Our Children's Earth Foundation, represented by
Environmental Law and Justice Clinic, School of Law
Attn: Amy S. Cohen
Golden Gate University
536 Mission Street
San Francisco, CA 94105-2968

Dear Ms. Cohen:

The requirements for public and EPA review of the proposed Major Facility Review Permit for NUMMI have been completed. The District received your two comment letters dated September 20, 2002 and October 7, 2002 and emails dated September 3 and October 1, 2002. Based on all comments received, the following corrections and changes have been made to the permit:

- Inclusion of S-48 Bumper Molding Operation as a significant (but exempt) source.
- S1809 is subject to Regulation 8-51 (and not subject to Regulation 8-2).
- A facility table has been added to Section IV of the permit to include specific requirements to meet the remaining deadlines set forth in the 112(j) regulations.
- The permit has been modified to incorporate changes to the standard language of the permit since the permit was initially proposed.
- The approval dates of various rules and SIP rules have been corrected.
- The Regulation 5 citations in Table III have been updated.
- A citation for 40 CFR Part 61, Subpart M, Asbestos, has been added to Table III.
- SIP Regulation 9, Rule 1, Sulfur Dioxide, has been deleted because the sections that apply are in the current District rule.
- The citations for BAAQMD Regulation 1-523 and SIP Regulation 1-523 have been corrected.
- Various additions were made to the glossary. In particular, the definitions of "Act", "Filterable Particulate", and TRMP Toxic Risk Management Plan were added. Minor corrections were made to several definitions.
- Section XI, Applicable State Implementation Plan, has been amended to show the web address of EPA Region IX SIP database.
- Change of Responsible Official.
- Minor amendment to Conditions # 10320 affecting sources S1070 and S1071 (resulting from Application # 6445). The prior version of this condition allows the use of solvent-based and water-based coatings in S-1070, but does not allow both types of coatings to be used at the same time. This is because NUMMI is required to use a thermal oxidizer to abate the solvent-based coatings, but not the water-based coatings. NUMMI requested that flexibility to apply both types of coating at the same time, and has agreed to the new requirement to use the thermal oxidizer when both types of coating are being applied. This change will allow NUMMI to apply water-based coatings to select instrument panels, without having to build a new booth. NUMMI will not be required to use the thermal oxidizer if they are using only water-based coatings exclusively. There will not be any increase in emissions from this minor condition amendment.
- Corrections on federal enforceability for applicable requirements.
- Editorial and typographical corrections.

Attached for your information are detailed responses to your comments. After considering all comments and making appropriate revisions, the District has made a decision to issue this Major Facility Review Permit. If you have any questions regarding this project, please call me at (415) 749-4689.

Sincerely yours,

_____

William deBoisblanc
Director, Permit Services

Enclosure

September 3, 2002 Email

Comment: Please grant a deadline extension to the public comment period.
Response: The public comment period was extended thru 10/7/02.

September 20, 2002 Letter

Issue 1. Assuring compliance
Comment # 1A: The District has not provided sufficient information from which OCE can conclude that NUMMI is in compliance with applicable requirements.
Response # 1A: In conjunction with issuance of a Title V permit, the District conducts a review of the applicant's compliance status to determine whether there are significant ongoing compliance problems that should be addressed in the permit. The District has done this for the NUMMI facility, and its conclusions are summarized in the Statement of Basis. The District's enforcement records are generally considered public records and accordingly citizens may access them, for instance, in advance of or concurrent with their review of a Title V permit. However, the District is unaware of any authority supporting the position, seemingly advanced by the comment, that citizens must, as part of the Title V process, be provided all compliance information in the possession of the District relevant to a given time period. While the District encourages such interest on the part of citizen reviewers, the District also notes that, as a practical matter, to wait until the beginning of the public comment period to request additional information risks not having such information in time to inform comments submitted during the comment period. This issue is discussed again below in response to OCE's second letter.

OCE has asked several questions about NUMMI's compliance history, in its October 7 supplementary comments. These are addressed below.

Comment # 1B: The District did not sufficiently assess the compliance issue. The District should have extended its compliance review to periods before and after the 9/00-9/01 period covered in the District Enforcement Division's Compliance Review document. The compliance review should cover a full five-year period. .
Response # 1B: As a matter of internal procedure, the District will, for certain facilities, have its Enforcement Division conduct a compliance review and summarize its conclusions in a document entitled the Compliance Review. The District considers this document as relevant information for its determination whether to issue the Title V permit, but the District's consideration of the facility's compliance record is not necessarily limited to this document. The Compliance Review necessarily addresses a particular time frame, typically from one to three years depending on factors such as the size of the facility and general knowledge regarding compliance problems. The District chooses a time frame that is sufficient to support a determination of whether compliance problems exist that are significant and continuing. Issuance of a draft permit may occur some time after preparation of the Compliance Review. The District can and does consider compliance information that post-dates the Compliance Review. Moreover, the District can consider information brought to its attention in other ways, such as through public comment. Because of public interest in these compliance review

documents, the District has endeavored to make them available at the same time as the Statement of Basis. However, the District does not represent that the Compliance Review represents the totality of compliance information considered in conjunction with Title V permit issuance.

As a general matter, the purpose of a review of compliance information is to determine current compliance, and to determine whether future compliance is reasonably assured. A review of non-compliance issues over a one-year period preceding permit issuance will be sufficient in most instances to reveal any continuing compliance issues, and is thus presumptively a sufficient basis on which to look forward. A non-compliance event that occurred more than a year ago and was resolved is probably not indicative of a continuing concern. The one-year demarcation is sufficient, as a general "look back" rule, though the District maintains flexibility to consider prior and subsequent instances of non-compliance where it is aware of recurring problems.

Comment # 1C: The District should have made an assessment of whether past problems have been corrected and, if not, whether those problems need to be addressed through a compliance plan and appropriate monitoring.
Response # 1C: The District made the evaluation suggested, and concluded that past problems are not likely to recur such that a schedule of compliance would be appropriate. It is typical, for a facility of the size and complexity of NUMMI, that over a period of several years violations will occur and will be noted in NOV's issued to the facility. For NUMMI, although some NOV's address similar issues, there is no record of a pattern of violations suggesting the need for additional measures in the Title V permit.

There are two kinds of compliance issues that suggest the need for a compliance plan or additional monitoring: continuous non-compliance that is still ongoing, and a pattern of incidents that share a root cause. In this instance, the District found neither. The comment from OCE discusses a number of NOV's dating back to 1996, and suggests these indicate a consistent pattern of non-compliance. The District does not find that this history of NOV's indicates a pattern with a root cause that could be effectively addressed by additional terms in the Title V permit~~. For instance, a failure to report as required in a permit condition is not normally cured through imposition of additional reporting requirements, which may also be ignored, but rather through assessment of a penalty providing an economic disincentive to further non-compliance.~~ In any case, the District does not note a persistent problem with failures to report by NUMMI.

Comment # 1D: The opinion expressed in the District Enforcement Division's Compliance Report that the proposed Title V permit will provide an assurance of "reasonable intermittent compliance" does not meet the standard of 40 CFR §70.1(b).
Response # 1D: As with Comment 1B, above, the District would like to point out that the Enforcement Division Compliance Report is but one piece of information relied upon by the District in issuing the Title V permit. Compliance reports are signed by the Director of the Enforcement Division, but do not necessarily represent the determination of the District in issuing the Title V permit. Compliance reports are being made

available to the public routinely because they are public records and because there has been a routine interest expressed in reviewing them.

In issuing a Title V permit, the District must make the findings required in the operating permit program approved by EPA pursuant to its Title V authority. These rules are found in Regulation 2, Rule 6. Regulation 2, Rule 6 does not contain a generalized requirement that permits "assure compliance" with applicable requirements. It does contain a specific requirement at 2-6-409.2.2 that each permit include "testing, monitoring, reporting and recordkeeping sufficient to assure compliance with the applicable requirements." This is the determination the District must make. The Compliance Report prepared by the Enforcement Division informs, but does not constitute, this determination.

On a theoretical level, the comment seems to advance the position that the "assure compliance" standard in Title V means providing an assurance that future violations will not occur. The District knows of no authority supporting this interpretation of Title V, and believes the position is intuitively incorrect. The single largest determiner of whether violations will occur in the future is the actions of the permittee. The single largest disincentive to the occurrence of future violations is the ~~knowledge~~expectation that such violations will be discovered and form the basis of an enforcement action. It follows that even a well-written permit cannot prevent future violations. A permit can, through imposition of testing, monitoring, recordkeeping, and reporting requirements, be an effective tool for verifying whether violations have occurred and can provide evidence that helps support an enforcement action. Section 2-6-409.2.2, mentioned above, is aimed at accomplishing exactly this. The District believes that if 2-6-409.2.2 is satisfied, then the permit "assures compliance" in the manner intended by Title V.

Comment # 1E: The various NOV's issued to the Facility since 1996 indicate a need for a compliance plan in the permit.
Response # 1E: The comment discusses certain specific NOV's issued since 1996. The District concludes that neither the NOV's discussed in the comment nor any other compliance information available to the District indicates a continuing compliance problem that warrants imposition of a compliance schedule.

The comment expresses uncertainty over what situations would rise to the level to merit imposition of a compliance plan in the Title V permit. This is a difficult issue to address on a purely conceptual level. As a general matter, the District views the compliance plan as one means among many for bringing about compliance. The enforcement tools available to the District run a broad range in terms of gravity and complexity. Issuance of an NOV is itself a means of encouraging compliance, as most companies regard the mere issuance as a penalty of sorts. An NOV that describes a significant violation and that is supported by evidence may be, but is not necessarily, followed by an action to assess a penalty. An NOV may also form part of the basis for imposition of a Title V compliance plan, but does not do so necessarily.

Compliance plans will generally be appropriate where a violation is 1) continuing or recurring and 2) can be effectively addressed through the imposition of additional permit terms. Some compliance issues are more appropriately addressed through compliance plans than others. A paradigm case for imposition of a compliance plan is

the failure to install a required abatement device – a "continuing" violation, the logical resolution of which would be to issue the permit with a schedule for installation. Recurring violations, as opposed to continuing violations, are less obviously suited for being remedied through a compliance plan. ~~by contrast, often involve failure to perform required actions such as monitoring or recordkeeping.~~ As mentioned above, if a root cause for recurring violations can be identified and if an effective plan can be developed~~, such as one involving increased monitoring and recordkeeping and reporting, that addresses the root cause,~~ then a compliance plan may be appropriate. Some types of violations are more effectively addressed through an enforcement response that involves assessment of a penalty of injunctive relief than through imposition of additional permit terms. Failures to follow compliance procedures such as monitoring and recordkeeping requirements are an example of this, as the imposition of additional compliance procedures may be insufficient to address a disinclination to follow such procedures.

An additional consideration is that, before a compliance plan can be imposed, the District must have evidence demonstrating the violation. Otherwise the permittee may appeal the imposition of the compliance plan as lacking a substantive basis. Issuance of an NOV is always based on evidence of non-compliance, but may or may not be based on the same level of evidence as would be expected for supporting an enforcement action or imposition of compliance plan. NOV's are sometimes issued with an expectation that additional evidence will be obtained at a later point in time, but such expectations are not uniformly fulfilled. These are among the reasons why a history of NOV's may or may not support imposition of a compliance plan.

Issue 2. Application information

Comment # 2A: The District should have required NUMMI to submit an updated description of its compliance status.

Response #2A: NUMMI submitted an updated compliance certification on July 28, 2002, in compliance with Regulation 2-6-426.2. Aside from this, NUMMI is not required to update its compliance certification.

Comment # 2B: The District should have required NUMMI to submit updated process description information.

Response # 2B: As a preliminary matter, the comment cites 40 C.F.R. § 70.5 as the relevant authority for determining whether an application is adequate. Part 70 sets minimum program approval requirements, but District must follow the regulations in the program approved by EPA, which is set forth primarily in Regulation 2, Rule 6. As an additional preliminary matter, the District does not consider comments on the adequacy of the application as necessarily being relevant to the adequacy of the permit. Facilities are responsible for submitting a complete application, and the District will use its available authorities to ensure it has the information it needs to issue the permit. However, the District's responsibility at this point in time is to issue an adequate permit, and to provide a rationale for the decisions made in issuing the Title V permit. Questions regarding the completeness of the application are not necessarily relevant to the act of issuing the permit.

In addition to information submitted with the application, the District has a considerable amount of process information in the applications for authorities to construct/permit to operate. These documents are public documents. However, the comment does not make clear why such information would be needed. Consistent with Regulation 2, Rule 6 and EPA guidance, including the EPA "white paper," the District expects facilities to submit information necessary to determine applicable requirements. The District believes the information submitted by NUMMI was sufficient to determine requirements applicable at the time of application submittal, as well as requirements that may have become applicable subsequently.

Comment # 2C: It is not possible for OCE to determine whether NUMMI's responsible official is qualified to be so designated.
Response #2C: Due to a change requested by NUMMI, the responsible official has been changed to Mr. Steve St. Angelo, Vice President Manufacturing Operations. His title indicates that he is qualified to be designated as a responsible official.

Issue 3. Statement of Basis
Comment # 3A: The statement of basis needs to contain a more detailed facility description.
Response # 3A: The comment cites no authority for this assertion. The description in the statement of basis is adequate for the purpose it serves. Additional description of the facility can be found in the application.

Comment # 3B: Why are the injection molding machines exempt from permits? What are the emissions from this equipment?
Response # 3B: To produce its bumpers, NUMMI uses an injection molding process. This process consists of heating and homogenizing plastic granules in a cylinder until they are sufficiently fluid to allow for pressure injection into a relatively cold bumper mold, where the fluid plastic solidifies and takes the shape of the bumper mold cavity. According to the manufacturer of the polypropylene pellets, negligible organic and particulate emissions are estimated from this injection molding process. The volatile content of the plastic granules is 0.03 weight percent, according to the manufacturer, TCA Plastics, Inc. NUMMI has estimated that they will use approximately 9000 tons per year of the material. Hence, the total emissions from their use are approximately 5,400 pounds per year (9000 tons/yr*2000 lbs/ton*0.03 wt%) or 2.7 tons per year. Hence, source S-48 Bumper Molding Operation is exempt from the permitting requirements of Subsection 2-1-301 and 2-1-302, by Subsection 2-1-122.4 for equipment used for compression molding and injection molding of plastics and emitting less than 5 tons per year of pollutants (Subsection 2-1-319). Because S-48 Bumper Molding Operation is significant, it has been added to the Title V permit. However, it is not subject to any District regulations. It is exempt from Regulation 8-2, per Regulation 8-2-116.2 (equipment used for compression molding and injection molding of plastics).

Issue 4. Monitoring
Comment # 4A: Monitoring is required to show compliance with Regulation 8-2-301 for sources in Tables VII-N, AA, BA, and BN.
Response # 4A: The Paint Mix Tanks indicated in Tables VII-N, AA, and BN are expected to comply with Regulation 8-2, because the emissions generated from these

sources are insignificant. Coating is stored in the paint mix tanks for use in the coating lines. When coating is needed at a coating source, coating is conveyed to the coating source via piping. The paint mix tank is closed and sealed with gasketed lids. The lids are only opened to test for viscosity of coating. There is a vanishingly small opportunity for emissions from paint product exposed to the open air at these units. Imposition of monitoring is therefore unnecessary. Table VII-BA (and Table IV – BD) incorrectly indicated that S1809 was subject to Regulation 8-2. Actually, S1809 is not subject to Regulation 8-2, but instead subject to Regulation 8-51. The Title V permit has been corrected to indicate that S1809 is subject to Regulation 8-51.

Comment # 4B: The District should explain its determination that capture efficiency requirements are impossible to enforce.
Response # 4B: See the discussion on page 38 of the Statement of Basis. The fundamental problem with "measuring" capture efficiency is that the part of the emissions that isn't captured is a fugitive emission that can't be measured. Though capture efficiency can be expressed as a limit, compliance with the limit cannot be measured directly. More accurate means of determining the effectiveness of abatement devices are available through use of a surrogate measures such as mass balance and source testing. Accordingly, the District has added such requirements into the permit and deleted specifications of capture efficiency. This substitution of terms that are more enforceable as a practical matter for those that are less so is just the type of exercise that is supposed to occur through the Title V process. Mass balance and source testing requirements have been added where the District determined that their use was practical and would assist in verifying compliance.

Issue 5. Reporting
Comment # 5A: The District fails to require data recorded in logs to be reported every 6 months as required by 40 C.F.R. §§ 70.6(a)(3)(i)(B) & 70.6(a)(3)(iii)(A).
Response # 5A: The comment mischaracterizes the requirements of Part 70. Part 70, and Regulation 2, Rule 6, which require semi-annual submittals of monitoring reports, not actual monitoring data.

Standard Condition I.F does say "Reports of required monitoring...", but in almost all cases this has not meant that the Title V facility is submitting data. Generally, the facility is reporting that they are conducting all required monitoring (unless there has been some lapse and they are reporting on that) and they are reporting on non-compliance, presumably discovered by monitoring. NUMMI currently submits and will continue to submit a report monthly to the District and with a copy also sent to EPA regarding both emissions and any applicable temperature excursions per the temperature excursion provisions of their permit conditions.

October 1, 2002 Email

Comment # 1: The District's TAC Report for 1999 shows that NUMMI emitted 47 tons of xylenes in 1999, but the 2000 TAC Report shows no xylene emissions. Did NUMMI phase out xylene during this period?

Response # 1: Although NUMMI reduced the amount of xylene used during this time period, they did not completely phase it out. It is not included in the 2000 TAC report, because the estimated emissions of xylene were below the xylene TAC trigger level.

Comment # 2: Thermal Oxidizer, A-102, (abating the spare parts ELPO oven) has an operational limit of 60 percent destruction efficiency. Is this correct? Why is it so much lower than other similar devices at the plant?
Response # 2: This unit was originally installed for odor control and VOC limits do not apply. The VOC content of this material is 0.5 lb/gal. Regulation 8-13-306 specifies "A person shall not apply to any part of product subject to this Rule any electrophoretic primer which has a VOC content in excess of 145 grams per liter (1.2 lb/gal) of coating applied, excluding water, unless emission to the atmosphere are controlled to an equivalent level by use of an air pollution abatement device with an abatement device efficiency of at least 90% that meets the requirements of Regulation 2, Rule 1." NUMMI is not required to abate the VOC emissions from this source to destruction efficiency of 90%.

Comment # 3: The Permit Evaluation for Permit Application 10741 states that S-1061 is exempt from NSPS Subpart MM, but the draft permit includes NSPS Subparts A and MM for S-1061. Did the District change its analysis?
Response # 3: The proposed Title V permit incorrectly identifies NSPS subpart MM (and the NSPS General Provisions in Subpart A) as applying to S-1061 ("Truck Axle Booth w/POS"). Subpart MM applies to "affected facilities" consisting of "each prime coat operation, each guide coat operation, and each topcoat operation" "that begins construction, reconstruction, or modification after October 5, 1979." Each of these coating operations is further defined to include specified equipment used to apply surface coatings to "components of automobile and light-duty truck bodies." Axles are not part of a car or truck "body". S-1061 therefore is not a Subpart MM "affected facility" and is not subject to Subpart MM because as an axle booth it does not fit within the subpart's definition of "prime coat operation", "guide coat operation" or "topcoat operation". The mistaken reference in the Title V permit was corrected.

October 7, 2002 Letter

Issue 1: Compliance with production limits

Comment # 1A: Is NUMMI in compliance with the production limits in Condition 9084?
Response # 1A: Condition 9084 no longer applies to NUMMI. That is why it does not appear in the draft Title V permit. This condition was deleted in Application 12094, which was approved on January 28, 1994.

Comment # 1B: Why is the production limit in Permit Condition #9156 I.1 and I.2 being deleted?
Response # 1B: Condition #9156 I.1 is being deleted because compliance with the permit has always been demonstrated through the equivalency clause at the end of the condition. NUMMI submits data to show that actual emissions do not exceed the levels in Conditions #9156 I.5 and I.6. Condition I.1 allows NUMMI to use a low production

rate to presumptively demonstrate compliance. This option is being eliminated, which makes the revised permit more restrictive. I.2. is being deleted because it only relates to I.1.

Issue 2: Removal of short-term emission limits

Comment # 2A: Do the hourly and daily limits in Condition 9084 still apply?
Response #2A: Condition 9084 no longer applies to NUMMI. That is why it does not appear in the draft Title V permit. This condition was deleted in Application 12094, which was approved on January 28, 1994.

Comment # 2B: Removal of short-term (daily) emission limits is not sufficient to limit "large, isolated" emissions over the short term that might have health and environmental impacts. For example, enforcement of daily VOC limits could impact whether there are ozone exceedances on a daily basis. Retaining daily/hourly limits would increase NUMMI's potential penalties for a prolonged violation. This amendment is a material, not an administrative, change.
Response # 2B: Daily throughput limits were deleted in 11 places in the permit. They were eliminated because they are entirely redundant. The determination of daily usage is derived from the monthly records ("Daily usage shall be determined by dividing the monthly usage amounts by the total operating days during that month"). The method of determining compliance shows that the conditions never served to limit "large, isolated" emissions over the short term. Violation of a monthly limit is a continuing violation that spans the affected month, and thus provides an ample basis for substantial penalties.

Issue 3: Other technical comments

Comment # 3A: The permit application did not contain emission data for every significant source at the facility.
Response #3A: Source specific emission data is not required in the permit application to allow the issuance of the Title V permit. When the permit application was required in 1996, applicants were only required to report emissions for permitted sources. Regulation 2, Rule 6 was amended in 2001 to require emission information for all significant sources, as defined in BAAQMD Regulation 2-6-239. However, the District is not requiring that all applications that were submitted previous to 2001 be amended to comply with the new requirement. NUMMI will report on all significant sources at the time of permit renewal. Notwithstanding this, the District believes it had sufficient information to determine and impose all applicable requirements in the Title V permit.

Comment # 3B: The Statement of Basis says that NUMMI is not a major source of HAPs. The District's inventory, however, indicates that NUMMI is a major source of butyl cellosolve, and may be a major source of toluene and xylenes.
Response # 3B: The statement of basis is incorrect. NUMMI is a major source of HAPs.

Comment # 3C: NUMMI may be subject to the currently proposed NESHAP for the surface coating of miscellaneous metal parts and products.

Response #3C: Both Part 70 and Regulation 2, Rule 6 have procedures for modifying Title V permits when a source becomes subject to a new rule. The applicability of the miscellaneous metal parts NESHAP to NUMMI will be determined when that Rule is finalized.

Comment # 3D: There may be other NESHAPS rules that apply to NUMMI that were overlooked because the District did not determine that the facility was major for HAPs.
Response #3D: They may be subject to NESHAPs (e.g., Auto & Light Duty Truck Manufacturing, Miscellaneous Metal Parts Products, Industrial Commercial & Institutional Boilers & Process Heaters), which have not yet been promulgated by EPA. NUMMI has submitted a Section 112(j) Part 1 permit application for these future NESHAPs. To assist the facility in complying with 112(j), reference to Section 112(j) requirements have been added to their Title V permit. They will be obligated to submit a Part 2 permit application by May 15, 2004, per 112(j) requirements.

Comment # 3E: The MACT hammer provision (CAA Section 112(j)) required NUMMI to submit by May 15 a permit proposing limitations equivalent to the standards that EPA would have promulgated if it had adopted a MACT standard.
Response # 3E: NUMMI submitted its Part 1 application on May 14, 2002. A facility table has been added to Section IV to include specific requirements to meet the remaining deadlines set forth in the 112(j) regulations.

Comment # 3F: Table VIIB requires annual source tests to demonstrate compliance with Condition #4281-2, but Table VIII does not specify the analytical methods to be used.
Response #3F: The test methods for this condition have been added to Table VIII.

Comment # 3G: Additional conditions should be placed in the permit to ensure that VOC source tests include chemical-specific calibration and separation of mixtures by gas chromatography.
Response # 3G: The applicable requirements and the approved test methods contain all appropriate criteria for ensuring that the tests measure what the applicable requirements limit. No additional conditions are needed.

Comment # 3H: The permit condition for the A-102 thermal oxidizer should be changed to require a destruction efficiency of 90% rather than 60%.
Response # 3H: This unit was originally installed for odor control and VOC limits do not apply. The VOC content of this material is 0.5 lb/gal. Regulation 8-13-306 specifies "A person shall not apply to any part of product subject to this Rule any electrophoretic primer which has a VOC content in excess of 145 grams per liter (1.2 lb/gal) of coating applied, excluding water, unless emission to the atmosphere are controlled to an equivalent level by use of an air pollution abatement device with an abatement device efficiency of at least 90% that meets the requirements of Regulation 2, Rule 1." NUMMI is not required to abate the VOC emissions from this source to destruction efficiency of 90%.

Issue 4: Access to public records

Comment 4: As a result of these difficulties in accessing public records, the OCE was unable to fully assess whether the District can assure compliance for NUMMI.
Response 4: To the extent the comment is suggesting that issuance of the Title V permit was flawed, the comment seems to make two key assumptions. First, it assumes that determining whether a Title V permit "assures compliance" necessarily entails a comprehensive review of all enforcement information in the permit agency's files. The District's views on this are discussed above. In short, the District does not believe this is required by Title V, Part 70, or Regulation 2, Rule 6, and the comment does not cite authority to the contrary. Second, and more to the point of this comment, the comment assumes that the Title V issuance process is flawed if public reviewers are not provided immediate access to all enforcement information in District files. Here as well, no relevant authority is cited. The District does not agree with this view.

While the District supports the concept of public review, there will often be practical limits on the quantity and breadth of information it can provide to the public in a given period of time. These practical limits become particularly apparent when requests for information are made at the start of the public comment period, with the expectation that the information will be provided in time to inform public comment. While the District strives to accommodate such requests, the results are likely to fall short of expectations for a facility of the size and complexity typically found in the Title V program.

Aside from the obvious task of issuing a Title V permit that is valid and accurate, the permitting agency's primary "informational" obligation in issuing the Title V is to explain the decisions it made in that process. The District does this primarily through its Statement of Basis and responses to comments. Enforcement information is among the information examined by the District, and the District explains in the course or issuing the permit whether significant enforcement issues exist and how these may have factored into its decisions in issuing the Title V permit.

What the comment suggests goes beyond this. The comment essentially advances the view that the public must be able to stand in the shoes of the permitting agency staff in terms of information availability. As an ideal goal for public participation, this is laudable. However, to suggest that it is either practical or that it is intended as a minimum requirement under Title V is counterintuitive. Title V contemplates that issuance of initial permits could take ~~up to~~ from one to three years from the time the application is received.~~,~~ See CAA § 503(c). Title V does not specify a minimum time frame for public comment but, consistent with precedent from othe permitting programs, EPA required a comment period of 30 days for permit issuance. 40 CFR § 70.7(h)(4). ~~and that the public have 30 days on which to comment on the proposed permit.~~ It could not have been intended by Congress in enacting Title V that the analysis performed by the agency staff over one to three years be re-created by public reviewers during the public comment period ~~in the space of 30 days~~. The impracticalities that the District has encountered when public reviewers have attempted such a thorough review are confirmation of this. While the District will continue as best it can to support public reviewers attempting access information in conjunction with the review of Title V permits, the District rejects the notion that the Title V process is flawed simply because that access is less than comprehensive. The District believes the fundamental test for

providing information is whether it has provided enough to explain its decisionmaking process.

Issue 5: Compliance assurance

Comment 5: The proposed Title V permit for NUMMI does not assure compliance as required.

Response 5: The District disagrees with OCE's assertion. The Title V permit does assure compliance**.** The preceding discussion addresses this.