



1 such objections arose after the comment period ended. See 42 U.S.C. §  
2 7661d(b)(2).

3 **I. Parties**

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

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

21 **II. Basis for Objection**

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

- 25 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

1 requirements, it must object to its issuance. See 40 C.F.R.  
2 70.8(c)(1) ("The Administrator will object to the issuance of any  
3 proposed permit determined by the Administrator not to be in  
4 compliance with applicable requirements of this part.") The numerous  
5 and significant violations discussed herein require the Administrator  
6 to object to the permit issued to General Chemical by DNREC.

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

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

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

18 The Code of Federal Regulations ("Part 70") requires Title V  
19 permits have a compliance schedule. 40 C.F.R. 70.5(c)(8)(iii). The Act  
20 defines a "'schedule of compliance'" as a "schedule of remedial  
21 measures, including an enforceable sequence of actions or operations,  
22 leading to compliance with an applicable implementation plan, emission  
23 standard, emission limitation, or emission prohibition." 42 U.S.C. §  
24 7661(3). The Consent Agreement with DNREC, signed after the close of  
25 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

1 to include a schedule of compliance. So, the Administrator should  
2 object to General Chemical's permit because it fails to comply with  
proper legal requirements.

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

5 Adequate monitoring and prompt notification are essential to a  
6 Title V permit because, without these, states and the public cannot  
7 know whether a facility is complying with air quality and public  
8 health protections. The law is clear in this area, "each permit issued  
9 under [Title V] shall set forth inspection, entry, monitoring,  
10 compliance certification, and reporting requirements to assure  
11 compliance with the permit terms and conditions." See 42 U.S.C. §  
12 7661c(c). Moreover, prompt reporting of violations is one of the main  
13 objectives of the Act's facility permitting: potentially dangerous  
14 illegal pollution or operational problems must be promptly reported to  
15 a responsible agency; the agency can then determine the response,  
16 ranging from further evaluation to immediate action. The Act requires  
17 "[p]rompt reporting of deviations from permit requirements, including  
18 those attributable to upset conditions as defined in the permit, the  
19 probable cause of such deviations, and any corrective actions or  
20 preventive measures taken." See 40 C.F.R. 70.6(a)(3)(iii)(B).

21 Even though General Chemical has stated an emission should be  
22 reported immediately if it poses an "imminent and substantial danger"  
23 to public health, safety or the environment," its recent actions show  
24 it does not timely report. See General Chemical's Reconciliation of  
25 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

1 assure compliance. Therefore, the permit must require more stringent  
2 monitoring and reporting requirements before it can be considered to  
3 be in compliance with federal regulations. Since the permit's  
4 monitoring and reporting requirements have proven to be inadequate,  
EPA should object to issuance of the permit.

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

8 General Chemical violated federal laws governing air  
9 pollution when it released hazardous substances from its facility.  
10 DNREC, on September 24, 2002, signed a Consent Agreement requiring  
11 "'General Chemical to undertake measures to prevent future releases'."  
12 See DNREC News, Volume 32, Number 272 (Sept. 24, 2002)(Attached as  
13 Exhibit A). Additionally, the Agreement orders General Chemical to do  
14 the following: 1) pay \$425,000 as a primary civil penalty; 2) complete  
15 a "Failure Mode and Effects Analysis of the sulfuric acid ...  
16 processes;" 3) "implement a compliance plan to develop a risk  
17 management program for the sulfuric acid process;" 4) investigate and  
18 report on releases since January 2001; and 5) improve notification  
19 procedures to reporting authorities. Id. A DNREC press release  
20 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).

21 During the last couple of months after the Consent Agreement was  
22 signed, General Chemical has had several reported hazardous releases.  
23 Specifically, on October 30, 2002, General Chemical released an  
24 unidentified amount of sulfur dioxide and sulfur trioxide due to a  
25 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

1 classified as extremely hazardous. Id. Again, sulfur trioxide was  
2 released on December 23, 2002, but in a much larger quantity - twenty  
3 pounds. Id. Finally, General Chemical released 1000 pounds of sulfuric  
4 acid from one of its storage tanks on January 1, 2003. Id. All of  
5 these chemicals are considered extremely hazardous because release of  
6 such chemicals into the surrounding environment can be poisonous or  
7 corrosive to body tissue; cause serious lung damage; as well as  
8 permanent injury, or even death. Id. The release of these chemicals by  
9 General Chemical is an even more severe violation because the Consent  
10 Agreement specifically ordered General Chemical to develop and  
11 implement plans to manage sulfuric acid processes. See DNREC News,  
12 Volume 32, Number 272 (Sept. 24, 2002) (Exhibit A).

13 The most recent release of sulfuric acid on January 1, 2003 is  
14 additionally troublesome because General Chemical suffered a previous  
15 leak in a similar storage tank. See General Chemical fire raises  
16 questions about storage tanks, (Feb. 12, 2002),  
17 <http://www.delawareonline.com> (Attached as Exhibit D). In February of  
18 2002, one of General Chemical's "30-year-old" tanks spilled  
19 approximately 2,000 tons of molten sulfur. This raises vital concerns  
20 about the safety of General Chemical's equipment because it does not  
21 appear that measures are being taken to construct appropriate and  
22 reliable storage tanks in General Chemical's facility. This is a major  
23 problem since General Chemical is "one of the largest producers on the  
24 East Coast of sulfuric acid." See General Chemical fire raises  
25 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.

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

#### 14 **IV. Conclusion**

15 In light of the permit's failure to require a compliance  
16 schedule, its failure to require adequate monitoring and reporting,  
17 and because numerous and significant violations have occurred since  
18 the public comment period ended, the Administrator should object to  
19 the Title V permit for General Chemical Corporation.  
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21 Dated: January 31, 2003

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