

Cover Page for Petition for Review by U.S. Court of Appeals

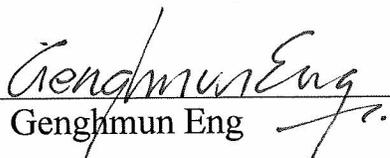
**PETITION FOR REVIEW OF US EPA ADMINISTRATOR OCT. 4, 2024**

**ORDER DENYING A PETITION FOR OBJECTING TO A TITLE V**

**OPERATING PERMIT, re: Petition No. IX-2024-14**

Court of Appeals Case No. \_\_\_\_\_  
before Judge \_\_\_\_\_  
U.S. Court of Appeals, Region 9  
125 South Grand Avenue, Pasadena, CA 91105

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\_\_\_\_\_  
Gengmun Eng

5 Jan 2025  
Date

UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

GENGHMUN ENG

5215 Lenore Street, Torrance, CA 90503

*Appellant and Petitioner, pro se,*

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY {"US EPA"} and

MICHAEL S. REGAN {"Administrator"}, Administrator, or

DR. JANE NISHIDA {"Administrator"}, Acting Administrator,

United States Environmental Protection Agency

and

REGION 9 OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY

{"US EPA Region-9 Staff"}

and

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT {"SCAQMD"}

*Respondents.*

**PETITION FOR REVIEW OF US EPA ADMINISTRATOR OCT. 4, 2024**

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**[Section A] INTRODUCTION**

**[A-1]:** It is Petitioner's understanding that Ninth Circuit normally requires Petitioner to file Excerpts of Record {"Excerpts"} with the opening brief [Circuit Rule 30-1, Rule 30-1.1], and separate those Excerpts from the brief, but submit them electronically concurrently with the brief [Circuit Rule 30-1, Rule 30-1.1, 30-1.2(a), 30-1.2(e)], except that such Excerpts are not required for a *pro se* party. However, the *pro se* party can cite documents in their opening brief [Rule 30-1-3], which is Petitioner's case here, and *pro se* proceedings also does not require a Mediation Questionnaire [Circuit Rule 15-2]. This '*Petition for Review*' to the US Court of Appeals document follows the format suggested in:

<https://selfhelp.appellate.courts.ca.gov/knowledge-center/opening-brief/>

**[A-2]:** Pursuant to Clean Air Act § 307(b)(1), 42 USC § 7607(b)(1); Rule 15 of the Federal Rules of Appellate Procedure (FRAP) for the Ninth Circuit; and Circuit Rule 15-1, Petitioner hereby petitions the Court for review of the final action taken by the US EPA Administrator Michael S. Regan, entitled "*Order Denying a Petition for Objection to a Title V Operating Permit*" (Oct. 4, 2024) {*Exhibit-01*}, as a response Petitioner's "*33-Page Amended Petition to the US EPA Administrator to Object to the Region 9 Permit Renewal as Constituted on May 28, 2024 for the Valero-Ultramar Wilmington HF Refinery, 2402 East Anaheim Street, Wilmington,*

90744 and Requesting that the US EPA Require Needed Permit Additions and Modifications as Outlined Herein” of July 15, 2024, Petition No. IX-2024-14 {*Exhibit-02*}, which Administrator denied in its entirety. Notice was published on Nov. 8, 2024, as FRL-12350-01-R9 in the Federal Register (Vol. 89, No. 217, page 88762), FR Doc. 2024-25944 {*Exhibit-03*}.

[A-3]: On Oct. 26, 2024, Petitioner appealed to the US EPA Environmental Appeals Board (EAB) in a 6-page filing, highlighting the two most critical Petition No. IX-2024-14 items. It was assigned ID-PINT-DAGV66, and later designated as CAA Appeal No. 24-11 {*Exhibit-04*}. On Nov. 7, 2024, the EAB dismissed Petitioner's Appeal due to Lack of Jurisdiction {*Exhibit-05*}, which now brings the matter of the original full Petition No. IX-2024-14 denial by the Administrator to the US Court of Appeals.

[A-4]: Petitioner also claims standing for this '*Petition for Review*' under Article III of the United States Constitution {*Exhibit-06*}, since a large-scale “Category-4” Catastrophic Hydrogen Fluoride (HF) Release by the Refinery Operator that goes “Outside the Refinery” will have immense off-site impacts, including long-term injury to people's health, including Petitioner's, and the environment. Petitioner further claims the defects identified herein need curing, and the Remedies Sought herein are needed to help minimize or reduce those immense off-site impacts.

**[Section B] STATEMENTS OF CASE**

The Valero-Ultramar Title-V Permit Renewal had 3 Public Comment periods:

**[B-1]:** A 45-day Public Comment period, when US EPA released its Valero-Ultramar Draft Title-V Permit Renewal, before sending it to the SCAQMD.

**[B-2]:** A SCAQMD Public Comment Period, ending on 9/26/2023, which only 2 members of the Public participated in, one being the Petitioner, and the other being the Torrance Refinery Action Alliance [TRAA]. During the this **[B-2]** Public Comment period, Petitioner submitted 3 documents covering multiple concerns, summarized below as A-2{i} through A-2{iii}.

**[B-2{i}]:** In his earliest Public Comments to the SCAQMD on the Valero-Ultramar Title-V Permit Renewal, Petitioner identified the additional need for:

*“[i] Better identification of Refinery Risk Factors (RRF) ... [iii] a Refinery Risk Reduction Plan (RRRP), and [iv] a compilation of Net Refinery Risk Reduction achieved to date for each RRF ... with special attention paid to the Refinery HF/MHF Alkylolation Unit.” {Exhibit-07, 9/23/2023, Notes 1 & 5}*

**[B-2{ii}]:** In his next SCAQMD Public Comments on the Valero-Ultramar Title-V Permit Renewal, Petitioner identified further concerns in the Draft-Title-V Permit in the Refinery Voluntary Risk Reduction Plan (VRRP), due to the VRRP ignoring:

“[i] the potential for large-scale HF/MHF releases .. [iii] the need for specific Refinery Response plans tailored to small, medium, large, and extreme HF/MHF releases, with special attention paid to earthquake, terrorist, or cyber-attack mediated release scenarios; as well as [iv] the need for Refinery coordination plans with Police, Fire, and Public Agencies.” {Exhibit-08; 9/24/23, Notes F & L}

**[B-3]:** On or about 4/5/2024, the SCAQMD released a 19-page response to these Public Comments {Exhibit-09}, noting that 'no changes were made' to the Draft-Title-V as a result of these 2 Public Comments, which was sent to the US EPA. Petitioner's understanding is that this SCAQMD response was a qualified Agency Comment for the Title-V Permit Renewal, which obligated the US EPA to initiate a follow-on 4/5/2024 to 5/20/2024 US EPA 45-day Public Comment period.

**[B-3{i}]:** On 5/8/2024, within the new 45-day Public Comment period, Petitioner submitted an extensive 29-page document to the US EPA Region-9 Staff, entitled: “*Emergency Petition to the US EPA for Timely and Needed Additions and Modifications to the Proposed Title V Permit Renewal for the Valero Ultramar HF Refinery*” {Exhibit-10}.

**[B-3{i}(a)]:** This *Emergency Petition* expanded the scope of Petitioner's concerns, due to access to a new 693-page document from the Los Angeles Fire Department (LAFD) Certified Unified Program Agency (CUPA), which was only disclosed due

to a TRAA Public Records Act (PRA) request. This 693-page document {Timestamp 12/25/2023, 2:49 PM} contained the entire LAFD CUPA *permit record* to date with respect to the Valero-Ultramar Wilmington HF Refinery. Because this *Emergency Petition* was timely, it provided Petitioner standing to bring forth further issues, expand the scope of prior issues, and added further weight to issues Petitioner already raised {see *Exhibit-11*}.

**[B-3{i}(b)]:** In his *Emergency Petition*, Petitioner labeled this 693-page document: “2022\_PEER-PRA-Response\_ValeroWilmington\_ALL-LAFD-Docs\_693pp.pdf” due to his belief then that the PRA originated from PEER (Public Employees for Environmental Responsibility). Petitioner's understanding now is that a member of the Torrance Refinery Action Alliance (TRAA) initiated the PRA request, and TRAA made this document available to Petitioner for Petitioner's *Emergency Petition* to the US EPA Region-9 Staff.

**[B-3{ii}]:** On or about May 28, 2024, the SCAQMD issued their Final Title-V Permit Renewal (Revision #149) to Valero-Ultramar [Facility ID 800026].

**[B-3{iii}]:** On 6/18/2024 {*Exhibit-12*}, US EPA Region-9 Staff responded to Petitioner's *Emergency Petition*, by notifying Petitioner that US EPA Region-9 Staff were not objecting to the Final Valero-Ultramar Title-V Permit Renewal, while encouraging Petitioner to submit a Formal Petition directly to the US EPA

Headquarters (Research Triangle Park, Durham, NC), requesting that the US EPA Administrator, Michael S. Regan, issue a formal Objection to granting the Final Title-V Permit Renewal. This new Petition period started just after the US EPA 45-day Public Comment period, running from 5/21/2024-7/18/2024 {*Exhibit-12*}.

**[B-4]:** On 7/15/2024, Petitioner submitted such a Formal Petition, which was assigned Petition No. IX-2024-14 {*Exhibit-02*}.

**[B-5]:** On 10/4/2024, the US EPA Administrator denied Petition IX-2024-14 in its entirety {*Exhibit-01*}, with Notice published on 11/8/2024 as FRL-12350-01-R9 in Federal Register, Vol. 89, No. 217, p. 88762; FR Doc. 2024-25944 {*Exhibit-03*}.

**[B-6]:** On or about 10/26/2024, Petitioner extracted 2 major concerns from Petition IX-2024-14, and submitted a Brief Appeal {*Exhibit-04, 10/26/2024*} on these 2 major concerns to the US EPA Environmental Appeals Board (EAB). Both major concerns were also part of his *Emergency Petition* {*Exhibit-10, 5/8/2024*}.

**[B-7]:** On or about 11/7/2024, the EAB dismissed Petitioner's Brief Appeal, due to lack of Jurisdiction {*Exhibit-05, 11/7/2024*}.

**[B-8]:** These 2 major concerns are captured here in the present document as the follow-on **[Section F]** “*Defective, Incomplete, and Inaccurate Permit Records.*”

**[Section C] STATEMENT OF APPLICABILITY**

Petitioner claims that the US EPA Administrator Denial of Petitioner's Petition No. IX-2024-14 in its entirety is a non-final judgment by virtue of Petitioner's present U.S. Appeals Court *'Petition for Review'* being allowed.

**[Section D] STANDARD OF REVIEW SOUGHT BY PETITIONER**

Petitioner here seeks that the US Court of Appeals apply the *de novo* standard for the present Petitioner's *'Petition for Review'*, which “*does not defer to the decisions made in the trial court {or Administrator}. Instead the Court of Appeal looks at the issue as if the trial court {or Administrator} had never ruled on it. This type of review is generally limited to issues involving questions of law. It is the most favorable standard of review for an appellant.*”  
*{selfhelp.appellate.courts.ca.gov/knowledge-center/opening-brief/}*.

**[Section E] STATEMENT OF FACTS**

Pursuant to Clean Air Act § 307(b)(1), 42 USC § 7607(b)(1); Rule 15 of the Federal Rules of Appellate Procedure (FRAP) for the Ninth Circuit; and Circuit Rule 15-1, Petitioner petitions the Court here for review of US EPA Administrator Michael S. Regan, Order entitled “*Order Denying a Petition for Objection to a Title V Operating Permit*” (Oct. 4, 2024) {*Exhibit-01*}, as a response Petitioner's “*33-Page Amended Petition to the US EPA Administrator to Object to the Region 9 Permit Renewal as Constituted on May 28, 2024 for the Valero-Ultramar Wilmington HF Refinery, 2402 East Anaheim Street, Wilmington, 90744 and Requesting that the US EPA Require Needed Permit Additions and Modifications as Outlined Herein*” of July 15, 2024, Petition No. IX-2024-14 {*Exhibit-02*}, which Administrator denied in its entirety. Notice was published on Nov. 8, 2024, as FRL-12350-01-R9 in the Federal Register (Vol. 89, No. 217, page 88762), FR Doc. 2024-25944 {*Exhibit-03*}. On Oct. 26, 2024, Petitioner prepared a 6-page Brief Appeal to the US EPA Environmental Appeals Board (EAB) [ID-PINT-DAGV66, {CAA Appeal No. 24-11}] {*Exhibit-04*}, highlighting the two most critical Petition No. IX-2024-14 items. On Nov. 7, 2024, the EAB dismissed Petitioner's Appeal due to Lack of Jurisdiction {*Exhibit-05*}, which brings Petition No. IX-2024-14 denial by the Administrator to the US Court of Appeals.

**[Section F] ARGUMENTS, PART ONE**

**[F-1]:** Petitioner claims here the *de novo* standard should be applied to this US Appeals Court '*Petition for Review*' as 3 potential faults were found in the US EPA Administrator denial of Petitioner's Petition IX-2024-14 that Petitioner claims involve questions of Law, as covered in the next **[F-3]** and **[F-4]** subsections; in addition to numerous '*Defective, Incomplete, and Inaccurate Permit Records*' also being found, which can be grouped into 2 major concerns as noted in above **[B-8]**, which are further detailed in the following **[Section G]**. These 2 major concerns were first highlighted in Petitioner's *Emergency Petition {Exhibit-10, 5/8/2024}*, and carried forward in Formal Petition IX-2024-14 *{Exhibit-02, 7/15/2024}*, then to Petitioner's EAB Brief Appeal *{Exhibit-11, 10/26/2024}*, which the EAB dismissed due to EAB Lack of Jurisdiction, so these 2 major concerns are now brought to the US Appeals Court, as part of this Petitioner's US Appeals Court '*Petition for Review*'.

Petitioner claims here that these 2 major concerns, if validated, comprise *de facto noncompliances* by the Refinery Operator, and that they also are *prima facie* defects, incompletenesses, or inaccuracies in the *permit, permit process, or permit record*, which can be adjudicated as a stand-alone items, without need for citing specific portions of any particular Regulatory document.

In addition, any validated *prima facie* defect, incompleteness, or inaccuracy, may compromise other aspects of the *permit, permit process, or permit record*, and may impact other Regulatory documents, creating implicit *noncompliance* conditions within those documents.

As a result, Petitioner further claims here that when alleged *prima facie* defects, incompletenesses, or inaccuracies in the *permit, permit process, or permit record*, can be adjudicated as a stand-alone items, without the need for Petitioner to specifically cite Regulatory Agency document sections, then the US EPA Administrator and/or Regulatory Agencies should be required to adjudicate those items, and to either validate or refute these *prima facie* claims. This process will then allow the remaining, now validated, *prima facie* claims to be used by the US EPA Administrator, Regulatory Agency, or any other Agencies, to determine if these validated *prima facie* defects, incompletenesses, or inaccuracies in the *permit, permit process, or permit record*, impacts any other documents or operations within their purview, including:

**[F-1a]:** Whether the validated *prima facie* defect, incompleteness, or inaccuracy creates further *noncompliances* in the CAA, 40 CFR Part 70, or 40 CFR §68.215, or other Regulatory Documents, allowing Regulatory Agencies to demand curing of those newly identified *noncompliances* by the Refinery Operator;

**[F1-b]:** Whether the validated *prima facie* defect, incompleteness, or inaccuracy creates follow-on concerns for other Agencies, including Police, Fire, and Health Agencies, that may have implicitly relied on all Refinery Operator *permit, permit process, and permit records* being accurate, complete, and non-defective.

**[F-2]: ALTERNATIVE STATUTORY CODE NAMES**

The CAA Clean Air Act is also '42 USC Chapter 85, Sects. 7401 – 7438'; while *40 CFR Part 70* is also 'Title 40, Chapter I, Sub-chapter C, Part 70, Sects. 70.1 – 70.14, and Appendix A'; and *40 CFR Part 68* is also 'Title 40, Chapter I, Sub-chapter C, Part 68, Subparts A – H, and Appendix A, Sects. 68.1 – 68.220'.

**[F-3]: CRITICAL AGENCY TEXTS REGARDING PETITION DENIAL**

**[F-3a]:** As part of *Emergency Petition* denial, the US EPA Region-9 noted that Petition grounds for an Administrator Objection must be based on claims that “*the permit, permit record, or permit process is not in compliance with applicable requirements of the Clean Air Act (CAA) or the regulations in 40 CFR Part 70*”.

**[F-3b]:** As part of Petition IX-2024-14 Denial, US EPA Administrator noted:

**[F-3b(i)]:** “*Petitioner must demonstrate that the permit does not include, assure compliance with, or otherwise satisfy a CAA-based requirement. Here, the Petitioner does not identify any applicable requirement with which the Permit does not comply.*” {Exhibit-01, p. 7 of 17}.

**[F-3b(ii)]:** “*Title V permits are not required to contain information related to an RMP beyond the requirements specified in 40 CFR §68.215. The Petitioner does not allege that the permit does not satisfy or include the requirements specified in 40 CFR §68.215 ...*” {Exhibit-01, p. 12}.

**[F-3b(iii)]:** “*The Petitioner seeks to use the title V permitting process to revise the terms of the facility’s underlying RMP itself.*” {Exhibit-01, p. 12}.

#### **[F-4]: POTENTIAL FAULTS IN AGENCY PETITION DENIALS**

##### **[F-4a]: First Petition Denial Potential Fault Identified**

Petitioner claims here that the US EPA Administrator erred in **[F-3b(i)]** by faulting Petitioner for not identifying a '*CAA-based requirement*', as if that was the **only** necessary statutory code before the US EPA Administrator would adjudicate the merits of Petitioner's concerns; and the US EPA Administrator further erred in **[F-3b(ii)]** by faulting Petitioner for not identifying a '*40 CFR §68.215 requirement*', as if that was the **only** necessary statutory code before the US EPA Administrator would adjudicate the merits of Petitioner's concerns. Both cannot simultaneously be true as the **only** necessary statutory code for US EPA Administrator action. Furthermore, US EPA Region-9 Staff noted, in contrast, that either of the '*requirements of the Clean Air Act (CAA) or the regulations in 40 CFR Part 70*' might be acceptable.

Thus, Petitioner claims here these texts demonstrate that ambiguities are present as to what constitutes the necessary statutory code that a Petitioner must cite in their Petition, under threat of Petition dismissal.

In addition to these ambiguities, Petitioner claims when a *common sense reading* of a Petition claim or concern, by itself, as a stand-alone item, indicates its potential validity, Agencies should be required to adjudicate such items on their merits, without the necessity of having Petitioner cite specific sections of the CAA, *40 CFR Part 70*, or *40 CFR §68.215*, or other Regulations, to bolster the validity of that Petition claim or concern. Petitioner seeks Court concurrence on this item.

**[F-4b]: Second Petition Denial Potential Fault Identified**

US EPA Region-9 Staff noted that Petition grounds for Administrator Objection must be based on Petitioner claims “*the permit, permit record, or permit process is not in compliance with applicable requirements of the Clean Air Act (CAA) or the regulations in 40 CFR Part 70*”. Here, when a Petition claim or concern alleges defects, incompletenesses, or inaccuracies are present in the “*the permit, permit record, or permit process*”, where a *common sense reading* of that Petition claim or concern, by itself, as a stand-alone item, indicates its potential validity, Petitioner claims that if these defects, incompletenesses, or inaccuracies are found to be valid, they represent stand-alone *de facto noncompliances* by the Refinery

Operator. Petitioner claims here that in this situation, where Petitioner alleges potential *de facto noncompliances*, Agencies should be required to adjudicate those Petitioner claims or concerns on their merits, to establish or refute claim or concern validity, without needing Petitioner to cite specific CAA, 40 CFR Part 70, 40 CFR §68.215, or other Regulatory sections.

*Noncompliance* covers a much broader range of possibilities than citing specific sections of the CAA, 40 CFR Part 70, or 40 CFR §68.215. If a *noncompliances* is intimately connected to a specific section or sections of the CAA, 40 CFR Part 70, or 40 CFR §68.215, requiring citing those specific sections would be appropriate. However, Petitioner claims here that stand-alone *de facto noncompliances* should not require such citing, since they can be adjudicated as stand-alone items. One class of these *noncompliances*, covers the case of *permit records* being defective, incomplete, or inaccurate. A single validated defective, incomplete, or inaccurate *permit record* may impact many Refinery Operator physical systems and subsystems, and thereby touch many CAA, 40 CFR Part 70, or 40 CFR §68.215 sections and subsections. In addition, it can compromise the Regulatory oversight functions of the CAA, 40 CFR Part 70, or 40 CFR §68.215, due to fact that when Regulatory Compliance documents and information are sent to various Agencies, those Agencies may be implicitly relying on the presumption that the *permit*

*records* are accurate, complete, and non-defective *permit records*, for their development of actionable plans. A Refinery Operator promulgating defective, incomplete, or inaccurate *permit records* to various Agencies can then cause those Agency actionable plans to also have hidden defects, hidden incompleteness, or hidden inaccuracies.

In consideration of the above paragraphs, so as to minimize the possibility of having an actual defect, incompleteness, or inaccuracy in the *permit record* contaminate the entire Regulatory enterprise, Petitioner claims here, that if a *common sense reading* of any Petitioner's claims or concerns alleging *permit records* being defective, incomplete, or inaccurate; those claims and concerns should be adjudicated by Agencies on their merits, without the necessity of having Petitioner cite specific sections of the CAA, *40 CFR Part 70*, or *40 CFR §68.215*. This comprises the second Petition Denial Potential Fault that Petitioner has identified, and Petitioner here seeks Court concurrence on this item.

**[F-4c]: Third Petition Denial Potential Fault Identified**

When a Petitioner brings a claim or concern to a Regulatory Agency, must they be operating as a full *in loco parentis* substitute for what the Regulatory Agencies should have been doing, in the natural course of executing Agency duties with the proper due diligence? A concrete example will help clarify this question.

Suppose a Regulatory Agency finds a Refinery Operator *noncompliance*, it is their duty to bring the Refinery Operator back into *compliance*. As part of that task, the Regulatory Agency must determine for the Refinery Operator which portions of the CAA, 40 CFR Part 70, or 40 CFR §68.215 provides the Regulatory Agency authority to demand Refinery Operator responses, so as to restore *compliance*.

When a Petitioner brings a claim or concern to a Regulatory Agency alleging a Refinery Operator *noncompliance*, if the Regulatory Agency evaluates that alleged *noncompliance* on its merits, and finds that the Petitioner's alleged *noncompliance* constitutes an actual Refinery Operator *noncompliance*; Petitioner claims here that for maximum Regulatory Effectiveness, and to hew closest to the US EPA Charter of protecting the Health and Environment, the Regulatory Agency should then bring their full weight and knowledge of the entire Regulatory landscape to identify all of the sections of the CAA, 40 CFR Part 70, or 40 CFR §68.215, or any other Regulatory Codes that also become *noncompliant*, followed by demanding the Refinery Operator cure all *noncompliances* expeditiously. Here, the Petitioner and Regulatory Agencies are working together, to ensure maximum combined effectiveness. In this case, Petitioner would not need to cite any specific sections of the CAA, 40 CFR Part 70, or 40 CFR §68.215, or any other Regulatory Codes, because that would be a *de jure* Regulatory Agency task that they are expert at.

On the other hand, when a Petitioner brings a claim or concern to a Regulatory Agency, alleging a Refinery Operator *noncompliance*, if the Regulatory Agency seeks to avoid evaluating that alleged *noncompliance* on its merits, and instead finds that the Petitioner's allegations are automatically defective and can be dismissed, because the the Petitioner did not also identify which CAA, *40 CFR Part 70*, or *40 CFR §68.215*, or any other Regulatory Codes sections also become *noncompliant*; it means that the full *in loco parentis* responsibility now falls on the Petitioner, to act as a fully qualified Regulatory Agency substitute. Petitioner then has to perform both tasks that the Regulatory Agency normally does, which is to first identify the *noncompliance*, and then to comb through the entire Regulatory landscape to identify which sections of the CAA, *40 CFR Part 70*, or *40 CFR §68.215*, or any other Regulatory Codes also become *noncompliant*. Petitioner would then have to pray that Regulatory Agency concurs with their selections, which then gives the Regulatory Agency yet another chance to minimize or dismiss the Petitioner's original claims and concerns. The Regulatory Agency now instead brings their full weight and knowledge of the entire Regulatory landscape to deny Petitions and Petitioner claims. Here, the Petitioner and Regulatory Agencies are working in opposition, which is likely to result in a minimum combined effectiveness. While there may be an extraordinary circumstance where the

Petitioner manages to successfully perform both tasks, as a full *in loco parentis* substitute for the Regulatory Agency experts, Petitioner claims here that this path achieves the least Regulatory Effectiveness overall, and hews furthest from the US EPA Charter of protecting the Health and Environment.

This comprises the third Petition Denial Potential Fault: When Petitioner alleged *noncompliances* involve *permit records* being defective, incomplete, or inaccurate, Petitioner should not be required to cite specific sections of the CAA, *40 CFR Part 70*, or *40 CFR §68.215*, or any other Regulatory Codes, to bolster the *noncompliance* claim, because a single defective, incomplete, or inaccurate *permit record* could affect many CAA, *40 CFR Part 70*, or *40 CFR §68.215*, or other Regulatory Codes sections. Instead, it should be a *de jure* Regulatory Agency duty to identify how a group of identified and validated defective, incomplete, or inaccurate *permit records*, as a whole, affects their entire Regulatory landscape. Petitioner also seeks Court concurrence on this item.

**[F-4d]: The Possibility of a *de minimis* Finding**

Petitioner claims as long as any *common sense reading* of a particular *permit record* itself makes it self-evident that the *permit record* is defective, incomplete, or inaccurate, then researching and citing which portion of CAA, *40 CFR Part 68*, or *40 CFR Part 70* required these *permit records* to be generated in the first place,

is at most a *de minimis* imperfection against Petitioner's claims or Petitions, and should be nilpotent with respect to Agency adjudication of the validity of those allegations. If the Agency validates the Petitioner's allegations, the Agency can then mandate Refinery Operator step needed for proper curing of the validated defective, incomplete, or inaccurate *permit records*.

As noted above, a single validated defective, incomplete, or inaccurate *permit record* may impact many Refinery Operator physical systems and subsystems, and thereby touch many CAA, 40 CFR Part 70, or 40 CFR §68.215 sections and subsections, as well as touching outside Agencies that may be relying on the presumption of accurate, complete, and non-defective *permit records*.

Thus, Petitioner further claims here that for the case of alleged defective, incomplete, or inaccurate *permit records*, the Administrator or any other Regulatory Agency can simply be directed to note Petitioner's omission of citing Regulatory Codes, as a *de minimis* Petition imperfection, with the Regulatory Agency proceeding to merits of the Petitioner's claims and concerns with respect to any alleged defective, incomplete, or inaccurate *permit records*.

#### **[F-5]: PETITIONER REBUTTAL TO SPECIFIC AGENCY DENIAL GROUNDS**

**[F-5(1)]:** On 4/5/2024, around when Petitioner first had access to the 693-page LAFD CUPA document, the SCAQMD issued their 19-page final response

{*Exhibit-09*} to Petitioner's *Exhibit-07* and *Exhibit-08* and other people's Public Comments. The SCAQMD noted 'no Permit changes' were being made as a result of those Public Comments. Of particular importance, in the SCAQMD denying all Public Comment claims, is the SCAQMD assertion {*Exhibit-09, p. 3 of 19*}:

“*The Refinery has a Comprehensive Risk Management Plan {RMP}.*”

After this SCAQMD denial, when the 693-page LAFD CUPA document was made available, Petitioner extracted 10 critical pages {*Exhibit-11*}, which allowed Petitioner to develop the follow-on items [G-2] and [G-3] of [Section G] in the present document. Petitioner claims here items [G-2] and [G-3] refute the above SCAQMD *RMP* assertion, and so that the SCAQMD erred in that assertion.

[F-5(2)]: Petitioner rebuts Administrator [F-3b(i)] and [F-3b(ii)] as follows:

[F-5(2)(a)]: In the follow-on items [G-2] and [G-3] of this document, Petitioner claims here that since virtually the entire *permit, permit process, and permit record* derive from the CAA requirements, any defective, incomplete, or inaccurate *permit records* already are a *prima facie noncompliances* of the Refinery Operator's CAA or 40 CFR 70.6(a)(6)(i) requirements. Thus, Petitioner claims that identification of defective, incomplete, or inaccurate *permit records* should have been sufficient grounds for the Administrator to adjudicate Petitioner's claims regarding these *noncompliances*, allowing the Administrator to mandate Permit Additions or

Modifications to cure these defects, and to help prevent future recurrences.

**[F-5(2)(b)]:** Petitioner claims since **NO** sections of the CAA, *40 CFR Part 68*, or *40 CFR Part 70*, allow the promulgation of defective, incomplete, or inaccurate *permit records* to any Agency receiving documents or reports; and that doing so by the Refinery Operator also constitutes a *prima facie* violations.

**[F-5(2)(c)]:** Petitioner further claims that as long as any *common sense reading* of a particular *permit record* itself makes it self-evident that the *permit record* is defective, incomplete, or inaccurate, then researching and citing which portion of CAA, *40 CFR Part 68*, or *40 CFR Part 70* required these *permit records* to be generated in the first place, is at most a *de minimis* imperfection against Petitioner's claims or Petitions.

**[F-5(2)(d)]:** As such, Petitioner also claims Administrator denial of Petitioner's Petition No. IX-2024-14 in its entirety, due to this *de minimis* imperfection, renders Administrator Petition denial as capricious and arbitrary, under CAA § 307(d)(9), and 42 USC 7607(d)(9).

**[F-5(2)(e)]:** Petitioner further claims that Permit Additions/Modifications are needed, to better *assure compliance with* already existing CAA or 40 CFR 70 requirements, including:

**[F-5(2)(e)(i)]:** Curing the items already identified from the Refinery Operator

having submitted defective, incomplete, or inaccurate *permit records* to Agencies;

**[F-5(2)(e)(ii)]:** Having further Permit Additions and/or Modifications to provide additional checks and balances to ensure the Refinery Operator does not submit future similarly defective, incomplete or inaccurate *permit records* to Agencies;

**[F-5(2)(e)(iii)]:** Having ERP additions and upgrades, vetted through the SCAQMD and US EPA, that properly addresses the possibility of a Category-4 Catastrophic HF/MHF Release Event that goes “Outside the Refinery”, creating Off-Site Impacts, which should contain these mandatory components to minimize health impacts people and damage to the environment:

**[F-5(2)(e)(iii-a)]:** Requiring the Refinery Operator to maintain ongoing coordination with the SCAQMD, US EPA, and the outside Agencies of Police, Fire, Health Authorities, and the Public, for responses to a Category-4 Catastrophic HF/MHF Release Event that goes “Outside the Refinery”.

**[F-5(2)(e)(iii-b)]:** Requiring the Refinery Operator to maintain adequate pre-event insurance, monetary resources, and payment implementation plans, vetted by the SCAQMD and US EPA, for post-event mitigation of long-term health impacts from Category-4 Catastrophic HF/MHF Releases that goes “Outside the Refinery”.

**[F-5(2)(e)(iii-c)]:** Requiring the Refinery Operator to develop and disseminate Catastrophic Event timelines for: (A) optimal, (B) less-optimal, and (C) sub-

optimal temporal responses, vetted by the SCAQMD and US EPA, that include human health impacts for (A), (B), and (C).

**[F-5(2)(f)]:** The Bhopal Gas Leak Disaster of 2-3 December 1984 killed more than 5000 people and injured an estimated 100,000, with many suffering long-term health issues. Union Carbide settled in 1989 through the India Supreme Court for \$470M, but if Union Carbide settlement paralleled the US Asbestos settlement, its comparable amount could have exceeded \$10B *{Exhibit-13}*. Petitioner claims that this Bhopal Gas Leak Disaster should be used by the SCAQMD and US EPA to assess the adequacy of future proposed Refinery Operator responses to a *'Category-4 Catastrophic HF/MHF Release with Off-Site Impacts'*.

**[F-5(3)]:** The Administrator also asserted: *"Petitioner seeks to use the title V permitting process to revise the terms of the facility's underlying RMP itself,"* which might be valid for some of Petitioner's original 16 claims in Petition IX-2024-14, but this *"revise the terms"* no longer applies to the main surviving claims, as given here in **[G-2]** and **[G-3]** of this *'Petition for Review'*, which seek only to: (a) cure defects found in ERM/ERP portions of the present-day Valero-Ultramar RMP; (b) cure defects found in the Refinery Operator *permit record*; and to (c) have Permit Additions and Modifications to correct these identified defects, to minimize their future occurrence or impacts.

**[Section G] ARGUMENTS, PART TWO****Defective, Incomplete, and Inaccurate Permit Records**

**[G-1]:** Part of the case Petitioner brings to the Court, is that Petitioner claims two major defects, incompletenesses, or inaccuracies, were found in the *permit record* {*Exhibit-11*} that: (a) need to be cured prior to the full granting of the Final Title-V Permit Renewal for the Valero-Ultramar HF Refinery in Wilmington, CA [SCAQMD Facility ID 800026]; with (b) additional Permit modifications warranted to prevent defect recurrence, and enhanced reporting to allow Agency curing of these types of defects in a more timely manner.

Both items (**[G-2]** and **[G-3]**, below) were highlighted in Petitioner's EAB Appeal {*Exhibit-04, 10/26/2024*}, and were important parts of Petition No. IX-2024-14 {*Exhibit-02, 7/15/2024*}, and the prior *Emergency Petition* {*Exhibit-10, 5/10/2024*} to the US EPA Region-9 Staff; with **[G-2]** relating to the Valero-Ultramar Emergency Response Manual [ERM] and Emergency Response Plans [ERP], as significant elements of their present-day overall Risk Management Plan [RMP]; while **[G-3]** relates to the Valero-Ultramar Refinery Operator submitting *prime facie* defective, incomplete, or inaccurate *permit records* to the LAFD (Los Angeles Fire Department) CUPA (Certified Unified Program Agency); with specific examples presented in **[G-4]**.

**[G-2]:** The first major item concerns the Valero-Ultramar ERM/ERP, which was provided on pp. 304-489 of the 693-page LAFD-CUPA document. It spans 186 pages, with Petitioner's *Exhibit-11*, on pp. 2-8, containing critical ERM/ERP extracts. The Valero-Ultramar ERM/ERP covers innocuous Category-1 through Catastrophic Category-4 events, where Petroleum Product and Corrosive Chemical Releases are treated separately, with HF/MHF Releases being the latter. The present-day ERM/ERP also has separate pages for Releases that go “Outside the Refinery” creating Off-Site Impacts versus those that might not go “Outside the Refinery”. Among these various ERM/ERP possibilities, Petitioner claims that a '*Category-4 Catastrophic HF/MHF release with Off-Site Impacts*' qualifies as a *worst case accidental release event*.

**[G-2a]:** The major defect Petitioner then identified is that the ERM and ERP has pages covering virtually every other case, except for this case. The ERM and ERP is silent on '*Category-4 Catastrophic HF/MHF release with Off-Site Impacts*', which Petitioner claims is a serious omission, so that there presently is no ERM and ERP “*evaluation of a worst case accidental release*” for the case of a '*Category-4 Catastrophic HF/MHF release with Off-Site Impacts*'. Consequently, there is no Refinery Operator “*response program*” for this worst-case.

**[G-2b]:** Petitioner also claims here that these omissions qualify as serious

violations of the Clean Air Act (CAA) Sections 7412(r)(7)(B)(ii)(I) and 7412(r)(7)(B)(ii)(III); since 7412(r)(7)(B)(ii)(I) requires that the Risk Management Plan (RMP) “*shall include an evaluation of worst case accidental releases*”, while 7412(r)(7)(B)(ii)(III) requires that the RMP contain “*a response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures.*”

**[G-2c]:** Petitioner claims these omissions, as CAA violations, make the Refinery Operator noncompliant to their *Permit*, and these omissions also make the Refinery Operator noncompliant to 40 CFR 70.6(a)(6)(i): “*The Permittee must comply with all conditions of the Part 70 permit. Any permit noncompliance constitutes a violation of the {Clean Air} Act, and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.*”

**[G-2d]:** Petitioner also claims here the Refinery Operator ERP (*Exhibit-11*, p. 5) for a ‘*Category-4 Catastrophic {Corrosive Chemical HF} Release*’ without considering off-site impacts is also defective, as the ERP only lists has 6 items in its Table 2.2 (*Exhibit-11*, p. 6) as Representative Actions for this catastrophic case.

These are labeled here as *ERP\_Item-1* through *ERP\_Item-6*, with Petitioner claiming that defects are present for each *ERP\_Item*, which are noted for each.

*ERP\_Item-1: "Activate the ERP and report emergency to Lead Process Technicians [LPT]"*. Petitioner claims [Item Defect-1] the ERP saying to "Activate ERP" is self-referential and not actionable. [Item Defect-2] Reporting to an LPT is also far too low a level for handling a Category-4 Catastrophic HF Release. There should be a "911" button on every Refinery and Contractor Staff radio or Communication Device that automatically ties in to the Refinery Operator Central Command and Control Console (CCCC), and automatically ties into the LAFD 911 system.

*ERP\_Item-2: "Check the MSDS information and know the chemicals in your area."* Petitioner Claims [Item Defect-3] every person routinely working in any area with hazardous chemicals is supposed to 'know the chemicals' in their area and where the MSDS (or SDS) binder is located. Very few, and maybe only one chemical, can create a Category-4 Catastrophic Corrosive Chemical release, so this step, if followed, wastes time, where seconds count.

*ERP\_Item-3: "Activate deluge systems if available and safe to do so without protective equipment."* Petitioner Claims [Item Defect-4] deluge systems for major HF releases, including Water Cannons, Water Curtains, and HF/MHF dumping into safe-tanks usually is activated from the CCCC. The first person to

report an emergency is not likely to be CCCC Operator. That's why notifying the CCCC should be the proper *ERP\_Item-1*. This *ERP\_Item-3* then likely has the first person to report an emergency **do nothing** else, while notice of the emergency works its way from the LPT person noted in the present *ERP\_Item-1*, up to the CCCC Operator, again wasting time, where seconds and minutes count.

*ERP\_Item-4: "Activate fixed monitors to control release at its source if available and safe to do so without protective equipment."* Petitioner Claims [Item Defect-5] 'Fixed Monitors' measure things at a particular location. Some Monitors activate automatically when sensing an improper condition, like automatic sprinklers that create "Monitor Streams". Unfortunately, at room temperature and normal atmospheric pressure, an HF/MHF Release generates pure HF gas, which no 'Fixed Monitor' can control, aside from Deluge Systems for major HF/MHF releases, which usually is activated from the CCCC. This *ERP\_Item-4* then likely has the first person to report an emergency **do nothing** else, while notice of the emergency works its way from the LPT person noted in the present *ERP\_Item-1*, up to the CCCC Operator, again wasting time, where seconds and minutes count.

*ERP\_Item-5: "Evacuate personnel from area."* Petitioner claims that the Refinery Operator is not likely to have anhydrous Hydrogen Fluoride [HF] gas in an on-site gas cylinder. The Refinery Operator may have small amounts of 'HF liquid' on

site, indicating Hydrofluoric Acid, which is a solution of Hydrogen Fluoride molecules in water, where localized spills can be cleaned up with Baking Soda (Sodium Bicarbonate). However, HF Releases from the Refinery Alkylation Unit or HF Settler Tanks associated with the Refinery Alkylation Unit are likely to form a toxic Ground-Hugging HF cloud, where a large release HF cloud can roll on for miles, and be lethal to humans within minutes of exposure. For small localized HF/MHF Releases, evacuating personnel may be proper. However, for massive HF/MHF releases that occur outside of where a person is located, the proper course of action for that person would likely be to 'Shelter-in-Place', as evacuation can expose personnel to the toxic HF cloud. Since this Table 2.2 is supposed to apply to a Category-4 Catastrophic HF/MHF Release, a 'Shelter-in-Place' instruction would more likely be the proper instruction.

*ERP\_Item-6: "Isolate equipment at a safe distance .. Divert the release to a safe containment area or continue dilution of the release using monitor streams."*

Petitioner claims [Item Defect-7] that isolating equipment by an individual likely applies only to small or localized HF/MHF releases. For major HF/MHF releases, isolating equipment likely needs to be done from the CCCC. Diverting the HF/MHF release is impossible because HF gas emerges from even localized releases. For small to medium-sized HF/MHF releases, dilution of the release is

also impossible without having a local deluge water system, which would have to be wired in locally to be quickly activated, after which the person should immediately leave, shutting the door behind them. The '*Continue Dilution*' instruction is totally inappropriate for even small HF/MHF releases, as it exposes the person to ongoing HF gas, which can result in a lethal exposure.

**[G-2e]:** Petitioner claims the above identified defects demonstrates the SCAQMD erred in their assertion *{Exhibit-09, p. 3 of 19}* that:

*“The Refinery has a Comprehensive Risk Management Plan {RMP}.”*

**[G-2f]:** Petitioner further claims that the present-day *permit, permit process, and permit record*, which was allowed to go forward with these Refinery Operator defects omissions in place, constitute grounds for modification of the present-day Valero-Ultramar Final Title-V Permit Renewal, with additional Permit terms and conditions added requiring the Refinery Operator to cure these omissions, and have them vetted as adequate by the SCAQMD, US EPA, and Public, to help prevent future recurrence. Petitioner seeks Court concurrence for Permit modifications and additions, to cure these defects and omissions, as outlined in **[Section H]**.

**[G-3]:** The second major item Petitioner identified is the Valero-Ultramar Refinery Operator submitted *prime facie* defective, incomplete, or inaccurate *permit records* to the LAFD-CUPA, which oversees six California State Programs: California

Accidental Release Prevention [CalARP], Hazardous Materials Management Plans [HMMP] and {Hazardous Materials} Inventory Statements [HMIS], Above-ground Petroleum Storage Act [APSA], Underground Storage Tank [UST], Hazardous Materials Business Plan [HMBP], and Hazardous Waste Generator and Onsite Treatment [HWGOT], thereby impacting multiple programs.

Petitioner claims here that Refinery Operator submission of defective, incomplete, or inaccurate *permit records* to any Agency constitutes a violation of Section K-25 of the Final Title-V Renewal Permit and/or CFR §68.215; depending on: (a) if similar defective, incomplete, or inaccurate *permit records* were also submitted to the SCAQMD or US EPA, or (b) if the SCAQMD or US EPA created similar defective, incomplete, or inaccurate *permit records* by accessing or copying *permit records* from the LAFD CUPA, or from the 6 Programs the CUPA oversees.

Section K-25 of the Final Title-V (p. 1339 of 1369) states: “*All records, reports, and documents required to be submitted by a Title V operator to AQMD or EPA shall contain a Certification of Accuracy consistent with Rule 3003(c)(7) by a responsible official (as defined in Rule 3000). [3004(a)(12)]*”

Similarly, CFR §68.215 requires 40 CFR Part 70 or 40 CFR Part 71 Stationary Source Operators, which includes all Refinery Operators, to submit a “Source Certification”, which is: “... a Certification Statement that the {Stationary} Source

*is in compliance with all requirements of this part, including the registration and submission of the RMP {Risk Management Plan}.” [40 CFR §68.215(a)(ii)].*

When the Refinery Operator submits *permit records* to Agencies besides the AQMD or US EPA, where a Certification of Accuracy is not required to be concurrently submitted, Petitioner claims here those Refinery Operator *permit records* are still required be complete, accurate, and non-defective. As a check, Petitioner queried the Google(R) AI Chatbot: “*Can a 40 CFR Part 70 Facility submit inaccurate information to other agencies?*”, which responded:

*“No, a 40 CFR Part 70 facility cannot submit inaccurate data to other agencies, as doing so would be considered a violation of environmental regulations and could result in significant penalties, including fines and potential legal action due to the requirement to submit truthful and accurate data.”*

As a result, Petitioner claims here that Refinery Operator submission of defective, incomplete, or inaccurate *permit records* to the LAFD CUPA makes the Refinery Operator noncompliant to 40 CFR 70.6(a)(6)(i), and modification of the Valero-Ultramar Final Title-V Permit Renewal is needed to enable proper curing, with additional Permit terms and conditions added that requires the Refinery to cure these *permit records*, and have them vetted as adequate by the SCAQMD, US EPA, and Public, to help prevent future recurrence. As such, Petitioner seeks Court

concurrence for Permit modifications and additions, to better ensure Refinery Operator submitted *permit records* are accurate, complete, and non-defective, as given in the follow-on [Section H] 'Proposed Remedies'.

[G-4]: Specific Examples of *prime facie* defective, incomplete, or inaccurate *permit records* submitted by the Refinery Operator to the LAFD-CUPA are presented herein. The Valero-Ultramar Hazardous Materials Business Plan [HMBP] and 55-page Hazardous Materials Inventory Statements [HMIS], were provided on pp. 230-293 of the 693-page LAFD-CUPA document. Petitioner's *Exhibit-11*, on pp. 9-10, contains critical representative HMIS extracts.

Petitioner claims that the Valero-Ultramar 55-page “*Hazardous Materials System BP-8 Computer Listing of Inventory Submitted*” released as part of HMIS compliance, and abstracted in *Exhibit-11*, contains multiple *prima facie* defective, incomplete, or inaccurate *permit records*, making them noncompliant to any and all CAA, 40 CFR Part 68, or 40 CFR Part 70 sections that mandate Refinery Operator recordkeeping that is complete, accurate, and non-defective.

The present SCAQMD *Facility Permit to Operate for Ultramar, Inc.* is Rev. #149, 5/28/2024, with SCAQMD records easily available back to Revision #38, dated 9/28/2004. Given that Title-V Permits require Permit Renewals every 5 years, Petitioner would have expected Permit Renewals in 2019, 2014, 2009.

**[G-4a]:** Petitioner claims the **First Record Defect** found in this 55-page *permit record* is that it has a “*Printed on: 7/28/2011*” timestamp. Therefore, this *permit record* seriously outdated, making it a *prima facie* defect. Petitioner finds it incredulous that the Refinery Operator has not added at least one new Chemical Inventory item in the last 13+ years, or has not increased the 'Maximum Quantity on Hand' for at least one chemical in this 55-page *permit record*; and that this defect was allowed by all Agencies to persist, after the circa 2014 Permit Renewal, after the circa 2019 Permit Renewal, and now into the Revision #149, 28 May 2024 Permit Renewal. Petitioner claims that additional Permit modifications are needed to cure this defect, and to prevent future recurrences.

**[G-4b]:** Petitioner claims the **Second Record Defect** found in this 55-page *permit record* is that while many chemicals are properly listed using either standard units of volume (e.g. gallons or cubic feet), or standard units of weight (e.g. pound or tons); and while one gallon is the same volume for each chemical using that unit, and one pound is the same weight for each chemical where that unit is used; many entries in this 55-page *permit record* are denominated in a unit of weight or volume listed as 'OTHERS'. Allowing use of that nonstandard unit of 'OTHERS' is by itself is a *prima facie* defect. Furthermore, is 1 unit of 'OTHERS' for a particular chemical the same as 1 unit of 'OTHERS' for another chemical?

This 55-page *permit record* is given here in {*Exhibit-14*}. It contains about 301 entries using standard units, while having about 65 entries using the unit 'OTHERS'. With 65 such entries, Petitioner claims it is beyond reasonable doubt that 1 unit of 'OTHERS' has varied the among different chemicals within this 55-page *permit record*. As such, each variance constitutes a separate *prima facie* defect by itself, thereby creating multiple inaccuracies throughout this entire 55-page *permit record*. Petitioner claims that additional Permit modifications are needed to cure these defects, and to prevent future recurrences.

**[G-4c]:** Petitioner claims the **Third Record Defect** found in this 55-page *permit record* was even if the chemical was properly listed using either standard units of volume (e.g. gallons or cubic feet), or standard units of weight (e.g. pound or tons); the 'Maximum Quantity on Hand' for at least 15 of the about 366 total entries is [blank]. Each [blank] entry creates variance by itself, and each one constitutes a separate *prima facie* defect, compared to a pristine *permit record*; thereby creating additional multiple inaccuracies throughout the entire 55-page *permit record*. Petitioner claims that additional Permit modifications are needed to cure these defects, and to prevent future recurrences.

**[G-4d]:** Petitioner also claims a **Fourth Record Defect**; an interaction between these **[G-4c]** defects, and the prior subsection **[G-2]** defects; namely that on p. 26

of this 55-page *permit record*, the '*Hydrogen Fluoride, Anhydrous*' maximum amount in pounds is one of the [blank] entries. Thus, not only is there no ERM and ERM “*evaluation of a worst case accidental release*” for a '*Category-4 Catastrophic HF/MHF release with Off-Site Impacts*', and no Refinery Operator “*response program*” for this case; there is not even a Refinery 'Maximum Quantity on Hand' listed. Thus, all Agencies, including Police, Fire, and Health authorities will be blindsided in a '*Category-4 Catastrophic HF/MHF release with Off-Site Impacts*', since '*Off-Site*' is necessarily “Outside the Refinery”. Petitioner claims special Permit additions and modifications are needed to cure this severe defect. Petitioner claims this **Fourth Record Defect** demonstrates the SCAQMD further erred in their assertion:

“*The Refinery has a Comprehensive Risk Management Plan {RMP}.*”

*{Exhibit-09, p. 3 of 19}*, which Petitioner believes was a major SCAQMD rationale for dismissing Petitioner's 9/2023 initial Public Comment claims and concerns. Petitioner therefore prays that the U.S. Court of Appeals mandate Permit additions and modifications to the Valero-Ultramar Title-V Permit Renewal to the fullest extent possible, to mitigate the catastrophic health and environmental impacts of a '*Category-4 Catastrophic HF/MHF release with Off-Site Impacts*'.

**[Section H] PROPOSED REMEDIES**

**[H-1]:** Petitioner claims that identified defects, especially in the *permit record*, (a) Need to be cured prior to the full granting of the Final Title-V Permit Renewal for the Valero-Ultramar HF Refinery in Wilmington, CA; and that (b) Permit Additions or Modifications are needed to prevent defect recurrence, with enhanced reporting to allow agencies to effect curing of these inaccuracies in a more timely manner.

**[H-2]:** Petitioner reiterates here his Petition No. IX-2024-14 claim *{Exhibit-02, p.11, pp. 18-19}* that Permit Additions or Modifications are needed, beyond this present-day *F24.1(a)* requirement:

***F24.1(a):** The Operator shall comply with the accidental release prevention requirements pursuant to 40 CFR Part 68 .. including the registration and submission of a Risk Management Plan (RMP).*

To effect the needed changes Petitioner asks the Court to concur with the following Permit Additions and Modifications to the present-day Valero Ultramar Wilmington HF Refinery 2024 Title-V Permit Renewal. These needed Permit changes were detailed in Petitioner's July 15, 2024 Petition No. IX-2024-14 (p. 11-of-33), with corrections and clarifications here noted using *{\*}* symbols.

***F24.1(b):** The Refinery Facility Operator as part of their RMP, shall maintain and*

*upgrade their Refinery Facility Emergency Response Manual [ERM] and Emergency Response Plans\* [ERP] for Corrosive Chemical Releases, up through and including Category-4 Catastrophic HF/MHF Releases with Off-Site Impacts.*

**F24.1(b)(i):** *The ERP shall include updates to the Refinery Operator Chemical Inventory (CI) list, which shall be released yearly to the Los Angeles Fire Department (LAFD) Certified Unified Program Agency (CUPA), and SCAQMD for Public Release.*

**F24.1(b)(i)(A):** *Quantity amounts shall be in either Standard International (SI) Units (such as kilograms and liters), or British Units (such as pound and gallons).*

**F24.1(b)(i)(B):** *Any missing or erroneous CI entries shall be corrected by the Refinery Operator in a timely manner, with a CI update released.*

**F24.1(c):** *All ERM and ERP changes and upgrades shall be vetted through the SCAQMD and US EPA\*\*, and shall include:*

**F24.1(c)(1):** *Enhanced Guidance for all Refinery on-site personnel covering the case of a Catastrophic Category 4 HF/MHF release scenario with Off-Site Impacts, and make it available to all Refinery on-site personnel;*

**F24.1(c)(2):** *Enhanced Guidance on what pre-coordination with outside agencies should be done, prior to a Catastrophic Category 4 HF/MHF release with Off-Site Impacts;*

**F24.1(c)(3):** *Enhanced Guidance on what coordination with outside agencies should be done, during a Category 4 Catastrophic HF release scenario with Off-Site Impacts, and what response time-scales are needed to minimize human injury and/or loss of life.*

**F24.1(c)(4):** *The Enhanced Guidance for F24.1(c)(1) through F24.1(c)(3) shall be developed with a time-scale resolution of no coarser than a 10 second interval, and cover a period no smaller than 20 minutes.*

**F24.1(d)\*\*\*:** *While a Category-4 Catastrophic HF/MHF Release with Off-Site Impacts may be unlikely, its economic and human and medical impact can be vast, so that additional financial security needs to be provided to the public-at-large in case of such an event. Therefore, as part of the Refinery Operator Emergency Response Plans [ERP]\*\*\*\*, for continued use of HF/MHF Alkylation, the Refinery Operator shall post a \$1 billion Surety Bond with the City of Los Angeles, using an independent insurer vetted by the City of Los Angeles as capable of paying for human, medical, and property damages, in the event of such a scenario occurring, in order to mitigate the short-term and long-term Public Health and Safety effects of a Refinery Operator Category-4 Catastrophic HF/MHF release with Off-Site Impacts.*

**F24.1(e):** *Because Category 4 Catastrophic HF/MHF releases with Off-Site*

*Impacts constitute an extreme Public Health and Safety Emergency, all Refinery Operator proposed: [1] ERM and ERP upgrades, and [2] Enhanced Guidance documents [F24.1(c)(2)-F24.1(c)(4)] shall be made available to the Public through the SCAQMD for Public Comments, after all Refinery Operator proprietary or confidential information is redacted out; with the SCAQMD then generating or concurring on the final upgraded ERMs, ERPs, and final Enhanced Guidance documents, prior to implementation.\*\*\*\*\**

**F24.1(f):** *{Present-day Final Title-V F24.1(b) paragraph.}*

*\* Note\_1a: Petitioner's concerns about the significant impacts of a Category-4 Catastrophic HF/MHF Release, and the lack of substantial and specific guidance in the Refinery Operator RMP for a Category-4 Catastrophic HF/MHF Release, covering Release effects within the Refinery, as well as those that could occur "Outside the Refinery", were originally highlighted as F24.1(b) on p. 11-of-29 of Petitioner's prior May 10, 2024 Emergency Petition to the US EPA Region-9 Staff, entitled: "Emergency Petition to the US EPA for Timely and Needed Additions and Modifications to the Proposed Title V Permit Renewal for the Valero Ultramar HF Refinery." {Exhibit-10}*

*\* Note\_1b: The phrase 'and Emergency Response Plans [ERP]' is added here for clarity and consistency.*

\*\* *Note\_2a*: The additional phrase: '*shall be vetted through the SCAQMD and US EPA*' was added here, to ensure the correctness and technical accuracy of ERM and ERP upgrades.

\*\* *Note\_2b*: These *F24.1(c)(1) – (c)(4)* mirror *F24.1(e)(1) – (e)(4)* in Petition No. IX-2024-14.

\*\*\* *Note\_3a*: The proposed Surety Bond was originally highlighted as *F24.1(c)* on p. 11-of-29 of Petitioner's prior May 10, 2024 *Emergency Petition* to the US EPA Region-9 Staff, entitled: "*Emergency Petition to the US EPA for Timely and Needed Additions and Modifications to the Proposed Title V Permit Renewal for the Valero Ultramar HF Refinery.*" {*Exhibit-10*}. Presently, the Refinery Operator had only a \$1M of General Commercial Liability Insurance per occurrence, through Ace American Insurance Company, which also actually expired on 5/1/2018 {*Exhibit-11, p. 2 of 10*}.

\*\*\* *Note\_3b*: Petition No. IX-2024-14 text claiming Valero-Ultramar was an LLC was removed.

\*\*\*\* *Note\_4*: The association of the proposed Surety Bond as a component of the Refinery Operator Emergency Response Plan [ERP] is added here for clarity.

\*\*\*\*\* *Note\_5*: This *F24.1(e)* clarifies and simplifies *E12 – E17* from Petition No. IX-2024-14.

## **[Section I] CONCLUSIONS**

In the present '*Petition for Review*' to the US Court of Appeals, Petitioner claims that the above information establishes Petitioner's standing to bring these concerns to the US Court of Appeals, with regards to the present-day Final Title-V Permit Renewal for the Valero-Ultramar HF Refinery in Wilmington, CA [SCAQMD Facility ID 800026], which includes these specific Petitioner Claims:

**[I-1]:** That 3 potential faults were found in the US EPA Administrator denial of Petitioner's Petition IX-2024-14 that involve questions of Law, as covered in the above **[Section F]**; and that:

**[I-2]:** That two major defects in the *permit record {Exhibit-11}* were also identified that: (a) need to be cured prior to the full granting of the Final Title-V Permit Renewal for the Valero-Ultramar HF Refinery, as given in the above **[Section G]**; with (b) additional Permit modifications warranted to prevent defect recurrence, and enhanced reporting allowing agencies to cure of these types of defects in a more timely manner, as given in the above **[Section H]**.

## **[Section J] CERTIFICATE OF COMPLIANCE**

Electronic Word Count for Document: 9432 Words

[Section K] CERTIFICATE OF SERVICE TO INTERESTED PARTIES

