Mr. Robert W. Carr
Air Pollution Control Officer
San Luis Obispo APCD
3433 Roberto Court
San Luis Obispo, CA 93401

Re: Tosco Santa Maria Refinery Proposed Title V Permit

Dear Mr. Carr:

Thank you for the opportunity to comment on the proposed Title V operating permit for the Tosco Santa Maria Refinery. The revised permit contains a number of substantive changes from the previous versions that you have provided to us for review. We appreciate the opportunity to review early drafts of this permit and your willingness to revise these drafts based on our comments. Based on our review of the proposed permit and the supporting information, EPA formally objects, pursuant to our authority under section 505(b) of the Clean Air Act (Act) and 40 CFR § 70.8(c), to the issuance of the proposed permit on the basis that it does not include all of the requirements that are applicable to the source under the Act, including the requirements of the State Implementation Plan (SIP). Specifically, several conditions contained in the District's Authority to Construct (ATC) permits for this facility are not included as conditions in the proposed Title V permit. This letter will explain the basis for our objection.

Federal regulations that implement the Title V permitting program (40 CFR Part 70) list the required content of Title V operating permits. 40 CFR 70.1(b) states that "[a]ll sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." In section 70.2, "applicable requirement" is defined to include, among other things, "[a]ny term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act." Furthermore, EPA's "White Paper for Streamlined Development of Part 70 Permit Applications" (July 10, 1995) includes guidance on the incorporation of the terms and conditions of previously issued new source review ("NSR") preconstruction permits into Title V permits. The White Paper states that:

> "As used here, 'new source review' refers to all forms of preconstruction permitting under programs approved into the SIP, including minor and major NSR (e.g., prevention of significant deterioration). Section 70.2 defines any term or condition of a NSR program as being an applicable requirement."

The District has a SIP-approved NSR permitting rule, and the conditions contained in any authority to construct permits issued by the District are recognized as applicable requirements of the Act. Consistent with this, the District's own Title V rule, which received interim approval from EPA, contains a definition of "applicable requirement" and lists permit content requirements consistent with Part 70 requirements. Therefore, the authority to construct conditions must be included in the proposed Title V permit.

The District has argued, in conversations with EPA staff and in a letter dated December 29, 1997, that the White Paper allows the Title V permitting authority some latitude to exclude ATC permit conditions from the Title V permit. Specifically, the District has asserted that the White Paper allows exclusion of ATC conditions as long as they are not based on an overriding federal requirement, such as BACT, NSPS, or a requirement contained in the SIP.

EPA disagrees with this interpretation of the White Paper. We do, however, agree that this guidance does allow for exclusion of a more limited range of ATC conditions, such as those which are obsolete or environmentally insignificant, or those which apply only to construction activities and not to daily operation of the source. Specifically, EPA would consider the removal of conditions such as those requiring written notice of operational changes or nuisance-abatement requirements, as long as these are not required by the SIP or any other federal regulation. Other ATC conditions, on the other hand, must be included in the Part 70 permit, such as those which limit emissions of criteria pollutants, or those which contain periodic monitoring requirements. EPA has agreed to explore the viability of the procedure outlined on pp.14-15 of the White Paper for postponing the decision of which conditions of the Title V permit are federally-enforceable.

After EPA objects to a permit, the permitting authority has 90 days to respond to the objection. If the 90-day period expires without the basis for the objection being fully corrected, section 505(c) of the Clean Air Act and 40 CFR §70.8(c)(4) require that the authority to issue or deny the permit pass to EPA. We appreciate the fact that the District has expressed interest in working with EPA to settle this objection issue before the end of this 90-day period.

I would like to thank you and your staff for all your help in providing information to aid our review and in discussing these issues with us. We are committed to working with you to resolve these issues. If you have any questions concerning our comments, please contact Matt Haber at (415) 744-1254.

Sincerely,

David P. Howekamp
Director
Air Division

cc: Ray Menebroker, ARB