dangerous illegal pollution or operational problems must be promptly reported to a responsible agency; the agency can then determine the response, ranging from further evaluation to immediate action. The Act requires “[p]rompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken.” See 40 C.F.R. 70.6(a)(3)(iii)(B).

Even though General Chemical has stated an emission should be reported immediately if it poses an “‘imminent and substantial danger’ to public health, safety or the environment,” its recent actions show it does not timely report. See General Chemical’s Reconciliation of Comments Received. (Attached as Exhibit E). For example, on January 1, 2003, General Chemical experienced an extremely hazardous sulfuric acid leak from one of its storage tanks. See DNREC Online: Environmental Releases. (Exhibit C). More than 1000 pounds of sulfuric acid were released, but reporting authorities were not notified until more than twenty-four hours after the occurrence. Id. This violates the federal reporting requirements because twenty-five hours is not “prompt” reporting when notifying authorities of an extremely hazardous chemical release. Recent violations also show additional monitoring of sulfur dioxide and sulfuric acid releases is needed to
assure compliance. Therefore, the permit must require more stringent monitoring and reporting requirements before it can be considered to be in compliance with federal regulations. Since the permit’s monitoring and reporting requirements have proven to be inadequate, EPA should object to issuance of the permit.

C. General Chemical is in Violation of the Act Due to its Releases of Extremely Hazardous Materials from its Facility.

General Chemical violated federal laws governing air pollution when it released hazardous substances from its facility. DNREC, on September 24, 2002, signed a Consent Agreement requiring “‘General Chemical to undertake measures to prevent future releases’.” See DNREC News, Volume 32, Number 272 (Sept. 24, 2002) (Attached as Exhibit A). Additionally, the Agreement orders General Chemical to do the following: 1) pay $425,000 as a primary civil penalty; 2) complete a “Failure Mode and Effects Analysis of the sulfuric acid ... processes;” 3) “implement a compliance plan to develop a risk management program for the sulfuric acid process;” 4) investigate and report on releases since January 2001; and 5) improve notification procedures to reporting authorities. Id. A DNREC press release concerning the Consent Agreement stated the purpose of the Agreement was to “‘correct environmental problems that have occurred in the Claymont area during the past year’.” Id. Following the Agreement, DNREC approved General Chemical’s permit on November 18, 2002. See http://www.epa.gov/reg3artd/permitting/petitions2.htm (Attached as Exhibit B).

During the last couple of months after the Consent Agreement was signed, General Chemical has had several reported hazardous releases. Specifically, on October 30, 2002, General Chemical released an unidentified amount of sulfur dioxide and sulfur trioxide due to a fire in a pre-heater. See DNREC Online: Environmental Releases (Attached as Exhibit C). Then, on November 14, 2002, one pound of sulfur trioxide was released from General Chemical’s facility. Id. Even though only one pound of the chemical was released, it was still
classified as extremely hazardous. Id. Again, sulfur trioxide was released on December 23, 2002, but in a much larger quantity – twenty pounds. Id. Finally, General Chemical released 1000 pounds of sulfuric acid from one of its storage tanks on January 1, 2003. Id. All of these chemicals are considered extremely hazardous because release of such chemicals into the surrounding environment can be poisonous or corrosive to body tissue; cause serious lung damage; as well as permanent injury, or even death. Id. The release of these chemicals by General Chemical is an even more severe violation because the Consent Agreement specifically ordered General Chemical to develop and implement plans to manage sulfuric acid processes. See DNREC News, Volume 32, Number 272 (Sept. 24, 2002) (Exhibit A).

The most recent release of sulfuric acid on January 1, 2003 is additionally troublesome because General Chemical suffered a previous leak in a similar storage tank. See General Chemical fire raises questions about storage tanks, (Feb. 12, 2002), http://www.delawareonline.com (Attached as Exhibit D). In February of 2002, one of General Chemical’s “30-year-old” tanks spilled approximately 2,000 tons of molten sulfur. This raises vital concerns about the safety of General Chemical’s equipment because it does not appear that measures are being taken to construct appropriate and reliable storage tanks in General Chemical’s facility. This is a major problem since General Chemical is “one of the largest producers on the East Coast of sulfuric acid.” See General Chemical fire raises questions about storage tanks, (Feb. 12, 2002), http://www.delawareonline.com (Exhibit D). Because these violations show General Chemical does not adhere to the regulations prescribed by federal or state law, or provide safe equipment to store its hazardous chemicals, the Administrator should object to its permit.

D. General Chemical’s Violations Have Contributed to Hazardous Releases from Sunoco’s Refinery.
Releases from General Chemical’s facility have contributed to hazardous situations at the neighboring Sunoco refinery. For instance, on January 22, 2003, Sunoco reported a pressure spike at General Chemical’s facility resulting in an eleven-minute release of sulfur dioxide from Sunoco’s Marcus Hook Plant. See DNREC Online: Environmental Releases (Attached as Exhibit C). The release of sulfur dioxide into the air was equivalent to 552 pounds. Id. Because Sunoco claims that its sulfur dioxide flare was directly caused by the hazardous release by General Chemical’s facility, the Administrator should object to issuance of General Chemical’s permit. Otherwise, General Chemical may continue to cause Sunoco to continue to violate federal and state air pollution laws, thereby remaining a threat to public health.

IV. Conclusion

In light of the permit’s failure to require a compliance schedule, its failure to require adequate monitoring and reporting, and because numerous and significant violations have occurred since the public comment period ended, the Administrator should object to the Title V permit for General Chemical Corporation.

Dated: January 31, 2003

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