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DEC 22 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**

In the Matter of

THE AIR POLLUTION CONTROL OFFICER of the
BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Complainant,

vs.

TESORO REFINING & MARKETING CO., GOLDEN
EAGLE REFINERY

Site No. B2758

Respondent.

Docket No. 3492

SECOND STIPULATED
CONDITIONAL ORDER FOR
ABATEMENT

(HEALTH & SAFETY CODE
SECTION 42451(b))

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 (hereinafter the "Coker"), 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 further hearings were held on May 5,

ARB

1 2005, October 27, 2005 and December 22, 2005. At the April 7, 2005, and May 5, 2005, hearings,
2 the APCO was represented by Assistant Counsel, Alexander G. Crockett, Esq. At the October 27,
3 2005, hearing the APCO was represented by Senior Assistant Counsel, Adan A. Schwartz, Esq. At
4 the December 22, 2005 hearing the District was represented by District Counsel, Brian C. Bunker,
5 Esq. At all hearings, Tesoro was represented by Bruce C. Paltenghi, Esq. All hearings were duly
6 noticed in accordance with applicable legal requirements and members of the public were afforded an
7 opportunity to comment.

8 At the hearing on May 5, 2005, a "Stipulated Conditional Order for Abatement" was entered
9 (hereinafter, the "First Order") providing various timeframes and actions to be met by Tesoro to
10 explore options for addressing Coker emissions problems, as well as interim measures to minimize
11 such problems pending implementation of a long-term solution. At the hearing on December 22,
12 2005, this "Second Stipulated Conditional Order for Abatement was entered (hereafter, the "Second
13 Order") providing various timeframes and actions to be met by Tesoro for implementing the
14 preferred long-term solution identified by Tesoro for addressing the Coker emissions problems, and
15 continuing to require interim measures as appropriate pending completion of the long-term solution.

16 WRITTEN EXPLANATION OF ACTION

17 Because the Parties have stipulated to the entry of this Second Order, the Hearing Board, as it did
18 in the First Order, must include a written explanation of its action in this Second Order, but it is not
19 required to make any factual findings to support the Second Order under Health and Safety Code
20 Section 42451(a). To that end, the Hearing Board explains its action as follows.

21 The Parties have agreed and begun upon a course of action to address the problems identified in
22 the Accusation and to provide the relief sought. As part of this course of action, the ultimate solution
23 agreed to by the parties, being the Coker Modification Project outlined in the Final Engineering Report
24 filed with the Hearing Board on November 23, 2005, will provide a long-term corrective solution for
25 regulatory violations associated with flue gas emissions from Tesoro's Fluid Coker Unit when problems
26 or emergencies arise at the No. 5 Boiler. The course of action will also provide, during the time period
27 in which the long-term corrective solution is being engineered and implemented, for the continuance,
28 and in some instances the completion, of interim improvements as prescribed by the First Order to the

1 then current system to (i) lessen the likelihood that problems or emergencies will arise at the No. 5
2 Boiler and (ii) minimize any emissions should such problems or emergencies occur. Additionally,
3 Tesoro will provide weekly management review of No. 5 boiler operations.

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

6
7 **ORDER**

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

11 1. The Request of the Parties for this Second Stipulated Conditional Order for
12 Abatement shall be and hereby is GRANTED.

13 2. Tesoro is hereby ordered to cease and desist from operation of its Fluid Coker Unit
14 ("Coker") (Source S-806), unless it complies with the requirements set forth in Paragraphs 3 through
15 25, inclusive, below.

16 **I.**

17 **IMPLEMENTATION OF COKER MODIFICATION PROJECT**

18 3. Tesoro shall implement and install the Coker Modification Project as outlined in the
19 Final Engineering Report filed with the Hearing Board on November 23, 2005. Tesoro shall
20 implement the Coker Modification Project in accordance with the increments of progress set forth
21 below:

	<u>Increment of Progress</u>	<u>Completion Date</u>
22	a. Permit Applications Submitted	April 1, 2006
23	b. Design Process Flow Diagrams Issued	July 1, 2006
24	c. Receive All Permits	August 1, 2006
25	d. Site Preparation Complete	December 1, 2006
26	e. Major Equipment Delivered	November 1, 2007
27	f. Major Equipment Erected	May 1, 2008
28	g. Mechanical Completion	July 1, 2008

1 flue gas.

2 7. If at any time the APCO believes that Tesoro is not in compliance with the requirements
3 of Paragraph 6 above, the APCO shall notify Tesoro in writing of the area(s) in which the APCO
4 contends that Tesoro's compliance is deficient, and the parties shall meet and confer in good faith, in
5 person or by telephone, to attempt to resolve the APCO's concerns. Tesoro shall not be deemed in
6 violation of Paragraph 6. before the APCO has provided Tesoro notice and the parties have met and
7 conferred as required by this Paragraph 7.

8 8. Tesoro shall repair and maintain the Electrostatic Precipitator on the No. 6 Boiler
9 ("ESP") (Abatement Device A-11) such that the No. 6 Boiler is capable of handling the maximum
10 reasonably anticipated volume of Coker flue gas without causing any violation of District regulations.
11 If the No. 5 Boiler is out of service and Tesoro directs Coker flue gas to the No. 6 Boiler, and the No.
12 6 Boiler experiences violations of District regulations as a result of inadequate ESP abatement
13 capacity, then Tesoro shall immediately shut down the Coker.

14 9. Tesoro shall improve and maintain the leak tightness of the No. 6 Boiler, the Coker
15 flue gas bypass piping between the No. 5 Boiler and No. 6 Boiler, and all associated equipment, such
16 that the APCO can carry out routine inspections and source (stack) testing at the No. 6 Boiler while
17 firing Coker flue gas without having to wear Self-Contained Breathing Apparatus.

18 10. Tesoro shall conduct weekly inspections of the No. 5 Boiler, the No. 6 Boiler, the bypass
19 line between them, and any associated equipment, to provide that all equipment is in a condition such
20 that flue gas from the Coker can be bypassed from No. 5 Boiler to No. 6 Boiler in the shortest
21 reasonable time as required by Paragraph 6. above. Tesoro shall record the results of the inspections
22 required by this Paragraph 10. in writing. Notwithstanding the termination of this Second Order in
23 Paragraph 25, this requirement shall no longer be effective upon the permanent shut down of the Coker
24 reactor and burner which eliminates the generation of Coker flue gas, except that Tesoro shall maintain
25 the records for a period of at least 5 years, from the date the record was created, and shall make the
26 records available to the APCO upon request.

27 11. Tesoro shall conduct monthly inspections of the No. 6 Boiler to provide that:

- 28 a. the No. 6 Boiler ESP is in a condition that will allow the No. 6 Boiler to be fired on
Coker flue gas without causing violation of District regulations as required by

1 Paragraph 8. above; and

- 2 b. the No. 6 Boiler is in compliance with the CO leak tightness requirements of
3 Paragraph 9. above.

4 Tesoro shall record the results of the inspections required by this Paragraph 11. in writing.

5 Notwithstanding the termination of this Second Order in Paragraph 25, this requirement shall no
6 longer be effective upon the permanent shut down of the Coker reactor and burner which eliminates
7 the generation of Coker flue gas except that Tesoro shall maintain the records for a period of at least 5
8 years, from the date the record was created, and shall make the records available to the APCO upon
9 request.

10 III.

11 PREVENTATIVE MEASURES TO REDUCE POTENTIAL FOR UNCONTROLLED 12 SHUTDOWN OF NO.5 BOILER

13 12. Tesoro shall ensure that all No. 5 Boiler operating procedures include a requirement
14 that operators document each operating procedure's specific, discrete steps completed by recording
15 the date and time each step was completed and the initials of the operator who completed it. All
16 such documentation shall be maintained for a period of at least 5 years from the date the record was
17 created. Tesoro shall make all No. 5 Boiler operating and maintenance procedures available at
18 Tesoro's refinery for the APCO's review and approval.

19 13. Tesoro shall continue a Documentation Program to record the key operating parameters
20 for the No. 5 Boiler on an ongoing basis and for the No. 6 Boiler whenever either is being fired on
21 Coker flue gas. Tesoro shall make the list of key operating parameters and associated limits and the
22 Documentation Program available to the APCO for review and approval.

23 14. Tesoro shall ensure that a management-level operations staff member conducts a weekly
24 review of the key No. 5 Boiler operating parameters identified pursuant to Paragraph 13. above
25 whenever No. 5 Boiler is being fired on Coker flue gas. This review shall meet the following
26 requirements:

- 27 a. The staff member that conducts the review shall certify in writing that the
28 review was performed.
- b. The certification shall either:

- 1 i. state that each key operating parameter is in compliance with its
2 associated limits and has been throughout the week reviewed; or
3 ii. identify each key operating parameter that is not in compliance with its
4 associated limits or was not at any time during the week reviewed, and state
5 that the other key operating parameters are in compliance with all associated
6 limits and have been throughout the week reviewed.

7 For each key operating parameter that is identified as being or having been
8 out of compliance with any of its associated limits pursuant to subsection b.ii.
9 of this Paragraph 14., the certification shall identify what steps have been
10 taken and/or will be taken to address the situation and bring the parameter back
11 within the limit involved.

- 12 c. The certification shall identify all monitoring devices on the No. 5 Boiler and
13 associated equipment that are inoperative or have been inoperative for greater than
14 24 hours during the week reviewed.
- 15 d. The certification shall be reviewed by Tesoro's Environmental Manager or
16 Refinery Manager, or by the person acting in the capacity of Environmental
17 Manager or Refinery Manager should the Environmental Manager or Refinery
18 Manager be unable to conduct such a review because of absence from the refinery,
19 within one week following the date the certification is made. The person
20 performing the review required by this subparagraph 14.d. shall mark the
21 certification with their initials and the date of their review to indicate that they have
22 reviewed the certification.
- 23 e. Tesoro shall maintain copies of all such certifications for a period of at least 5
24 years from the date the record was created, and shall make them available to the
25 APCO for inspection upon request.

26 15. Tesoro shall continue a system (the "DCS system") to record electronically key operating
27 parameters that are measured at the No. 5 Boiler and No. 6 Boiler when firing Coker flue gas.

28 16. Tesoro shall record in the manner and method, and in such frequency, as set forth in the
Documentation Program Tesoro is required to continue pursuant to Paragraph 13 above, any key

1 parameters that are not electronically recorded at the No. 5 Boiler, and at the No. 6 Boiler when firing
2 Coker flue gas.

3 17. Tesoro shall notify the APCO:

- 4 a. whenever it discovers that any key operating parameter is not in compliance with
5 any of its associated limits; and
6 b. whenever it commences preparations for bypassing Coker flue gas from the No.
7 5 Boiler to the No. 6 Boiler.

8 **IV.**

9 **MISCELLANEOUS PROVISIONS**

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

12 19. This Second Order may be modified or amended by further order of the Hearing Board.

13 20. This Second Order is not intended to and shall not be construed to have the effect of
14 permitting a variance.

15 21. The Hearing Board shall retain jurisdiction of this matter.

16 22. Tesoro shall provide semi-annual written progress reports to the Hearing Board, in an
17 original and nine (9) copies, in the months of November and May of each calendar year (commencing
18 in May 2006) of its progress under this Second Order.

19 23. This Second Order shall become effective immediately upon the filing of this Second
20 Order.

21 24. This Second Order shall supersede the terms and conditions of the First Order, being the
22 "Stipulated Conditional Order for Abatement" filed in this matter on May 5, 2005. Until this Second
23 Order is filed and thereby effective the First Order shall govern. When this Second Order is effective,
24 the First Order shall be and is terminated.

25 25. Upon permanent shut-down of the Coker reactor and burner, thereby eliminating the
26 generation of Coker flue gas to complete the requirements in Paragraph 3 above, Tesoro shall notify the
27 Hearing Board and the APCO in writing filed with the Clerk of the Hearing Board. Upon the filing of
28 such notice, the APCO and/or Tesoro may request a hearing regarding any outstanding compliance
issues with respect to implementation of the Coker Modification Project, or the Hearing Board may

1 hold a hearing on it own motion. If, within 30 days of the filing of such notice, no party requests such a
2 hearing and the Hearing Board does not schedule such a hearing, this Second Order shall terminate
3 automatically by its own terms, with no further action or hearing by the Hearing Board. If a hearing is
4 requested and/or scheduled by the Hearing Board, this Second Order shall not terminate automatically
5 but shall be terminated by further Order of the Hearing Board.

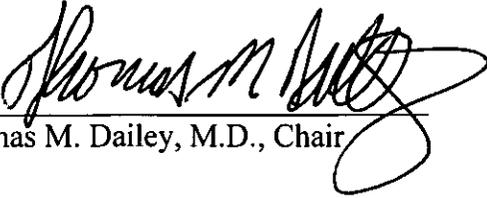
6 Moved by: Terry A. Trumbull, Esq.

7 Seconded by: Allan R. Saxe, Esq.

8 AYES: Christian Colline, P.E., Julio Magalhaes, Ph.D., Allan R. Saxe, Esq., Terry A. Trumbull,
9 Esq., and Thomas M. Dailey, M.D.

10 NOES: None

11 NON-PARTICIPATING: None

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16 Thomas M. Dailey, M.D., Chair

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Date 12-22-05