Amy S. Cohen, Esq.
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Environmental Law and Justice Clinic
536 Mission Street
San Francisco, CA 94105-2698

Re: Comments on Reopening of Major Facility Review Permit,
Tesoro Refining & Marketing Company (Facility Nos. B2758 & B2759)

Dear Ms. Cohen:

Thank you for your letter of September 8, 2005, providing comments on behalf of Our Children's Earth Foundation on the public draft for the proposed reopening of the Major Facility Review Permit for the Tesoro Refining & Marketing Company. The District is now proposing the reopened permit to EPA for their review. The District has considered your comments in preparing the final permit, and has the following responses. (Please note that the numbering of the headings does not track the headings in your comment letter, as some headings addressed general, background issues and did not provide specific comments on the proposed reopening.)

I Comments Regarding Adequacy of Monitoring, Recordkeeping & Reporting:

Three comments were raised regarding the adequacy of the monitoring, recordkeeping and reporting requirements in the Permit. They are addressed in turn below.

A. Flares—Monitoring for NSPS Subpart J

Comment 1: "[40 C.F.R.] Section 60.104(a)(1) imposes a hydrogen sulfide ("H2S") emission standard, and contains an exemption for the "combustion in a flare of process upset gases or fuel gas that is released to the flare as a result of relief valve leakage or other emergency malfunctions." Therefore, in order to qualify for the exemption, a flaring event must satisfy the conditions necessary for the exemption – *i.e.*, "relief valve leakage" or some other "emergency malfunction." The only way to verify whether an exemption is properly claimed is to require federally enforceable monitoring and reporting of flaring events to the District.

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"Monitoring is required to determine whether in fact there was an emergency "malfunction," as defined under 40 CFR § 60.2, NSPS Subpart A, as opposed to other types of flaring events that might not qualify for the exemption. Pursuant to NSPS Subpart A, the definition of "malfunction" means a "sudden, infrequent, and not reasonably preventable" equipment or process failure, and excludes failures caused by "poor maintenance or careless operation." 40 C.F.R. § 60.2 Without monitoring and reporting of flaring events to the District, no information exists to determine whether a claimed "emergency malfunction" is actually a routine event or due to poor maintenance or careless operation, and therefore does not qualify for the exemption.

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"In addition to monitoring, the Permit must include appropriate reporting to the District to ensure compliance with NSPS Subpart J. . . . An exemption under NSPS Subpart J may be attributable to upset conditions and therefore require prompt reporting of such conditions to the District.

"Indeed, the District elsewhere acknowledges that monitoring and recordkeeping are required to verify that a source qualifies for an exemption from an applicable requirement. As documented in the previous reopening of the Permit, notice of which was issued on April 15, 2005, the District requires Tesoro to monitor and keep records necessary to demonstrate that its cooling towers qualify for exemption under Regulation 8-2. See SB (April 15, 2005) at 14. According to the District, "the facility has the burden of keeping records necessary to demonstrate that it qualifies for the exemption." SB (April 15, 2005) at 14. Accordingly, Tesoro has the burden of monitoring, recordkeeping, and reporting necessary to demonstrate that each flaring event qualifies for the exemption from the H2S standard in NSPS Subpart J.

"Rather than adding the required monitoring in this reopening, the District decided to "defer its response" until EPA issues new guidance on this issue. SB at 8. The District points to EPA's withdrawal of past guidance addressing the issue, interpreting this to mean that EPA has somehow reconsidered or failed to clarify its position, SB at 8, even thought EPA did not explicitly rely on the guidance in its Order. See EPA Order at 28-30. This deferral is improper. First and foremost, the EPA Orders regarding the Tesoro, Valero and Chevron refineries are in full force and effect. The District is flatly refusing to comply with the Orders and reissue the Permits in accordance with the Orders as required under Title V and Part 70. Second, the District may not "defer" response on a legal issue merely because EPA indicates it may issue guidance at some future time. To do so wrongly assumes that EPA lacks authority to enforce "applicable requirements" where it has stated that it may issue guidance on implementation of those requirements some time in the future."

Response: As the District has explained in correspondence with EPA on this issue, Title V does not provide authority to impose monitoring for purposes of determining whether a requirement is applicable. Authority to impose new monitoring relates only to "applicable" requirements. As the District has also stated, it is important to address

whether Subpart J is in fact applicable. However, the question of whether Title V monitoring is appropriate does not arise unless and until the standard is determined to apply.

With respect to reporting, Title V reporting requirements apply to all standards that are incorporated into the permit as "applicable". As discussed above, however, the first question to address is whether the standard is "applicable".

The correspondence between BAAQMD and EPA reflects a difference of opinion regarding whether Title V monitoring is required for the H_2S standard Subpart J as well as the conditions under which that standard applies. That EPA issued and then withdrew guidance is, in the District's view, noteworthy, but in no way determinative of the issue. Whether Title V monitoring is required for a requirement that has not been determined to be applicable is primarily a legal issue, and the District has explained its reasoning on this topic. Whether Subpart J applies at flares that have heretofore been considered exempt is a mixed question of law and fact, and the District has explained it position on this topic as well. The District's statement to the effect that it would defer a response until new guidance is issued was, in part, a reaction to EPA's statement, in withdrawing the guidance, that new guidance was forthcoming. The District remains receptive to consideration of further rationale, whether offered in guidance or some other form.

B. Cooling Towers—Monitoring for BAAQMD Reg. 6-311

Comment 2: "BAAQMD Regulation 6-311 calculates the allowable emission limits for the discharge of particulate matter from cooling towers. The emission limits are determined by applying the process weight rate of the cooling tower to emission rates found in Table 1 of the Regulation.

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"The process material used to determine the process weight, and therefore the process weight rate, must be identified to ensure that it only includes "material introduced into the operation" under Regulation 6-203, and not other substances. If the process material does not meet the requirements of Regulation 6-203, then the emission limits applied to the cooling towers will be incorrect and the District's justification for not imposing periodic monitoring is flawed. The SB does not identify the material used to determine the process weight rate. There is no way to determine the applicable emission limits without identification of that material."

Response: For cooling towers, the "process material" for purposes of the Regulation 6-203 definition is the water that flows through the cooling tower. The "process weight rate" used to determine the applicable Regulation 6-311 limit for cooling towers is calculated by multiplying the cooling tower water flow rate by the weight of the water. In all cases, the process weight rate for the cooling towers is well over the highest Regulation 6-311 threshold, making the cooling towers subject to the 40 lb./hr. limit. The District has revised the Statement of Basis to clarify that water flow rate is the process weight basis for determining allowable emissions for a cooling tower subject to Regulation 6-311.

C. FCCU – Monitoring for BAAQMD Regs. 6-301 & 6-310

Comment 3: "[The monitoring requirements in proposed condition 22150] must be met "no later than the ESP monitoring commencement date required under 40 CFR Part 63, Subpart UUU." See Permit Condition NO. 22150 at 86. Under Subpart UUU, existing affected sources must comply with the Subpart standards by April 11, 2005, or they may obtain an extension of the compliance date if they fulfill certain conditions.

"It is unclear whether the Tesoro Refinery has obtained an extension of its compliance date for the applicable monitoring requirements. . . . If it has obtained a proper extension, then the "compliance schedule" required by 40 CFR § 63.1563(c)(2) should be included in the Permit along with the operating conditions under which the extension remains valid. In addition, the legal and factual basis for the compliance extension must be fully explained in the SB. If the refinery has not obtained a proper extension, then a schedule of compliance is required, and the SB should be revised to clearly indicate that the unit is out of compliance with the applicable monitoring requirement."

Response: The District incorporated the compliance deadline of the MACT standard in order to avoid duplication and conflict. Now that the MACT standard's compliance deadline has passed, the permit conditions have been updated to require immediate compliance. Tesoro has not obtained an extension.

II. Comments Regarding The Need For A Compliance Schedule

A number of comments were raised regarding the Compliance Review that the District conducted in response to EPA's determination in its 3/15/05 Order that the District had not adequately supported its determination that (with one exception) no schedule of compliance was necessary to address on-going non-compliance at the facility. Each comment is addressed below.

A. Extent of Documentation of Causes of Past Violations

Comment 4: "For the public to effectively evaluate the Refinery's compliance record and comment on the necessity of a compliance schedule for any of its listed sources, it is necessary to include information about the causes of the violations, as well as whether and how those causes have been corrected. . . .

"The SB should be revised to include "Root Cause" and "Corrective Action" analyses for each violation, similar to those that the Tesoro Refinery included in its "Annual Performance Review and Evaluation Submittal" to Contra Costa Health Services, June 30, 2004 ("APR"). See APR at 2-11. The origin of and solution to each violation should be fully explained. Without this information the SB is incomplete, and further may inaccurately represent certain sources as being in compliance where the actual cause of the violation has not yet been resolved and has not been prevented from recurring."

Response: As EPA made clear in its March 15, 2005 Order, the District was required to "make a reasonable determination that no compliance schedule is necessary because (i) the facility has returned to compliance; (ii) the violations were intermittent, did not evidence on-going non-compliance, and the source was in compliance at the time of permit issuance; or (iii) the District has opted to pursue the matter through an enforcement mechanism and will reopen the permit upon a consent agreement or court adjudication of the noncompliance issues." Order at 17. The District's Compliance Review was more than adequate to satisfy these requirements. For each violation, the District documented when and how the violation was stopped and the facility returned to compliance. It also documented why the violations were isolated or intermittent and did not evidence ongoing non-compliance (with the exception of the coker flue gas issue, which is being addressed by a schedule of compliance), for example by explaining that multiple violations at a particular process unit were caused by unrelated problems. Furthermore, although this comment insinuates that the District may have "inaccurately represent[ed]" the truth regarding these violations, the comment provides nothing more than conclusory speculation as to how that could be. The District therefore disagrees that additional detail needs to be provided in the Compliance Review to support the District's determination that, with the exception of the coker flue gas issue, no compliance schedule is necessary.

With respect to the level of detail provided in Tesoro's June 30, 2004, Annual Performance Review and Evaluation Submittal, which was attached with the comments, the Compliance Review does not need to include the highly detailed information provided there in order to adequately explain and support the District's determination not to require a schedule of compliance. The District does investigate violations at the refinery to this level of detail, and it documents those investigations in its files, which are open for public inspection once a violation is settled. But for a number of reasons the District does not believe that it would be appropriate to include that level of detail in the Compliance Review. For one, it would make the Compliance Review, and hence the Statement of Basis, a huge and unwieldy document if such detailed information were to be included for every violation, which would run counter to Title V's goal of providing information to the public in an easily accessible format. For another, it simply is not necessary to do so in order to undertake a meaningful assessment of whether a compliance schedule is necessary, as explained above.

B. Multiple and Repeat Violations

Comment 5: "[T]he District has not adequately explained whether certain sources which are responsible for multiple and repeat violations have in fact been resolved by curing the causes of the problems."

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"For these sources, the District should require a compliance schedule"

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"The very high overall number of violations at the Tesoro Refinery indicates the facility's inability to comply with District regulations on an ongoing basis. These violations show

that the Refinery has been unable to maintain the facility at a level necessary to minimize violations. Therefore, in addition to compliance schedules for the previously discussed sources, the District should require compliance schedules for the following sources to require that Tesoro prepare an analysis of how these multiple violations can be corrected and prevented."

Source #1401—Sulfur Recovery Unit

"This source had a total of 16 excess sulfur dioxide ("SO_2") violations resulting from a wide variety of different causes during the four-year period the SB addresses (1/1/01 to 12/31/04). Violations resulted from events such as power interruptions, a malfunctioning oxygen valve, a feed water pump malfunction, operator error, and unstated causes. This high number of violations due to a variety of causes indicates that Tesoro has been unable to ensure that this source will comply with SO_2 emission regulations. The District should add a compliance schedule for this source to require that Tesoro prepare an analysis of how these multiple violations can be corrected and prevented.

"Power supply interruptions caused excess SO_2 emissions violations on 6 different occasions between 1/1/01 and 12/31/04. These emissions violations indicate a pattern of recurring violations with a common cause. The District should require a compliance schedule to specifically address power supply interruptions at this source. See also Comment B.3.a below for additional comments on power supply interruptions regarding this and other sources.

"For three excess SO_2 emissions violations (on 4/11/01, 9/18/01 and 9/24/01) the District does not state the cause of the violations. The public is therefore unable to determine whether these violations are part of a pattern of recurring violations with a common cause."

Source #903—Coker Boiler #5

"This source had 14 violations due to various causes between 1/1/01 and 12/31/04. While four of these violations are apparently being addressed through the "Stipulated Conditional Order of Abatement" issue by the Hearing Board on May 5, 2005 (Docket No. 3492) ("Abatement Order"), the remaining 10 violations show that Tesoro has an ongoing inability to consistently comply with District regulations. The District should include a compliance schedule for this source to require that Tesoro prepare an analysis of how these multiple violations can be corrected and prevented. Additionally, the District does not state the cause of a violation that occurred on 10/30/04. Therefore, the public is unable to determine whether this violation is part of a pattern of recurring violations with a common cause."

Source #1411—Sulfuric Acid Manufacturing Plant

"This source had 6 violations relating to odor, leaking lines, and excess SO_2 due to various causes between 1/1/01 and 12/31/04. Additionally, the District does not state the cause of a violation that occurred on 4/25/02. Therefore, the public is unable to determine whether this violation is in any way related to other violations."

Source #904—Boilerhouse #6

"This source had a total of 6 violations relating to excess opacity, excess SO_2, and excess NOx due to various causes between 1/1/01 and 12/31/04. Additionally, the District does not state the cause of a violation that occurred on 6/10/03 and 7/6/04. Therefore, the public is unable to determine whether these violations are part of a pattern of recurring violations with a common cause that are not addressed by the Abatement Order (schedule of compliance)."

Response: The District has adequately investigated and addressed situations where particular sources have experienced multiple or repeat violations, as EPA determined in its March 15, 2005, Order. As EPA explained in the Order,

> "Petitioner has failed to demonstrate that the District's consideration of the various repeat episodes and alleged violations may have resulted in a deficiency in the Permit. . . . Petitioner has not demonstrated that the District's consideration of the various 'recurring' violations for particular emissions units may have resulted in a deficient permit or justifies the imposition of a compliance schedule."

Order at p. 18. The comment has not provided any reason to question EPA's determination on this issue.

In addition, EPA also endorsed the District's view that

> "at a refinery, at least occasional events of non-compliance can be predicted with a high degree of certainty. . . . Compliance by the refineries with all District and federal air regulations will not be continuous. However, the District believes the compliance record at [Bay Area] refineries is well within a range to predict reasonable intermittent compliance."

Order at 22, quoting the District's December 1, 2003, CRTC at 15. EPA further explained the

> "practical reality that complex sources with thousands of emissions points which are subject to hundreds of local and federal requirements will find themselves out of compliance, not necessarily because their permits are inadequate but because of the limits of technology and other factors. Even a source with a perfectly-drafted permit—one that requires state of the art monitoring, scrupulous recordkeeping, and regular reporting to regulatory agencies—may find itself out of compliance, not because the permit is deficient, but because of the limitations of technology and other factors."

Order at 22-23. The District agrees with these statements, and does not find any reason to require a compliance schedule based simply on the "overall number of violations" that this facility has experienced.

In summary, the District disagrees that it has not adequately explained why it has not imposed a schedule of compliance as a result of what you contend are "repeat and multiple violations" and "the very high overall number of violations" at this facility.

C. Worker Training

Comment 6: "In the APR, "Root Cause" #3 for the 7/04/03 opacity violation at the #6 Boiler stack is listed as "[m]aintenance personnel were not adequately trained in the maintenance of the customized Bailey control system." See APR at 5. This was cause for "Corrective Action" #6: "[p]rovide additional training to maintenance personnel on maintaining Bailey controls." While human error may be a factor in every industry, this worker-related violation was caused by a lack of sufficient training. A compliance schedule for this source will help ensure that future violations do not occur, including those caused by lack of sufficient training, and may keep violations of this nature from recurring throughout the facility.

"Proper training is an appropriate corrective action that should be incorporated in a compliance schedule whenever inadequate worker training is the cause of or a contributor to compliance problems."

Response: The District is not aware of any non-compliance that is being caused by a lack of adequate worker training. The comment points to one instance where Tesoro identified a lack of adequate training as a root cause of an opacity violation, but the violation has ceased and it appears from the comment the operators have in fact been retrained. As a result, the comment has not provided any basis upon which to conclude that a schedule of compliance based on this incident, and the District is not aware of any.

D. Root Causes and Correction Dates:

Comment 7: "The SB states that multiple violations occurring on 2/20/04 were corrected on the "day of" or "day after" discovery. This is inaccurate because the "Corrective Actions" related to the incident as listed in the APR to Contra Costa Health Services include "Anticipated Dates of Completion," which range from three to nine months after the incident date. See APR at 7-9. Additionally, the SB does not explain the causes of the violations.

"On 2/20/04, the facility experienced a refinery-wide power failure that caused an emergency shutdown of almost all refinery processing units, resulting in violations from six sources (S-955, S-992, S-854, S-944, S-1411, and S-1410). The SB lists all but one source's violation as "corrected the day of discovery by restoring power to the process units." These descriptions of how the violations were corrected relate only to the mechanical adjustments made at the time of the violations to cease their occurrence. They do not explain the causes of the violations, and whether the cause of the failure has in fact been corrected to ensure the problem does not recur.

"In the APR to Contra Costa Health Services, Tesoro lists eleven "Root Causes" of the 2/20/04 incident and includes a list of sixteen "Corrective Actions" with varying "Anticipated Dates of Completion" ranging from 6/1/04 at the earliest to 11/01/04 at the latest. See APR at 6-9. All of these corrective actions were not scheduled to be

completed until at least three and one half months after the date of the violations, with the latest to occur nine and one half months later. (Although several corrective actions relate to facility power supply issues no associated with specific refining equipment, Corrective Actions #1 and #2 relate to mechanical piping problems, and #6 to operator training. All three of these corrective actions list completion dates of 9/01/04.) This contradicts the District's report that violations for all six sources were corrected on the "day of" or "day after" discovery. The SB is therefore inaccurate and misleading as to correction of violations for this incident, as indicated by the APR.

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"The SB states that Tesoro's 7/04/03 violation was corrected on the same day. This is inaccurate because one of Tesoro's stated "Corrective Actions" for this violation, as stated in the APR, was not projected to be complete until 7/01/04. See APR at 4. Additionally, the SB does not adequately explain the malfunction that caused the problem.

"NOV #A44624A for opacity excess in the form of a visible plume from the #6 Boiler stack is listed on the SB as "corrected on the day of discovery by manually opening the air louvers on the boiler after a malfunction, to reduce visible emissions." However, this explanation points only to the mechanical adjustments made at the time of the violation to cease its occurrence. It does not explain the cause of the stated "malfunction" and when or whether that problem was corrected.

"In the APR to Contra Costa Health Services, Tesoro described the events of the 7/04/03 incident, listed four "Root Causes" of the incident, and seven specific "Corrective Actions" to address each "Root Cause," with an "Anticipated Date of Completion" attributed to each. See APR at 4-5. Of the seven corrective actions listed, six were complete at the time the APR was submitted. However, Corrective Action #2, "Develop formal operating guidelines for ID fan speed at different steam rates," was not scheduled to be completed until 7/01/04, almost one year after the date of the incident. See APR at 4. The SB is therefore incorrect that the violation was corrected on the day of discovery."

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"For two violations on 7/18/04 for excess NOx and CO emissions, the District states that "the start-up period was exceeded and a permit condition change was requested." The SB does not explain whether and how the underlying cause of the problem was cured. The purpose of the SB is to provide the legal and factual basis for permitting decision. However, the SB provides no explanation as to the following questions: why the start-up period was exceeded; why a permit condition change is necessary; whether a permit change was in fact made, and if so, what the change was. Because it is impossible to determine whether the cause of the problem has been fixed, the District should revise the SB to explain these issues."

Response: This comment is apparently based on a misunderstanding of what it means for a facility to have "returned to compliance" after a violation, whether a violation is "on-going," and whether the source is "in compliance at the time of permit issuance," which are the operative elements of EPA's test for whether a schedule of compliance is

required. See EPA 3/17/05 Order at 17. For purposes of the Compliance Review, a violation ceases when the refinery is no longer in a condition in which it is violating the applicable requirement at issue, for example when the equipment involved is shut down or repaired such that it is no longer emitting air contaminants in excess of its permit limits. That is what the District meant in the Compliance Review when it stated that a violation was "corrected". In some cases Tesoro planned to take additional steps in response to a violation after the violation was corrected, but that does not mean that the underlying violation continued and was on-going. The District takes this opportunity to correct any misunderstanding that may exist over the use of these two phrases.

The District also notes that even if the basis for the comment were correct, and that Tesoro continued to be in violations until its "Corrective Actions" were completed, it appears from the Annual Performance Review that all such "Corrective Actions" have now been completed, so this comment would be moot in any event.

If you still believe that Tesoro's submittal to Contra Costa County Health Services Department has created some confusion over these issues by using the term "corrective action" to refer to actions after the violation has been corrected when is no longer any ongoing non-compliance, you may want to direct your concerns to Tesoro and/or the Health Services Department and suggest that they use an alternative term in future Annual Performance Review submissions.

E. NSPS Subpart J/Consent Decree Requirements

Comment 8: "Evidently, there are at least eight sources at the Tesoro Refinery that require a "compliance schedule" for compliance with 40 C.F.R. § 60.104 ("Standards for sulfur oxides"), NSPS Subpart J. According to the Permit, the eight sources listed below are subject to NSPS Subpart J. The Permit indicates that a "compliance schedule" applies to each of these sources for compliance with 40 C.F.R. § 60.104. However, no such compliance schedules are included in the Permit. See Permit at 438 (Sec. V, "Schedule of Compliance"). Moreover, the SB provides no information regarding the compliance status of these eight units, and fails to provide any factual or legal basis explaining the need for compliance schedules. See SB at 12 ("Schedule of Compliance"), 14 ("Compliance Status").

"The Tesoro Refinery is covered by a judicial consent decree with EPA setting forth specific obligations for the facility's compliance with NSPS Subpart J. 70 Fed. Reg. 36,410 (June 23, 2005) (notice of the proposed decree) ("CD"). Compliance obligations arising from this decree must be contained in the terms and conditions of the Permit and discussed in the SB.

"Title V unambiguously requires that each permit "include . . . a schedule of compliance . . . and other such conditions as are necessary to assure compliance with applicable requirements." 42 U.S.C. § 7661c(a). Thus, the permit *itself* must include a schedule of compliance where a source is not in compliance at the time of permit issuance. 40 C.F.R. § 70.6(c)(3) ("All Part 70 permits shall contain the following elements with respect to

compliance: . . . a schedule of compliance consistent with § 70.5(c)(8)(iii) of this part.") "If the facility is out of compliance with an applicable requirement at the time of permit issuance, revision, or reopening, the schedule of compliance shall contain a plan by which the facility will achieve compliance. The plan shall contain deadlines for each item in the plan." BAAQMD Reg. 2-6-409.10.3. The compliance schedule "shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject." 40 C.F.R. § 70.5(c)(8)(iii)(C). It "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirement on which it is based." *Id.* Finally, the schedule of compliance must provide for the submission of certified progress reports containing specific information at least every six months. *See* 40 C.F.R. §§ 70.5(c)(8)(iv); 70.6(c)(4); BAAQMD Reg. 2-6-409.10.3.

"To ensure that a Title V permit satisfies these compliance plan requirements where, as here, the facility is subject to administrative order or CD, the permit itself must contain the specific obligations arising from the order or CD. EPA has determined that, where a CD addresses how a facility will meet and ensure continuing compliance with applicable requirements, the permit must specifically incorporate these provisions by including: "1) a copy of the signed CD for attachment to the permit, 2) a cross reference to the signed CD (including caption, date signed and/or entered and court), and 3) a statement that the CD will be complied with, including submission of semiannual progress reports, as provided for in the CD." See letter to Tom Bachman, Div. of Air Quality, North Dakota Health Dep't, from Richard R. Long, Director, Air and Radiation Program, EPA Region 8, Ref. 8P-AR, Re: Tesoro (BP Amoco) Consent Decree, Dated April 12, 2002."

Response: Title V requires that the District must include a schedule of compliance only where the facility is out of compliance with some applicable requirement. Here, the District has determined that the flares referenced in the comment (S-854, S-992, and S-1013) are not subject to and therefore not out of compliance with Subpart J or any other applicable requirement. As a result, there is no basis for adopting a schedule of compliance. There is nothing in the Consent Decree that provides a factual basis for determining that these sources are out of compliance with Subpart J, and the comment has not provided any such factual basis either. The District therefore disagrees that a schedule of compliance is appropriate for these sources, and is not reopening the permit to incorporate one.

For the thermal oxidizers identified in the comment (A-39, A-40, A-42, A-43, and A-1402), the District will initially pursue Subpart J compliance issues through an enforcement mechanism, and then will add a schedule of compliance as appropriate upon agreement with Tesoro (or after court adjudication of any non-compliance). The District intends to proceed in this manner because the extent to which these units may be out of compliance is not fully clear at this stage, meaning that it is not fully clear what Tesoro may need to do to come into compliance. In the first instance, Tesoro will be required to add monitoring or seek EPA approval of an alternative monitoring plan. After monitoring is in place, Tesoro may be required to take other steps if the monitoring

indicates a non-compliance situation. It would be premature to try to craft a schedule of compliance before it is clear exactly what Tesoro will need to do.

With respect to the impact of the Consent Decree on the District's determination on how to proceed, the District also notes that, contrary to the commenter's assertions, nothing (that District staff could find) in the Consent Decree identifies what will be needed for compliance with Subpart J at these units, or that specifies a compliance schedule for these units. That EPA did not identify specific steps necessary for compliance in its Consent Decree thus further supports the District's determination.

Because the District is proceeding in this manner, it is not including a Schedule of Compliance regarding this issue in the permit at this time. This approach is explicitly authorized by EPA's Order. (*See* Order at p. 17 (no schedule of compliance needed where District has opted to pursue the matter through an enforcement mechanism and will reopen the permit upon a consent agreement or court adjudication of the noncompliance issues").)

F. Technical Errors in Information Presented

Comment 9: "The District incorrectly classifies the violations that are subject to the Abatement Order as either "B" or "D" (thus not requiring a compliance schedule). These violations should be classified as "E" ("Ongoing/recurring violation requiring a compliance schedule") since the Abatement Order has been incorporated into the Permit as a "Schedule of Compliance."

Response: The District has corrected the table to address this oversight.

G. Format of Table

Comment 10: "Appendix A of the SB is sorted chronologically according to the date an individual NOV was issued, regardless of which source the NOV relates to. This structure makes it extremely difficult for the public to determine whether a particular source has a pattern of noncompliance because the violations are not sorted by source in the table. Instead, the Appendix should be organized by source number, which would allow the public to more easily evaluate whether a source has a pattern of noncompliance."

Response: The table can be sorted in a number of different ways, each of which carries certain benefits as well as certain drawbacks. The District disagrees that sorting the table by date rather than source number makes it unduly difficult to evaluate the information presented in the table. The District notes that the commenter was in fact able to undertake a detailed review and analysis of the compliance evaluation summarized in the table, regardless of how it was sorted. The District also notes that neither 40 C.F.R. Part 70 nor the Administrator's March 15, 2005, Order require this type of information to be presented in any particular format.

Again, thank you for your comments. If you have any questions about this action, please call me at (415) 749-4653.

Sincerely,

DRAFT

Brian Bateman,
Director of Engineering

Enclosures
BFB:myl

CC: Ms. Christa Salo, Golden Gate University School of Law
Mr. Michael Hughes, Golden Gate University School of Law
Ms. Christina Caro, Golden Gate University School of Law

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