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MAY 5 2005

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

MARY ROMAIDIS
CLERK
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

**BEFORE THE HEARING BOARD OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA**

9	In the Matter of)	Docket No. 3492
10	THE AIR POLLUTION CONTROL OFFICER of the)	
11	BAY AREA AIR QUALITY MANAGEMENT DISTRICT)	STIPULATED CONDITIONAL
12	Complainant,)	ORDER FOR ABATEMENT
13	vs.)	(HEALTH AND SAFETY CODE
14	TESORO REFINING & MARKETING CO., GOLDEN)	SECTION 42451(b))
15	EAGLE REFINERY)	
16	Site No. B2758)	
17	Respondent.)	

The above-captioned matter is an "Accusation and Request For Conditional Order For Abatement" filed by Complainant, the Air Pollution Control Officer ("APCO") of the Bay Area Air Quality Management District ("District") against Respondent, Tesoro Refining & Marketing Co. ("Tesoro"). The APCO filed its Accusation on February 23, 2005, seeking an order from this Hearing Board requiring Tesoro to shut down a process unit known as the Fluid Coker Unit, Source S-806, unless Tesoro satisfies certain conditions. This Accusation was assigned Docket No. 3492.

On March 8, 2005, Tesoro filed a "Notice of Defense" and "Statement By Way Of Mitigation" requesting a hearing and expressly denying all allegations of the Accusation.

An initial hearing was held on April 7, 2005, and a further hearing was held on May 5, 2005. At both hearings, the APCO was represented by Assistant Counsel Alexander G. Crockett, Esq., and Tesoro

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1 was represented by Bruce C. Paltenghi, Esq. All hearings were duly noticed in accordance with
2 applicable legal requirements and members of the public were afforded an opportunity to comment.

3 **WRITTEN EXPLANATION OF ACTION**

4 Because the parties have stipulated to the entry of this Order, the Hearing Board must include a
5 written explanation of its action in this Order, but it is not required to make any factual findings to support
6 the Order under Health and Safety Code Section 42451(a). To that end, the Hearing Board explains its
7 action as follows.

8 The parties have agreed upon a course of action to address the problems identified in the
9 Accusation and to provide the relief sought. The course of action agreed to will provide a long-term
10 corrective solution for regulatory violations associated with flue gas emissions from Tesoro's Fluid Coker
11 Unit when problems or emergencies arise at the No. 5 Boiler. The course of action will also provide,
12 during the time period in which the long term corrective solution is being engineered and implemented,
13 for interim improvements to the current system to (i) lessen the likelihood that problems or emergencies
14 will arise at the No. 5 Boiler and (ii) minimize any emissions should such problems or emergencies occur.
15 Additionally, Tesoro will review various operating and maintenance procedures; provide additional
16 operator and maintenance training; and provide weekly management review of No. 5 boiler operations.

17 The Hearing Board therefore believes that the parties' agreed course of action is in the public
18 interest and that entry of this Order is appropriate under the circumstances.

19 **ORDER**

20 WHEREFORE, pursuant to Sections 42451(b) and 42452 of the California Health & Safety Code,
21 the HEARING BOARD of the BAY AREA AIR QUALITY MANAGEMENT DISTRICT hereby
22 ORDERS as follows:

23 1. The APCO's Request for a Conditional Order For Abatement shall be and hereby is
24 GRANTED.

25 2. Tesoro is hereby ordered to cease and desist from operation of its Fluid Coker Unit
26 ("Coker") (Source S-806), unless it complies with the requirements set forth in Paragraphs 3 through 26,
27 inclusive, below.

I.

IMPLEMENTATION OF BACKUP SYSTEM FOR NO. 5 BOILER

3. Tesoro shall identify and evaluate the feasibility of implementing any and all appropriate technologies, processes, and/or equipment that could serve as a backup system for the No. 5 Boiler (Source S-903) as a means to accept and treat Coker flue gas emissions. Tesoro shall evaluate each identified alternative based on the following criteria:

- a. effectiveness at preventing pollution and violations of applicable District regulations
- b. cost
- c. any ancillary or indirect positive or negative impacts on Tesoro or the public health and welfare
- d. time required for implementation
- e. any other relevant factors identified by Tesoro or the APCO

Tesoro shall submit a status report to the Hearing Board presenting the pros and cons of each alternative evaluated, and proposing a preferred alternative, by July 1, 2005. Prior to submitting the status report, Tesoro shall meet and confer with the APCO regarding the status report's contents. The Hearing Board may hold a hearing, upon its own motion or upon the request of any party, to consider and review the matters presented in the status report, including the preferred alternative.

4. After submission and review of the status report pursuant to Paragraph 3 above, Tesoro shall proceed to develop a detailed engineering proposal for the preferred alternative (or as otherwise required by further Order of the Board). By September 15, 2005, Tesoro shall submit a Final Engineering Report to the Hearing Board setting forth the final engineering proposal. The Final Engineering Report shall contain increments of progress to implement the preferred alternative (such as engineering, permitting, procurement of parts, installation and tie-in). Prior to submitting the Final Engineering Report, Tesoro shall meet and confer with the APCO regarding the Report's contents. Following submission of the Final Engineering Report, the Hearing Board shall hold a further hearing in this matter to review the Final Engineering Report and amend or modify this Order to require implementation of the

1 preferred alternative (or as otherwise ordered at the further hearing) along with the appropriate increments
2 of progress and associated due dates.

3 5. Tesoro shall investigate the cause(s) of emissions violations that have occurred in
4 connection with startup of the Coker/No. 5 Boiler, and shall take all appropriate corrective actions to
5 address the cause(s) identified so that Coker-startup-related emissions problems do not recur. Tesoro
6 shall complete its investigation and provide a status report to the Hearing Board on the cause(s) and the
7 scheduled corrective actions taken (or to be taken) no later than July 1, 2005.

8 **II.**

9 **INTERIM IMPROVEMENTS TO CURRENT BACKUP SYSTEM PENDING**

10 **IMPLEMENTATION OF LONG-TERM CORRECTIVE SOLUTION**

11 6. Tesoro shall maintain the No. 5 Boiler (Source S-903), the No. 6 Boiler (Source S-904),
12 the bypass line between them, and any associated equipment in such a condition that flue gas from the
13 Coker can be bypassed from No. 5 Boiler to No. 6 Boiler in the shortest reasonable time. All reasonable
14 measures shall be implemented by Tesoro to shorten the bypass time.

15 7. Tesoro shall demonstrate compliance with the requirements of Paragraph 6 above by
16 conducting a critical path analysis of the steps necessary to bypass Coker flue gas from the No. 5 Boiler to
17 the No. 6 Boiler (including the preparation of a Program Evaluation and Review Technique (PERT)
18 chart). For each step identified by the analysis, Tesoro shall document:

- 19 a. the measures it has taken or plans to take to reduce the time necessary to complete
20 that step; and
21 b. why further steps to reduce the time further would not be reasonable.

22 Tesoro shall submit a report containing this information to the Hearing Board no later than July 15, 2005.

23 8. If at any time the APCO believes that Tesoro is not in compliance with the requirements of
24 Paragraph 6 above, the APCO shall notify Tesoro in writing of the area(s) in which the APCO contends
25 that Tesoro's compliance is deficient, and the parties shall meet and confer in good faith, in person or by
26 telephone, to attempt to resolve the APCO's concerns. Tesoro shall not be deemed in violation of
27 Paragraph 6 before the APCO has provided Tesoro notice and the parties have met and conferred as
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1 required by this Paragraph 8.

2 9. Tesoro shall repair and maintain the Electrostatic Precipitator on the No. 6 Boiler ("ESP")
3 (Abatement Device A-11) such that the No. 6 Boiler is capable of handling the maximum reasonably
4 anticipated volume of Coker flue gas without causing any violation of District regulations. If the No. 5
5 Boiler is out of service and Tesoro directs Coker flue gas to the No. 6 Boiler, and the No. 6 Boiler
6 experiences violations of District regulations as a result of inadequate ESP abatement capacity, then
7 Tesoro shall immediately shut down the Coker.

8 10. By July 15, 2005, Tesoro shall document that the ESP currently has sufficient abatement
9 capacity to handle the maximum reasonably anticipated volume of Coker flue gas without causing
10 violations of District regulations.

11 11. Tesoro shall improve and maintain the leak tightness of the No. 6 Boiler, the Coker flue
12 gas bypass piping between the No. 5 Boiler and No. 6 Boiler, and all associated equipment, such that the
13 APCO can carry out routine inspections and source (stack) testing at the No. 6 Boiler while firing Coker
14 flue gas without having to wear Self-Contained Breathing Apparatus. Tesoro shall develop an inspection
15 and testing protocol to demonstrate compliance with this requirement, and shall submit such protocol to
16 the APCO by June 15, 2005, for review and approval.

17 12. Tesoro shall conduct weekly inspections of the No. 5 Boiler, the No. 6 Boiler, the bypass
18 line between them, and any associated equipment, to provide that all equipment is in a condition such that
19 flue gas from the Coker can be bypassed from No. 5 Boiler to No. 6 Boiler in the shortest reasonable time
20 as required by Paragraph 6 above. Tesoro shall record the results of the inspections required by this
21 Paragraph 12 in writing and shall maintain the records for a period of at least 5 years, from the date the
22 record was created, and shall make the records available to the APCO upon request.

23 13. Tesoro shall conduct monthly inspections of the No. 6 Boiler to provide that:

- 24 a. the No. 6 Boiler ESP is in a condition that will allow the No. 6 Boiler to be fired on
25 Coker flue gas without causing violation of District regulations as required by
26 Paragraph 9 above; and
27 b. the No. 6 Boiler is in compliance with the CO leak tightness requirements of
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Paragraph 11 above.

Tesoro shall record the results of the inspections required by this Paragraph 13 in writing and shall maintain the records for a period of at least 5 years, from the date the record was created, and shall make the records available to the APCO upon request.

III.

**PREVENTATIVE MEASURES TO REDUCE POTENTIAL FOR UNCONTROLLED
SHUTDOWN OF NO. 5 BOILER**

14. Tesoro shall review and update its operating and maintenance procedures for the No. 5 Boiler as follows:

- a. Tesoro shall review all No. 5 Boiler operating and maintenance procedures (including, without limitation, procedures relating to the Boiler's attemperation water and tube temperature monitoring systems) and identify any and all deficiencies for operating procedures by May 15, 2005 and for maintenance procedures by November 15, 2005.
- b. Tesoro shall rewrite the No. 5 Boiler operating and maintenance procedures, as necessary to address any deficiencies for operating procedures, by June 15, 2005 and for maintenance procedures by December 15, 2005.
- c. By June 15, 2005, all No. 5 Boiler operating procedures shall include a requirement that operators document each specific, discrete step completed by recording the date and time the step was completed and the initials of the operator who completed it. All procedures shall also include a requirement that all measurements required to be made by operators must be recorded and the records maintained for a period of at least 5 years from the date the record was created.
- d. By June 15, 2005, Tesoro shall make available for the APCO's review and approval all revisions made to No. 5 Boiler operating procedures. By December 15, 2005, Tesoro shall make available for the APCO's review and approval all revisions to No. 5 Boiler maintenance procedures. Review of these procedures by

1 the APCO shall be conducted at Tesoro's refinery.

2 15. Tesoro shall train (or retrain) all No. 5 Boiler operators and maintenance personnel on the
3 No. 5 Boiler's modified operating and maintenance procedures identified in the provisions of Paragraph
4 14 above. Such training (or retraining) shall be done for operators by July 15, 2005 and for maintenance
5 personnel by January 15, 2006.

6 16. By May 15, 2005, Tesoro shall identify the key operating parameters and associated limits
7 for the No. 5 Boiler and No. 6 Boiler, and shall implement a Documentation Program to record the key
8 operating parameters for the No. 5 Boiler on an ongoing basis and for the No. 6 Boiler whenever it is
9 being fired on Coker flue gas. The Documentation Program shall specify the frequency and method of
10 documentation for each key operating parameter identified. Tesoro shall make the list of key operating
11 parameters and associated limits and the Documentation Program available to the APCO for review and
12 approval.

13 17. Beginning no later than May 15, 2005, Tesoro shall ensure that a management-level
14 operations staff member conducts a weekly review of the key No. 5 Boiler operating parameters identified
15 pursuant to Paragraph 16 above. This review shall meet the following requirements:

- 16 a. The staff member that conducts the review shall certify in writing that the review
17 was performed.
- 18 b. The certification shall either:
- 19 i. state that each key operating parameter is in compliance with its associated
20 limits and has been throughout the week reviewed; or
- 21 ii. identify each key operating parameter that is not in compliance with its
22 associated limits or was not at any time during the week reviewed, and state
23 that the other key operating parameters are in compliance with all associated
24 limits and have been throughout the week reviewed.

25 For each key operating parameter that is identified as being or having been out of
26 compliance with any of its associated limits pursuant to subsection b.ii. of this
27 Paragraph 17, the certification shall identify what steps have been taken and/or will
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1 be taken to address the situation and bring the parameter back within the limit
2 involved.

3 c. The certification shall identify all monitoring devices on the No. 5 Boiler and
4 associated equipment that are inoperative or have been inoperative for greater than
5 24 hours during the week reviewed.

6 d. The certification shall be reviewed by Tesoro's Environmental Manager or
7 Refinery Manager, or by the person acting in the capacity of Environmental
8 Manager or Refinery Manager should the Environmental Manager or Refinery
9 Manager be unable to conduct such a review because of absence from the refinery,
10 within one week following the date the certification is made. The person
11 performing the review required by this subparagraph 17.d. shall mark the
12 certification with their initials and the date of their review to indicate that they have
13 reviewed the certification.

14 e. Tesoro shall maintain copies of all such certifications for a period of at least 5 years
15 from the date the record was created, and shall make them available to the APCO
16 for inspection upon request.

17 18. Beginning no later than July 1, 2005, Tesoro shall implement a system (the "DCS system")
18 to record electronically key operating parameters that are measured at the No. 5 Boiler and No. 6 Boiler.

19 19. Any key parameters that are not electronically recorded at the No. 5 Boiler, and at the No.
20 6 Boiler when firing Coker flue gas, Tesoro shall record in the manner and method, and in such
21 frequency, as set forth in the Documentation Program Tesoro is required to implement pursuant to
22 Paragraph 16 above.

23 20. Tesoro shall notify the APCO:

24 a. whenever it discovers that any key operating parameter is not in compliance with
25 any of its associated limits; and

26 b. whenever it commences preparations for bypassing Coker flue gas from the No. 5
27 Boiler to the No. 6 Boiler.

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IV.

MISCELLANEOUS PROVISIONS

21. The parties, or either of them, shall notify in writing, by an original and nine (9) copies, the Hearing Board of any violation of this Order.

22. This Order may be modified or amended by further order of the Hearing Board.

23. This Order is not intended to and shall not be construed to have the effect of permitting a variance.

24. The Hearing Board shall retain jurisdiction of this matter.

25. In addition to all reports to the Hearing Board required by the terms of this Order, Tesoro shall provide semi-annual written progress reports, in an original and nine (9) copies, in the months of November and May of each calendar year commencing in November 2005 of its progress under this Order.

26. This Order shall become effective immediately upon the filing of this Order.

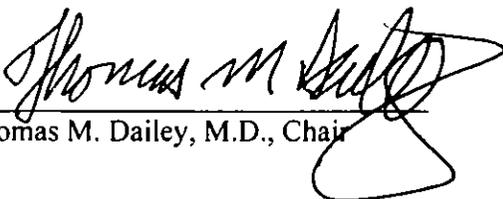
Moved by: Christian Colline, P.E.

Seconded by: Terry A. Trumbull, Esq.

AYES: Christian Colline, P.E.; Allan R. Saxe, Esq.; Julio Magalhães, Ph. D.; Thomas M. Dailey, M.D.

NOES: None

NON-PARTICIPATING: None


Thomas M. Dailey, M.D., Chair

5-5-05
Date