

# Title V Objection/Clean Air Act: Environmental Organizations Petition Addressing Delaware City, Delaware, Refinery



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

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Several environmental organizations filed a document before the United States Environmental Protection Agency styled:

*Petition to Object to the Title V Operating Permit for the Delaware City Refinery ("Petition")*

The environmental organizations jointly filing the *Petition* include:

- Delaware Audubon Society
- Delaware Concerned Residents for Environmental Justice
- Sierra Club
- Environmental Justice Health Alliance for Chemical Policy Reform
- Widener Environmental and Natural Resources Law Clinic
- Environmental Integrity Project
- Earthjustice

(collectively, "Earthjustice")

Earthjustice objects to the proposed renewal Title V permit issued by the Delaware Department of Natural Resources and Environmental Control ("DNREC") for the Delaware City, Delaware refinery owned and operated by Delaware City Refining Company, LLC.

42 U.S.C. § 7661d(A) requires that states submit each Title V Operating Permit to EPA for review. The federal agency has 45 days to object to the issuance of the permit if it determines it is not in compliance with the applicable requirements of the Clean Air Act. If EPA does not object to a permit, the Clean Air Act provides that any person may petition the EPA Administrator, within 60 days of the expiration of the 45-day review, to object to the permit. If EPA does not object to the permit, Section 505(b)(2) provides that any person may petition the EPA Administrator, within 60 days of the expiration of the 45-day review period, to object to the permit.

Earthjustice objects based on the following arguments:

- Environmental Justice Concerns Mandate Increased Focus and Action by EPA to Ensure that the Permit's Provisions are Strong and Comply with Title V and the Clean Air Act Requirements.
- DNREC'S Response Regarding These Environmental Justice Concerns Fails to Demonstrate That EPA Could or Should Ignore These Important Factors.

- DNREC violated public participation requirements by failing to provide an adequate public hearing and respond to significant comments.
- DNREC failed to provide an adequate public hearing.
- DNREC failed to respond to substantive comments in writing.
- The proposed permit contains unlawful loopholes for SSM periods.
- The Proposed Permit Unlawfully Gives DNREC Discretion to Excuse Noncompliance During Periods of Unplanned Shutdowns of the FCU and FCCU and Unplanned Shutdown or Bypass of Their Controls.
- DNREC’s response to comments offers no valid reason for retaining the unlawful director’s discretion provisions.
- The Proposed Permit Unlawfully Relaxes 40 C.F.R. Part 63, Subpart UUU Standards Applicable to the FCCU During Planned Startups and Shutdowns and When the FCCU’s CO Boiler is Combusting Only Refinery Fuel Gas.
- During planned startups and shutdowns, the permit provides the FCCU with either an unlawful exemption from—or an unlawful alternative to—the Subpart UUU standards for metallic HAPs.
- The proposed permit unlawfully excuses the FCCU from complying with Subpart UUU standards when the CO boiler is burning only refinery fuel gas.
- DNREC’s response to comments offers no valid reason to retain the permit language relaxing Subpart UUU standards applicable to the FCCU during planned startups and shutdowns and when the FCCU’s CO boiler is combusting only refinery fuel gas.
- That the Director’s Discretion Provisions and Provision Relaxing the FCCU’s Subpart UUU Requirements Were Incorporated from Construction Permits Provides No Reason for EPA to Refuse to Address these Loopholes.
- The Valero Houston Order and Its Basis
- EPA cannot possibly refuse to address SSM loopholes from underlying construction permits that affect NESHAP, SIP, or consent decree limits.
- EPA’s interpretation and rationale from previous Title V orders is irrelevant to the question of whether EPA can consider the director’s discretion provisions’ effect on minor NSR limits.
- The Clean Air Act and EPA’s Title V regulations mandate that the agency consider the director’s discretion provisions’ unlawful effect on minor NSR limits.
- The Permit Includes an Unlawful Affirmative Defense to Liability for Exceedances of “Technology-Based” Limits During Malfunctions and Emergencies.
- DNREC’s response to comments offers no valid reason to retain the unlawful affirmative defense.
- The proposed permit fails to assure compliance with NESHAP and NSPS requirements.
- The Permit Fails to Ensure Compliance with NSPS and NESHAP Requirements for a Flare Management Plan.
- EPA should require DNREC to revise the permit to identify other specific applicable requirements from NESHAP Subpart UUU and NSPS Subpart J.
- The proposed permit fails to include necessary terms and conditions to assure compliance with the accidental release prevention, risk management plan regulations, 40 C.F.R. part 68.
- EPA must object to assure compliance with RMP rules in part 68.
- EPA must object due to DNREC’s failure to respond to petitioners’ significant comment raising the problem of the draft permit’s omission of important RMP rule, part 68, requirements.

A copy of the *Petition* can be downloaded [here](#).