

PUBLIC HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the Valero Cogeneration) 01-AFC-5
Plant)

CONFERENCE ROOM
CITY HALL
BENICIA, CALIFORNIA

TUESDAY, OCTOBER 30, 2001
3:05 p.m.

Reported By:
James Ramos
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert A. Laurie

Garret Shean, Hearing Officer

STAFF PRESENT

Paul A. Kramer

Matthew S. Layton

APPLICANT

Karen J. Nardi
McCutcheon, Doyle, Brown & Emersen, LLP

Sam Hammonds
Valero Refining Company

INTERVENORS

Mark Wolfe, CURE
Adams, Broadwell, Joseph & Cardozo

Dana Dean
Good Neighbor Steering Committee

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

I N D E X

	Page
Proceedings	1
Opening Comments	1
Air Quality	6
WITNESSES:	
CURE	
DR. PHYLLIS FOX	
Direct Examination by Mr. Wolfe	22
Cross Examination by Ms. Nardi	29
Cross Examination by Mr. Kramer	32
Redirect Examination by Mr. Wolfe	34
Further Redirect Examination by Mr. Wolfe	77
Cross Examination by Mr. Kramer	81
COMMITTEE	
STEVE HILL, Bay Area Air Quality Management District	
Questions by Committee	36
Cross Examination by Ms. Nardi	48
Cross Examination by Mr. Hammonds	53
Cross Examination by Mr. Wolfe	55
Cross Examination by Dr. Fox	62
Cross Examination by Ms. Dean	72
Closing Statements	
Karen J. Nardi Counsel for Applicant	87
Mark R. Wolfe Counsel for CURE	97
Dana Dean Good Neighbor Steering Committee	99

I N D E X

	Page
Closing Comments	102
Adjournment	108
Certificate of Reporter	109

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

COMMISSIONER LAURIE: Ladies and gentlemen, good afternoon. My name is Robert Laurie, Commissioner with the California Energy Commission. We are here today to conduct an additional public hearing on the Revised Presiding Member's Proposed Decision. The matter will then be set for additional hearings in front of the full Commission tomorrow.

This is another meeting of the two member Commission Committee. I am the Second Member of that Committee. Commissioner Rosenfeld, the Presiding Member, will not be present today.

This hearing is being recorded, and so I'd ask you to speak slowly. If we run into trouble with the recordation, we will stop the proceedings until the matter can be resolved.

Again, the microphones in this room are only recording microphones, they are not amplifying microphones, and we want to make sure that members of the public can hear. If there's any question about that, we'll interrupt and ask you to repeat, and we'll ask you to speak loudly.

To my left is Mr. Garret Shean. Mr. Shean is the Hearing Officer assigned to this

1 case. Mr. Shean will administer these
2 proceedings, subject to my timely or untimely
3 interruptions, as I may see fit.

4 At this time I'd like to have additional
5 introductions. I'd like introductions of the
6 Applicant, and then I'd like introductions of
7 Staff, and then introductions of the Intervenors.

8 Start it off with Staff, please.

9 MR. KRAMER: Paul Kramer, the Staff
10 Counsel.

11 MR. LAYTON: Matt Layton, Air Quality.

12 MR. HAMMONDS: I'm Sam Hammonds, for the
13 Applicant, Valero.

14 MS. NARDI: I'm Karen Nardi, Counsel to
15 Valero, the Applicant.

16 MR. WOLFE: I'm Mark Wolfe, Counsel for
17 CURE, Intervenor. Mark Wolfe, here on behalf of
18 CURE, and joining me is Dr. Phyllis fox.

19 COMMISSIONER LAURIE: At this time I'll
20 turn the matter over to Mr. Shean, who will
21 describe for you the purpose of today's meeting,
22 and the process and procedure that we intend to
23 follow.

24 Mr. Shean.

25 HEARING OFFICER SHEAN: Okay. I'll just

1 indicate for the record that one of our other
2 Intervenor, Dana Dean, representing the Good
3 Neighbor Steering Committee, has entered the room,
4 so we are -- now have our two principal
5 Intervenor. I have received a note from the City
6 of Benicia, our other Intervenor, indicating that
7 given their satisfaction with the current state of
8 the Revised Presiding Member's Proposed Decision,
9 they did not expect to attend today's meeting, but
10 will have a representative at tomorrow's full
11 Commission hearing.

12 The purpose of today's Committee
13 activity is to take any further comments on the
14 Revised Presiding Member's Proposed Decision.
15 Valero -- I beg your pardon. CURE has asked for
16 an opportunity to present comments and evidence in
17 a combined sort of way, with respect to the Air
18 Quality aspects of the Revised Proposed Decision,
19 and, to a certain extent, the underlying Final
20 Determination of Compliance.

21 If there are any other comments from any
22 other party, or there are public comments, we will
23 afford an opportunity for the public before the
24 conclusion of today's hearing, to address the
25 Committee.

1 COMMISSIONER LAURIE: Mr. Shean, let me
2 ask a procedural issue. It can be made clear, and
3 correct me if I'm wrong, that the evidentiary
4 record is closed, and the purpose of today's
5 hearing is to receive comment. We will not be
6 taking sworn testimony. Is that correct?

7 HEARING OFFICER SHEAN: Actually, we had
8 -- the Committee had intended to leave, or reopen
9 the record so that if CURE or any other party had
10 evidence to present on the FDOC and the Revised
11 PMPD, this was their sole and last opportunity to
12 do so.

13 COMMISSIONER LAURIE: Okay. Evidentiary
14 record is reopened for the limited purpose as
15 described.

16 Anything else?

17 HEARING OFFICER SHEAN: All right. With
18 that, we can -- I think we'll ask Ms. Dana Dean,
19 who is our other Intervenor, if you have any other
20 matters that you want to present to the Committee
21 before we launch into CURE's presentation.

22 MS. DEAN: Actually, could I wait until
23 after they've spoken?

24 HEARING OFFICER SHEAN: Sure.

25 MS. DEAN: Is that -- is that all right?

1 Okay.

2 HEARING OFFICER SHEAN: All right.

3 Mr. Wolfe, you're up, then.

4 MR. WOLFE: Thank you. And thank you,
5 Commissioner Laurie, for being here.

6 We will try our best to make this as
7 quick and as simple as possible.

8 The real issue here is compliance with
9 federal LORS. As everyone knows, that is a hard
10 requirement of the Warren-Alquist Act. Under no
11 circumstances can the Commission adopt any finding
12 that is inconsistent with applicable federal law
13 or regulation. That's a requirement of Section
14 25525 of Warren-Alquist. And our concern is that
15 the Revised PMPD, as it currently stands, does not
16 comply with federal LORS. And let me explain that
17 first by giving you a little bit of background.

18 COMMISSIONER LAURIE: Let me interrupt
19 again, with a procedural question, Mr. Wolfe. And
20 I apologize for interrupting your -- your
21 presentation.

22 Question, Mr. Shean. Has there been any
23 exchange of information so the Applicant knows
24 what this testimony is going to be, so that they
25 can be in the position to cross examine?

1 HEARING OFFICER SHEAN: Yes.

2 COMMISSIONER LAURIE: And -- and --

3 okay.

4 MS. NARDI: Yes, there has been,
5 Commissioner Laurie. There was a pleading filed
6 by CURE alerting us to the specific issues they
7 wanted to address today, and we're prepared to
8 address them.

9 COMMISSIONER LAURIE: And you prepare --
10 is it your intent to submit any rebuttal evidence?

11 MS. NARDI: We would like to reserve the
12 right to ask questions of Dr. Fox, whom I believe
13 Mr. Wolfe is going to present. And we'd also like
14 to reserve the right to have Mr. Hammonds, who is
15 an environmental engineer at the refinery, respond
16 and present his own evidence, if it's appropriate.

17 COMMISSIONER LAURIE: Okay. Very well.
18 Thank you.

19 Mr. Wolfe.

20 MR. WOLFE: Okay. And just along those
21 lines. I'm proceeding with the understanding that
22 this is a Committee conference, to be followed by
23 my calling Dr. Fox to testify. And what I'm doing
24 right now is -- is presenting sort of the
25 framework for our comments.

1 So I --

2 HEARING OFFICER SHEAN: Yeah, we
3 understand. You're not the one testifying.

4 MR. WOLFE: -- I'm not testifying under
5 oath. Okay, thank you. Just to clarify.

6 All right. A bit of background for
7 Commissioner Laurie's benefit. When the PDOC was
8 issued, back in late August or early September,
9 the concern we had was that it reached a
10 conclusion that the project, quote, unquote,
11 netted out a federal PSD review. It made that
12 conclusion based on subtracting, quote, unquote,
13 contemporaneous emissions decreases at other
14 sources at the refinery to get the new project,
15 the net total of the new increases from the
16 project and the shutdown to be below those limits.

17 We submitted comments questioning the
18 assumptions of the methodology of that netting
19 analysis, and we concluded that, in fact, the
20 project, even counting the simultaneous shutdowns,
21 exceeded PSD thresholds, and that a PSD permit was
22 required.

23 At that point, USEPA Region 9 also
24 submitted comments on the PDOC, reaching
25 substantially the same conclusion. They concluded

1 that, in fact, based on what was presented in the
2 PDOC and the AFC here, the project looked like it
3 exceeded PSD thresholds, and that a PSD permit was
4 required.

5 In the FDOC, what the district
6 essentially did was impose emissions caps on the
7 pollutants that otherwise would've exceeded the
8 PSD thresholds. That's fine. Cap them so that
9 they would be below those thresholds. Which, as
10 we pointed out in our pleading, would be a
11 perfectly appropriate thing to do.

12 The problem is, is that the Federal
13 Clean Air Act requires that any emissions cap
14 imposed under these circumstances to essentially
15 escape federal PSD review, must be federally
16 enforceable. If those emissions limits are not
17 federally enforceable, they essentially are no
18 limits at all. And in order to be federally
19 enforceable, they need to be, to use a term of
20 art, practically enforceable. And this is a
21 concept that is articulated repeatedly in various
22 EPA guidance memos that we cite in our pleadings
23 and in our comments.

24 The key problem, as we see it, with the
25 way the conditions are enforced under this FDOC is

1 that compliance is determined using a 365 day
2 rolling average. That means compliance with the
3 limit cannot even be determined during the first
4 year of operation at all. Because it's a rolling
5 average they have to wait until the 366th day in
6 order to determine whether the source is in
7 compliance.

8 COMMISSIONER LAURIE: Does the condition
9 specifically say that?

10 MR. WOLFE: It states that compliance is
11 -- is monitored on a 365 day average, I believe.

12 COMMISSIONER LAURIE: So if -- if you
13 have compliance based upon a 365 day average, and
14 you're in your 85th day, so your year is only 85
15 days, is there any evidence in the record that
16 Staff has indicated that it has been enforceable
17 at that point that you must, in fact, wait for 365
18 days?

19 MR. WOLFE: Well, here's one thing that
20 I think goes to that question. On page 13 of the
21 FDOC, they're talking about the PM10 emissions
22 limit. And it says that -- in the second
23 paragraph, actual PM10 emissions will be
24 determined by source test. If the actual
25 emissions are higher than assumed, Valero will be

1 required to restrict operations either by reducing
2 firing lowering fuel sulfur to remain below PSD
3 threshold of 15 tons per year for the project.

4 The problem is we don't see a condition
5 that actually encapsulates that. And we think one
6 needs to be there, and that's one of our primary
7 points.

8 Let me point to language in the NSR
9 manual, which I assume you're familiar with. This
10 is the EPA guidance document that essentially lays
11 out how new source permits are to be written. And
12 the key language that we've quoted repeatedly in
13 this process governs the -- the timeframe for
14 determining compliance. And let me just read it,
15 it's very brief.

16 "Compliance with any permit
17 limitation must be able to be
18 established at any given time.
19 When drafting permit limitations,
20 the writer must always ensure that
21 restrictions are written in such
22 a manner that an inspector could
23 verify instantly whether the
24 source is or was complying with
25 the permit conditions. Therefore,

1 short term averaging times on
2 limitations are essential."

3 COMMISSIONER LAURIE: And what were you
4 reading from, Mr. Wolfe?

5 MR. WOLFE: I was reading from EPA's new
6 source review manual, page C3 and 4.

7 Again, the problem here is as it's
8 written, the FDOC and the Revised, RM -- PMPD,
9 allow this project to operate for an entire year,
10 essentially with no method determined whether it
11 is complying with the emissions caps that enable
12 it to avoid PSD review.

13 When we get to Dr. Fox's testimony she
14 will be much more specific on what language in the
15 conditions we feel is deficient, and how that
16 language can actually be fixed to address the
17 problem.

18 COMMISSIONER LAURIE: Have you had any
19 discussions with the Applicant about your
20 concerns?

21 MR. WOLFE: None. We submitted a -- our
22 comments, I believe, on the 25th, so about --

23 COMMISSIONER LAURIE: So you've had no
24 conferences --

25 MR. WOLFE: No.

1 COMMISSIONER LAURIE: -- no attempt to
2 determine whether or not your concerns may be met
3 by them?

4 MR. WOLFE: No.

5 COMMISSIONER LAURIE: Okay.

6 MR. WOLFE: The second major category of
7 concern we have is the absence of specification in
8 the permits as to the methods for determining
9 compliance and enforcement. Again, this is
10 something that we see as required by federal LORS.
11 EPA guidance documents, which we have quoted in
12 our pleadings, establish -- essentially, I'll just
13 quote again from an EPA guidance memo dated
14 January 25th, '92, that we cite in the pleading we
15 filed on the 25th, at page 8.

16 "In order for limits to be
17 enforceable as a practical matter,
18 the rule or permit must clearly
19 specify the limits that apply and
20 include the specific associated
21 compliance monitoring."

22 In other words, it must clarify which
23 methods are used for making a direct determination
24 of compliance with the potential to emit
25 limitations. Unless there is something specified

1 in the permit that explains the methodology for
2 measuring emissions and determining how that cap
3 is going to be enforced, we feel that the permit
4 doesn't comply with federal LORS.

5 And let me just point out on that note
6 that -- that we think EPA Region 9 agrees with us
7 on this point. They submitted two letters the
8 week before last that we referenced in -- in the
9 hearing before the full Commission last week. The
10 first was a letter to Jack Caswell, essentially
11 saying that they had no problem with the
12 Commission going forward and licensing this
13 project. But the second letter was sent to the
14 district, dated October 16th, where they go into
15 some detail about their concerns regarding the
16 lack of test methods and protocols specified in
17 the permit.

18 They say that these deficiencies can be
19 corrected when the district issues the Title 5
20 permit for the refinery. To use their language,
21 while EPA has some concerns with test methods and
22 compliance determinations for this project, we
23 believe they can be addressed when the district
24 issues the Title 5 permit.

25 On the following page, when they go into

1 their specific comments, they ask the district to
2 clarify test methods that are being used, and how
3 practical enforceability is to be achieved when
4 the Title 5 permit issues.

5 Now, the problem with that approach, and
6 we obviously ourselves afford some deference to
7 EPA's interpretation of the statutory program, is
8 that the Energy Commission has to make a finding
9 of LORS compliance for the project now. To the
10 extent that there is a deficiency that prevents
11 that finding from being made, we don't think it's
12 appropriate to wait for the Title 5 permit to come
13 out to fix the problem. These test methods and
14 protocols and practical enforceability
15 clarifications need to be there now, and we think
16 they can be. And when Dr. Fox testifies she'll
17 give you some more details on what can be done to
18 fix that.

19 So we would respectfully disagree with
20 EPA's apparent position that these problems can be
21 remedied when the Title 5 comes out, which,
22 frankly, we don't know what that's going to say,
23 or when it's even going to come out.

24 But let me add one last point, which is
25 it's our understanding that when EPA sent this

1 letter the understanding was that the refinery's
2 Title 5 permit was going to come out in December
3 of this year. And it's since then revealed that
4 it is probably not going to be final until
5 September 2002. Under those circumstances, since,
6 if I understand correctly, Phase 1 of this project
7 will be operational by June, you will have at
8 least a three month gap where the project will be
9 operating in the absence of a Title 5 permit that
10 in theory corrects these various deficiencies.

11 So with all of that said, what I would
12 like to do is call Dr. Fox and have her identify
13 specifically which conditions in the Revised PMPD
14 remain deficient, from a federal LORS standpoint,
15 and offer some changes to those that we think can
16 solve the problem.

17 Before I do that, let me just give you
18 an overview of the changes to the existing
19 conditions that we think could go a long way to --
20 to solving this problem. And I have not discussed
21 these with the Applicant.

22 COMMISSIONER LAURIE; Just out of
23 curiosity, do you think the law as currently
24 written allows you to discuss it with the
25 Applicant?

1 MR. WOLFE: Let's see. At the -- the
2 regs as currently written?

3 COMMISSIONER LAURIE: Because I -- I
4 can't tell you, Mr. Wolfe. So I'm just curious as
5 to whether you think you have the freedom to have
6 that discussion. And this is not intended to be a
7 trick question.

8 MR. WOLFE: Oh, no, I understand. I
9 believe you're referring to the sections of the
10 siting regs that are under discussion for being
11 revised.

12 COMMISSIONER LAURIE: Yes.

13 MR. WOLFE: Outside of a noticed
14 hearing, I assume is your question.

15 COMMISSIONER LAURIE: Yeah.

16 MR. WOLFE: I'd have to go back and look
17 at them, but --

18 COMMISSIONER LAURIE: Okay.

19 MR. WOLFE: -- we haven't, so --

20 COMMISSIONER LAURIE: That's fine.

21 MR. WOLFE: -- okay.

22 COMMISSIONER LAURIE: Because my -- I
23 believe it is permissible to have those
24 discussions.

25 MR. WOLFE: Between an Intervenor and an

1 Applicant.

2 COMMISSIONER LAURIE: And I encourage
3 them on a regular basis.

4 MR. WOLFE: Okay. Thank you.

5 One of the pollutants that both we and
6 EPA observed in the PDOC was going to exceed PSD
7 thresholds was sulfuric acid mist. The PSD
8 threshold is seven tons per year. The district
9 came back in the FDOC and put a cap of seven tons
10 per year on that. This I'm hoping is a non-
11 controversial suggestion, but because the PSD reg
12 is written in such a way that -- that PSD is
13 triggered when you get to seven tons, that we just
14 need to change a couple of words in that condition
15 to make sure that we remain below seven tons.

16 As it's currently written, seven tons
17 itself is permissible, and 6.9 should be. So I'm
18 hoping that that's one we can go forward with.

19 Second --

20 HEARING OFFICER SHEAN: May I ask you a
21 question about it.

22 MR. WOLFE: Sorry.

23 HEARING OFFICER SHEAN: I thought we had
24 revised AQ-20 to --

25 MR. WOLFE: Had you?

1 HEARING OFFICER SHEAN: -- to read
2 sulfuric acid emissions from P60 and P62 combined
3 shall not equal or exceed seven tons in any
4 consecutive four quarters. Is that -- does that
5 satisfy your --

6 MR. WOLFE: My mistake. You're right.
7 It does.

8 HEARING OFFICER SHEAN: Okay.

9 MR. WOLFE: Thank you. Thank you.
10 Sorry about that.

11 HEARING OFFICER SHEAN: Okay.

12 MR. WOLFE: One additional change,
13 however, to Condition AQ-20 that you just read
14 from, to address the concern we just articulated
15 about there being a 365 day rolling average.
16 Again, under that -- under that circumstance, it's
17 impossible to determine whether the PSD threshold
18 is going to be exceeded until you get to the 366th
19 day. So what we would like to see is a daily
20 average of basically seven tons per year divided
21 by 365 days. And so we would have a daily limit
22 there to assure that we were not exceeding the SAM
23 emission threshold.

24 COMMISSIONER LAURIE: What happens if
25 you have a problem with your third day, so the --

1 average will be skewed because the number of days
2 that you're dividing by are -- are low. I
3 understand the principle, I understand the -- it
4 is my view that you don't -- you should not wait
5 365 days to do a test to determine whether or not
6 you're meeting the standard. But can you take the
7 test on the first day, can you take the test on
8 the second day or the third day, and we don't have
9 to talk about that, but that certainly is a
10 question that I have.

11 MR. WOLFE: Okay. And my hope is that
12 -- is that Dr. Fox can illuminate that --

13 COMMISSIONER LAURIE: Okay.

14 MR. WOLFE: -- when we get to her.

15 So the first proposed change has already
16 been done, so that's very good news. The second
17 proposed change would be to impose something less
18 than an annual compliance period. And we're going
19 to propose a daily one.

20 Third, and trickier, is to address our
21 and EPA's concerns prior to the Title 5, we need
22 to specify the monitoring methods that will be
23 used to assure compliance with the emissions caps
24 for all pollutants. The FDOC references a, quote,
25 unquote, district determined emissions factor for

1 all pollutants, but in our view there's not enough
2 information in the FDOC that describes how the
3 district is going to come up with that emission
4 factor, what information it's going to rely on to
5 determine it, and et cetera, et cetera. And Dr.
6 Fox can speak to that a little bit more.

7 But again, some specification of test
8 methods and protocols. Basically the same things
9 that EPA has said need to be addressed that EPA
10 thinks can be addressed in the Title 5, we think
11 those need to be addressed now.

12 And then, finally, to address the
13 uncertainty that stems from not knowing when the
14 Title 5 is actually going to be issued, and
15 recognizing that the assumption here is that these
16 problems can be corrected. If they are not, if we
17 can't reach an agreement on incorporating these
18 other proposed changes, we would like to see a
19 condition added that essentially requires the
20 Applicant, prior to construction of Phase 2 of the
21 project, demonstrate to the Compliance Project
22 Manager of the CEC that they have a duly issued
23 Title 5 permit.

24 So with that, if -- unless there are
25 questions for me, I would -- I would call my

1 witness.

2 COMMISSIONER LAURIE: Mr. Shean, are you
3 ready?

4 HEARING OFFICER SHEAN: I'm ready to go.

5 MR. WOLFE: Should I just -- I ask Dr.
6 Fox to step up.

7 (Inaudible asides.)

8 HEARING OFFICER SHEAN: Why don't we
9 have the reporter swear her in.

10 COMMISSIONER LAURIE: Members of the
11 audience, if you cannot hear, raise your hand, so
12 we'll do something about it. Okay.

13 (Thereupon, Phyllis Fox was, by the
14 reporter, sworn to tell the truth and
15 nothing but the truth.)

16 MR. WOLFE: Thank you. For the record,
17 Dr. Fox's resume was submitted and docketed in
18 conjunction with the additional testimony she
19 submitted on October 25th.

20 COMMISSIONER LAURIE: Is there a
21 stipulation as to her ability to testify as an
22 expert in this matter?

23 MS. NARDI: We haven't challenged that
24 -- her qualifications to testify.

25 COMMISSIONER LAURIE: Thank you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TESTIMONY OF

DR. PHYLLIS FOX

called as a witness on behalf of CURE, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WOLFE:

Q Dr. Fox, just to lay a quick foundation.

Did you prepare the document entitled Additional Testimony of J. Phyllis Fox, Ph.D., and Comments on the Revised PMPD submitted by CURE October 25th?

A I did.

Q Could you please summarize for the Committee the points you raise in that submittal.

A Do you want me to go through them item by item?

Q Yes, please.

A The first issue is the issue of the 35 day rolling average. And the main issue there is

--

Q I'm sorry, Dr. Fox. You mean the 365 --

COMMISSIONER LAURIE: The 365 day?

BY MR. WOLFE:

Q -- 365 day.

1 A 365 day, right -- 365 day rolling
2 average. And the issue there, as Mr. Wolfe
3 stated, is before you can get your first
4 compliance point you have to wait for 365 days.
5 And there's quite a bit of EPA guidance on this
6 particular point. And the usual recommendation to
7 get around it is to specify interim limits that
8 apply only during the first year of operation.

9 So what I would propose is that the
10 permit be supplemented to include interim limits
11 that would apply only during that first year
12 period.

13 Q Could you --

14 COMMISSIONER LAURIE: When -- when you
15 say interim limits, you mean interim measurements?

16 THE WITNESS: No. Interim limits that
17 would have to be complied with.

18 COMMISSIONER LAURIE: Okay. How about
19 how would the interim limits be measured?

20 THE WITNESS: The same way that the
21 normal limits would be measured, and what's been
22 proposed in the FDOC is to determine a, quote,
23 district determined emission factor, which is not
24 specified at the moment. And presumably it would
25 be so many pounds of pollutant per unit of fuel

1 consumed, and then you multiply that factor by the
2 fuel use to calculate the emissions.

3 One of the problems is the district
4 determined emission factor hasn't been defined in
5 the FDOC.

6 The second issue is when you limit
7 potential to emit, which is the approach that EPA
8 and the district have taken in this case to assure
9 that emissions remain below the thresholds that
10 trigger federal PSD review, when you establish an
11 emission cap to keep the emissions below the
12 threshold, federal case law stipulates that the
13 cap be accompanied by restrictions on operation,
14 unless the cap itself is equal to the maximum
15 emissions that are potential from the facility.

16 And in this case, caps have been
17 established which are not equal to the maximum
18 emissions. And in that case, it would be
19 consistent with federal case law to also require a
20 limit on production or operation. For example,
21 limiting the hours of operation would be an
22 example, or limiting the amount of fuel that could
23 be consumed would be another example.

24 COMMISSIONER LAURIE: And do you have
25 any specific proposals as to what you feel would

1 satisfy the requirements of the law, as you
2 interpret it? Do you have any specific proposals
3 as applicable to this project?

4 THE WITNESS: I believe that I would
5 incorporate into the permit language that made it
6 clear that when the limits that have been specific
7 are reached, assuming we can agree on how you make
8 that determination, that the facility reduce its
9 operating hours.

10 COMMISSIONER LAURIE: Okay.

11 THE WITNESS: There's -- there's words
12 to that effect in the textual portion of the FDOC,
13 but there's no corresponding permit condition in
14 the Revised PMPD or in the Proposed Permit
15 Conditions themselves.

16 We've talked about the cap on sulfuric
17 acid mist emissions, and I believe you made a
18 change to Condition AQ-20 which addresses the
19 third issue that I had comments on.

20 The fourth one is in the case of
21 sulfuric acid mist, which is capped in Condition
22 AQ-20 at seven tons per year, which is the federal
23 PSD significance threshold, there is no short-term
24 limit. Compliance with the SAM cap is to be
25 determined with this 365 day rolling average,

1 based on a daily average. And the question is,
2 given that you're looking at a daily average
3 calculated from a 365 day rolling average, what do
4 you compare that daily number to, because the only
5 limit in the permit on sulfuric acid mist is
6 expressed in terms of tons per year.

7 So I believe a condition needs to be
8 added to the permit, a short term limit on
9 sulfuric acid mist. And I would propose seven
10 tons per year times 2,000 pounds per ton, divided
11 by 8,760 hours per year, which is about 1.6 pounds
12 per hour, based on a 24-hour average basis.

13 The last point is the issue of
14 compliance methods. The permit doesn't contain
15 any specific methods for making the measurements
16 that it required. And, most troubling, no
17 discussion or methods for determining the district
18 determined emission factor which would be used in
19 making the 365 day per year rolling average
20 calculation.

21 In some cases, like for carbon monoxide
22 and NOx, the district has a methods manual which
23 contains standard procedures that they routinely
24 use. However, there are some parameters that are
25 specified here that are not covered by those

1 procedures. An example for -- in this case would
2 be ammonium sulfate, which is a form of
3 particulate that forms, and it's specified to be
4 measured in here but no method is specified.

5 Another example is how the district
6 determined emission factor that would be used to
7 determine compliance would actually be determined,
8 particularly given that the refinery fuel gas has
9 been characterized as being highly variable. So
10 if you've got a -- a gas stream which is very
11 variable, and you're tasked with determining one
12 number, one emission factor that would be applied
13 forevermore, each and every day, 365 days a year,
14 for the life of the project, how do you determine
15 that number so you fairly capture the variation in
16 the fuel itself?

17 I think that's a difficult question, and
18 it hasn't been dealt with anywhere in the record
19 in this case.

20 Those were my main comments.

21 MR. WOLFE: Thank you, Dr. Fox. That's
22 all we have.

23 COMMISSIONER LAURIE: Mr. Shean.

24 HEARING OFFICER SHEAN: Do you have some
25 recommendations as to how we were going to address

1 the issues that have been raised by Dr. Fox so
2 that -- so we would lead into any cross
3 examination? Do you have in mind any solutions,
4 if I can use that word, advisedly, obviously, to
5 what -- what it would be that would grow out of
6 the effect of the testimony of Dr. Fox?

7 MR. WOLFE: Are you -- you're looking
8 for language.

9 HEARING OFFICER SHEAN: Yes.

10 MR. WOLFE: Okay.

11 HEARING OFFICER SHEAN: If that's what
12 you have, or --

13 MR. WOLFE: And we can provide it, I
14 think, in two our of three, or maybe three out of
15 four of our issues here. And we apologize for not
16 having it in writing at this point, based on the
17 time pressure. But I think the ones that we can
18 tackle, we can tackle very, very quickly right
19 now, if the Committee is so inclined.

20 HEARING OFFICER SHEAN: Okay. Do you
21 have something in mind that just needs to be
22 reproduced, that -- you might make it available to
23 Staff and the district and to the Applicant and
24 the Committee?

25 ///

1 BY MR. WOLFE:

2 Q Dr. Fox, have you scrawled your proposed
3 edits to the conditions there?

4 A Well, I've marked up one of the
5 conditions. It's quite simple. I can just read
6 it off.

7 COMMISSIONER LAURIE: Well, Mr. Shean,
8 what I would prefer to do, honestly, and it's just
9 my -- my preference. I would like to hear cross
10 exam by the other parties. Then take a coffee
11 break, and if folks want to get together and talk
12 about the weather or anything else during the
13 course of that coffee break, they are free to do
14 so, rather than me listening to that debate and
15 that dialogue.

16 HEARING OFFICER SHEAN: All right. Let
17 me just ask. Anything from the Staff?

18 MR. KRAMER: We'd defer to Valero to go
19 first.

20 HEARING OFFICER SHEAN: Okay. Well --

21 CROSS EXAMINATION

22 BY MS. NARDI:

23 Q The only real question that I have for
24 Dr. Fox is whether you have brought the specific
25 language changes that you would be asking that the

1 Commission make, and that the Applicant accept, to
2 this set of conditions. I've listened attentively
3 to what you've said, but we are here today and we,
4 of course, would like to, and I believe probably
5 the Commission Staff, and perhaps Mr. Hill, from
6 the Air District, would like to look at the
7 specific changes that you're proposing to the
8 PMPD.

9 A In some cases I can -- I can state them.
10 In some cases, I don't feel like I personally know
11 enough to draft them, and an example of that would
12 be the, quote, district approved emission factor.
13 And I don't know, as I sit here, exactly what the
14 district had in mind for that. And it's not clear
15 to me how -- how one would go about calculating
16 it. I feel like that's something that -- that
17 requires some dialogue.

18 MR. WOLFE: If I could just add, Ms.
19 Nardi, that with the exception of that one, I
20 think it's -- it's literally a question of one or
21 two sentences that we can jot down at the break.

22 MS. NARDI: I don't have any further
23 questions for Dr. Fox. We do, of course, have
24 statements that we'd like to make in response, and
25 we'll wait until our turn to do that.

1 COMMISSIONER LAURIE: Thank you.

2 Did -- did you have any questions?

3 MS. DEAN: Only about this issue that
4 was just discussed, so -- the district determined
5 emissions factor. I'm confused as to what the
6 alternative is.

7 MR. KRAMER: We have one question.

8 MS. DEAN: More of a comment.

9 MS. NARDI: I have one other question of
10 procedure. Mr. Hill is here today from the Bay
11 Area Air Quality Management District. And really,
12 much of this commentary is directed to his agency,
13 which had detailed discussions with the Federal
14 EPA about all of these issues.

15 And so -- and Mr. Hill, I'm sure, will
16 be available for questions, but I don't know
17 whether it would be appropriate if he has any
18 questions of Dr. Fox to ask them at this time, or
19 later.

20 COMMISSIONER LAURIE: Well, what --
21 absent Mr. Shean kicking me, what I would -- I
22 think the way I'd like to handle that is call the
23 gentleman up at a later point in time, and have
24 Staff sponsor his testimony, and then questions
25 can be asked at that time.

1 MR. KRAMER: One -- one theme might be
2 several questions.

3 CROSS EXAMINATION

4 BY MR. KRAMER:

5 Q Dr. Fox, could you look in the FDOC at
6 the Conditions 14, 15, and 16. They provide
7 limits on the heat input rate to the -- to the
8 turbines in the heat recovery steam generators.

9 A Yes.

10 MR. WOLFE: Very quickly, before we go
11 there, maybe we could limit it to the conditions
12 in the PMPD, which I understand they're identical,
13 but that's the document we were working on.

14 MR. KRAMER: May I borrow your copy,
15 then. Okay, so that would be AQ-14, I believe.

16 MS. NARDI: What page are you on, Mr.
17 Kramer?

18 MR. KRAMER: Looks like 37 in the
19 strike-out version.

20 HEARING OFFICER SHEAN: AQ-14.

21 MS. NARDI: Thank you.

22 BY MR. KRAMER:

23 Q And 15 and 16. Each of those limits the
24 heat input rate to the -- to the equipment. Why
25 is that not a sufficient operational limit?

1 A Those heat input rates assume baseload
2 full operation, and based on the comments that we
3 filed on the PDOC, using those heat input rates
4 and the normal emission factors, you exceed the
5 PSD significance threshold, which is how we got
6 where we are. What we would be talking about is
7 limiting the heat input rates to less than 8,760
8 hours of operation per year.

9 Q Okay. So -- and your concern on the PSD
10 was the SO2; correct?

11 A SO2, sulfuric acid mist, and PM10.

12 Q Okay. In the case of PM10, Condition
13 AQ-19, subparagraph (h), sets an hourly limit;
14 correct?

15 A Right.

16 Q Okay. So I gather you don't have a
17 problem with that?

18 A No, not as an hourly limit, I don't have
19 a problem with that.

20 (Inaudible asides.)

21 MR. KRAMER: Okay. Thank you.

22 No further questions.

23 MR. WOLFE: Can I just ask one
24 clarifying question of Dr. Fox, in response to --
25 surrebuttal.

1 REDIRECT EXAMINATION

2 BY MR. WOLFE:

3 Q Can you clarify, the hourly limit of
4 PM10 in the PMPD currently, does that keep us
5 below the PSD significance threshold?

6 A No. The hourly limit is 4.65 pounds per
7 hour averaged over 24 hours, and if you do the
8 math that works out to about 20 tons per year per
9 turbine. And the PSD significance threshold is
10 15. That's how we got to where we are. If you
11 have two turbines operating, then you're over the
12 PSD significance threshold of 15 by a significant
13 amount. And even if you net out the 14-plus tons
14 per year from shutting down the boilers, you still
15 handily exceed the PSD significance threshold.

16 Q Dr. Fox, AQ-19, subparagraph (h), also
17 contains a 1.55 pounds per hour average over a
18 calendar year limit. Why does that not address
19 the concern?

20 A That's the 365 day rolling average. And
21 that only comes in on an annual average rolling
22 basis. And the way this condition is written is
23 you could have emissions of 4.65 pounds per hour
24 averaged over 24 hours 365 days a year, and
25 thereby exceed the PSD significance threshold,

1 which goes to the heart of our concern.

2 There's no way, given this permit --
3 given the way these conditions are currently
4 drafted, to assure that the emissions stay below
5 the cap that's been imposed.

6 MR. WOLFE: That's all.

7 COMMISSIONER LAURIE: Thank you, Ms.
8 Fox.

9 In regards to the district
10 representative, let me -- I'd like to see a show
11 of hands or a comment as to which parties would
12 intend to ask questions of the district
13 representative.

14 Okay. All parties. Well, let's go
15 ahead and do that now. I think the -- Mr. Shean,
16 can the Committee sponsor the witness, or -- okay.

17 Thank you, Ms. Fox.

18 MR. KRAMER: Go ahead and --

19 (Thereupon, Steve Hill was, by
20 the reporter, sworn to tell the
21 truth and nothing but the truth.)

22 COMMISSIONER LAURIE: Mr. Shean.

23 HEARING OFFICER SHEAN: Okay. I will do
24 this briefly.

25

1 TESTIMONY OF
2 STEVE HILL

3 called as a witness by the Committee, having been
4 first duly sworn, was examined and testified as
5 follows:

6 HEARING OFFICER SHEAN: Mr. Hill, the
7 Final Determination of Compliance dated October
8 4th was either prepared by you or under your
9 direction; is that correct?

10 MR. HILL: Yes, that is correct.

11 HEARING OFFICER SHEAN: And you're aware
12 of its contents?

13 MR. HILL: Yes, I am.

14 HEARING OFFICER SHEAN: Okay. Is there
15 any objection to Mr. Hill qualifying to testify as
16 an expert in this matter?

17 MS. NARDI: None.

18 MR. WOLFE: None.

19 HEARING OFFICER SHEAN: In the absence
20 of an objection, he is so qualified.

21 Do you want to -- let me just say, for
22 the Committee's benefit, perhaps you could address
23 the matters raised in the testimony of Ms. Fox,
24 and there may be some questions for you
25 thereafter.

1 MR. HILL: Sure. I'll just hit the high
2 points about the issues that have been identified
3 as concern or confusion about how this permit
4 works on the particular issues.

5 First, I'd like to point out that the
6 EPA's letter doesn't say deficiency anywhere in
7 it. It is a letter of recommendations, things
8 they would like to see in the permit. But because
9 it's not a PSD permit, the feds don't have
10 jurisdiction. So they can ask us to make changes,
11 but there is no requirement that we do any of
12 these things.

13 Let's -- we've spent a lot of time
14 talking about the 365 day average and the problems
15 that that might potentially have for demonstrating
16 compliance. The 365 day limit allows
17 determination of compliance from the first day.
18 The first day that the facility operates you do a
19 365 day average, and they are less than seven
20 tons. The second day, they're still less than
21 seven tons. And you can determine whether they
22 are in compliance with the annual seven ton limit
23 right up until the day they aren't, at which point
24 you know that they are not in compliance with the
25 seven ton per year limit.

1 You --

2 COMMISSIONER LAURIE: So you -- you need
3 not wait one year before there is a test to
4 determine compliance; is that correct?

5 MR. HILL: No, you don't need to wait a
6 year from this method to determine compliance.
7 You do need to have an emission factor in order to
8 be able to determine compliance, and that will not
9 happen until you've done your first test. You
10 won't have developed an emission factor that you
11 can apply.

12 So it is perhaps conceivable that you
13 would not know -- you might exceed the seven ton
14 limit if the emission is an order of magnitude
15 higher than we expect it to be, or, you know, I'm
16 not sure how high -- much higher it would have to
17 be, but if the first source test shows that the
18 emissions are grossly higher than -- than we have
19 any reason to believe that they could possibly be,
20 it's possible that you will have exceeded that.
21 But you wouldn't know that until you've done the
22 test, anyway. There's -- there's no way of
23 knowing that until you've done the test, at which
24 point you have the problem that you have to deal
25 with.

1 But once you've established the emission
2 factor, you can determine compliance on a daily
3 basis. Every day, you'll know if they're in
4 compliance. And once you've reached that 365 days
5 of being in compliance, then that period just
6 continues to move on. That's what the rolling
7 average means. So you look back at the last year,
8 every single day. And if you're less than seven
9 tons, you're -- for the sulfuric acid mist, if
10 you're less than the threshold, then you're in
11 compliance. And that's true from the day you
12 start. You look back a year, and if you're less
13 than that threshold, you're in compliance. You
14 just keep going. So it is possible to determine
15 that you're in compliance with the annual limit
16 from the very first day.

17 Some discussion was had about the
18 Louisiana-Pacific case. That case and the
19 findings were not quite accurately represented.
20 In the Louisiana-Pacific case that -- that was the
21 case where we were talking about whether or not a
22 mass emission cap is -- is okay under federal law,
23 that was a case where the facility had actual
24 emissions above a threshold, and a cap with no --
25 no measurement techniques built into it. And

1 Louisiana-Pacific said we have this enforceable
2 condition, it's just not being enforced. We have
3 this enforceable condition that's supposed to keep
4 our emissions below the -- the PSD threshold. And
5 EPA's remedy for us violating that condition is to
6 enforce the condition, not to find that we
7 exceeded PSD. And what the court said in
8 Louisiana-Pacific is no, just a bare limit, with
9 nothing else, isn't enough.

10 What we've got here is not a bare limit
11 with nothing else. What we have is a cap with
12 tools in place to determine whether or not that
13 cap is being complied with. And that's the
14 difference between this situation and what was
15 done in Louisiana-Pacific.

16 COMMISSIONER LAURIE: And when you make
17 reference to the tools, can you be more specific?

18 MR. HILL: Sure. The caps are -- and
19 this also speaks to another issue that was raised,
20 which is whether or not there is -- there are
21 conditions in the permit that stop operation, or
22 require curtailment if the -- if the caps are
23 threatened. And there are in the conditions, 22-A
24 and 22-B, for example, say that the emissions
25 cannot be above a certain level. The annual

1 emissions are restricted to the cap. And if you
2 go over that, you're in violation.

3 If, in order to remain in compliance
4 with the permit, if they approach those caps, they
5 need to shut down, or they need to curtail, or
6 they need to take some sort of action.

7 COMMISSIONER LAURIE: And -- and in your
8 view, that would be in the discretion of the
9 compliance officer, in order to ensure that the
10 standard is being met?

11 MR. HILL: Well, the purpose of the caps
12 is to ensure that they don't go over these trigger
13 thresholds. And they're annual thresholds, that's
14 why it's inappropriate to be looking at a -- at a
15 daily limit for determining whether or not you're
16 approaching an annual threshold. The ways in
17 which the facility can respond to approaching
18 those annual limits, there's a lot of them. And
19 we can't tell the company -- or, we could tell the
20 company, but that would be inappropriate -- how to
21 do that.

22 They can curtail, they can change the --
23 the fuel that they're using from -- change the mix
24 from -- to increase the amount of natural gas to
25 reduce the amount of fuel gas they're firing.

1 They can stop using the -- the heat recovery steam
2 generators and just fire the turbines. There are
3 a lot of things that they can do operationally to
4 reduce their -- or control their emissions to stay
5 within the caps.

6 And -- and since it's an annual cap,
7 it's inappropriate to be imposing limits on a
8 daily basis to deal with an annual cap. We set
9 the permit up with these rolling averages, it's
10 the tool that we've developed for being able to
11 determine on a daily basis, or a frequent basis,
12 short-term basis, compliance with an annual limit.
13 But it's not appropriate to take an annual limit,
14 scale it down to a daily level, and say that
15 compliance with a daily limit is the same as
16 compliance with an annual limit. It's just an
17 entirely different scale. And it's a much more
18 stringent, restrictive condition.

19 I think I lost the point of -- of your
20 question. I don't think I answered your question.

21 COMMISSIONER LAURIE: I'm okay.

22 MR. HILL: It'll probably come back.

23 Let's see. Those are the main points
24 that -- that I had. Let's see. Less than annual
25 compliance, specified -- oh, the specification of

1 monitoring methods.

2 You asked how we were going to -- how --
3 what the tools that we used to -- to determine
4 compliance. As Dr. Fox mentioned, we have a
5 manual of procedures that deals with most of the
6 pollutants. Some of the pollutants that we're
7 dealing with here are directly measured on a
8 continuous basis. Some of the other pollutants
9 that we are dealing with here are -- there are
10 parameters. For example, the sulfur dioxide
11 emissions. We measure the sulfur content in the
12 fuel, we know how much fuel is being burned;
13 therefore, we know how much sulfur is being
14 burned. And we assume 100 percent of that sulfur
15 goes to SO₂. We're also going to assume a certain
16 part of it goes to SO₃, so we're going to -- we're
17 going to be double counting that.

18 But given a -- given an SO₂ -- given the
19 sulfur content and a fuel combustion rate, you can
20 calculate what the SO₂ emissions are going to be.
21 If you assume combustion to SO₂.

22 So what we're doing is we're measuring
23 an operating quantity, usage units, and we're
24 going -- and we are measuring another parameter
25 that allows us to calculate the emissions based on

1 the usage. That's the emission factor approach
2 that Dr. Fox described. And for some of the
3 pollutants, it is more straightforward than
4 others. For the SO2 it's fairly straightforward.

5 For pollutants like particulates and
6 sulfuric acid mist, those factors are going to be
7 developed on the basis of source tests. And in
8 the PDOC, we had proposed annual source tests for
9 particulates, and we had proposed no emissions for
10 sulfuric acid mist because that was an issue that
11 we had overlooked.

12 As a result of the comments from CURE,
13 we -- they suggested that we go to quarterly
14 testing in order to develop emission factors in
15 order to help determine compliance on a more
16 frequent basis, and to try to do something to
17 capture some of the variability in the -- in the
18 conditions. And so we followed their suggestions
19 for the frequency of PM10 monitoring, and actually
20 upped the frequency to quarterly. And then we
21 linked that with the sulfuric acid mist
22 measurements, so that those are going at the same
23 time.

24 The idea is that you do testing, and you
25 try to develop emission factors based on whatever

1 operating parameters that you can -- that you can
2 determine affect those emissions. The first order
3 of assumption is that it's just proportional to
4 the amount of fuel used. As we get more and more
5 datapoints, we'll look at variability as a
6 function of sulfuric -- sulfur content, and
7 anything else that we can think of that might
8 affect the emission factors.

9 But we will be developing from quarterly
10 source tests emission factors specific to these
11 turbines, and using those to estimate or calculate
12 what the emissions are, and using those for
13 determining compliance with the annual limits.

14 Let's see. Title 5, I think was the
15 other point. Title 5 permit timing is sometime in
16 the summer of next year. And if the concern is
17 that there aren't known source test methodologies
18 in place before the Title 5 permit is in place,
19 that that's -- that's not something that I would
20 be concerned about. We have the manual of
21 procedures, we have source test methodologies, we
22 have standard EPA approved methods for most of
23 these -- most of these pollutants.

24 The sulfuric acid mist is something that
25 is not a standard source test method. My source

1 test people tell me they know how to measure it,
2 and that's the approach that we're going to use
3 for determining whether or not the facility is in
4 compliance, or determining what the -- what the
5 emission factors are. If -- if the Commission
6 wants to see what that source test methodology is,
7 we'd be happy to share it. We ran tests on
8 similar facilities recently. I haven't seen the
9 results yet, but -- but we have a source test
10 method that we're proposing to use for that.

11 And I'd be happy to answer any
12 questions.

13 HEARING OFFICER SHEAN: Do I -- let me
14 -- since it was raised by CURE, let me just look
15 here, I think it was on page 13. On page 13, the
16 language quoted earlier. It's the -- if the
17 actual emissions are higher than assumed, Valero
18 will be required to restrict operations, reduce
19 firing, or lower fuel sulfur to remain below PSD
20 threshold of 15 tons per year for this project.

21 Is that -- and do I understand, from the
22 discussion we've just had, that -- that the
23 emission limits in the PMPD, Revised PMPD, of AQ-
24 22, that are showing, for example, PM10 at 6.803
25 tons per year, is how you would keep them below

1 this --

2 MR. HILL: That's correct. Yes.

3 HEARING OFFICER SHEAN: Okay. And one
4 of the questions that they raised, too, was that
5 -- let's see, I think in your revision of
6 conditions in the FDOC, included you Condition 20,
7 which dealt with sulfuric acid emissions not
8 exceeding the seven ton PSD threshold.

9 Is there a reason why, for example, you
10 have the sulfuric acid emissions limit stated in
11 that condition, and you didn't do the same with
12 the -- the PM10?

13 MR. HILL: The PM10 limits are in
14 conditions. There -- there's a -- there are tons
15 per year. I -- I don't have the document right
16 here --

17 HEARING OFFICER SHEAN: Okay.

18 MR. HILL: -- in front of me. But there
19 are tons per year emissions for every pollutant
20 that has -- every pollutant that we regulate has a
21 tons per year emission limit in it, because one of
22 the things that we keep track of was what the tons
23 per year from the facility is. And so all of
24 those are -- those limits are -- there's a --
25 there's a permit condition limiting each and every

1 single one of those.

2 There is a PM10 limit. It's -- and I
3 don't know that, I don't have the number. I
4 thought it was 20, but I could -- I could be
5 mistaken. But there are conditions limiting
6 annual emissions of each of the criteria
7 pollutants.

8 HEARING OFFICER SHEAN: Okay. I don't
9 have anymore. Thanks.

10 COMMISSIONER LAURIE: Mr. Kramer.

11 MR. KRAMER: No, nothing.

12 COMMISSIONER LAURIE: Ms. Nardi.

13 MS. NARDI: We have a couple of
14 questions for Mr. Hill.

15 CROSS EXAMINATION

16 BY MS. NARDI:

17 Q The first question I have has to do with
18 the enforceability of the permit that the Air
19 District intends to issue. And Dr. Fox has
20 explained her view that it is not practically
21 enforceable. And I was wondering if you could
22 comment on how your inspectors would enforce this
23 permit, the specific things that they would do to
24 enforce the 57 conditions that we have in this --
25 in this permit.

1 A The main thing that they would be doing
2 is reviewing records. There's -- there's a
3 substantial amount of records that required to be
4 kept, and these rolling averages are required to
5 be calculated and maintained in a -- in a log so
6 that -- so that we can go in and look and see
7 whether or not they're in compliance with those.
8 Under Title 5, they're required to submit semi-
9 annual reports on compliance, and notify us when
10 they detect a non-compliant situation.

11 We have source -- when the -- when the
12 source tests are conducted, and there are
13 quarterly source tests required in this permit,
14 they're required to notify our source test people
15 before those source tests are conducted, and we
16 can come out and observe those. We can actually
17 come out and test in parallel. Under some
18 circumstances, we will come out and test -- it
19 depends upon a number of factors whether or not we
20 are going to do that, how much -- how much
21 shoulder looking we do.

22 So we review -- we review their records,
23 we review their documents. We review their -- the
24 -- the accuracy testing of the monitors. We
25 review the source test results. All of those are

1 tools that we use in a package to determine the
2 compliance of a facility.

3 Q So does your agency believe that it will
4 be able to practically enforce the conditions of
5 this permit?

6 A Yes, we will.

7 Q Another question I had went to the first
8 remarks that Dr. Fox made, about whether the
9 Federal EPA is satisfied that the permit that the
10 Bay Area Air Quality Management District has
11 issued complies with federal law. And the first
12 question I had is have you had discussions with
13 Federal EPA about the comments that they
14 submitted? There were two letters.

15 A Yes, we have.

16 Q And did you discuss the issues that we
17 have talked about today, the enforceability, the
18 appropriateness of specific conditions to make
19 sure that we don't just have a blanket tons per
20 year limit?

21 A In the context of the earlier comments,
22 we discussed that issue. And -- and you notice
23 that that issue doesn't arise in their comments.

24 Q To -- excuse me. To clarify, I am
25 talking about the first set of EPA comments --

1 A Oh.

2 Q -- back in September. They sent you two
3 letters in September, and my question was did you
4 discuss those specific issues with the federal
5 agency?

6 A Yes, we did.

7 Q And is it your understanding that
8 they're satisfied that these issues have been
9 resolved to their satisfaction?

10 A It's -- it's my understanding that they
11 are confident that this is -- this permit does not
12 trigger PSD. And therefore, their role in
13 reviewing the -- the "i's" and the "t's" is
14 extremely limited. They have these issues that
15 they want to discuss with us on monitoring, but
16 these are more questions that they're not sure how
17 the monitoring -- for the reasons that Dr. Fox
18 mentioned, that we -- we don't specify in our
19 permit in excruciating detail the details of the
20 monitoring processes.

21 We rely on standard methodologies, EPA
22 test methods. There are a couple of reasons for
23 doing that. One is that those test methodologies
24 are improved periodically, and to build them into
25 the permits is -- is an invitation to have to

1 modify them.

2 The second is the federal -- the federal
3 requirement for credible evidence, by limiting the
4 methodology for determining compliance to a
5 specific particular method, you rule out, or you
6 -- you potentially rule out the -- the use of
7 other credible evidence. It doesn't really block
8 that, but it can mislead people into believing
9 that. So our approach is to rely on the manual
10 procedures and to rely on the expertise of our
11 source test people to negotiate with the -- with
12 the operator to appropriate testing methodologies,
13 and we review those with EPA.

14 Q Another question I had is why the
15 district doesn't require, for example, continuous
16 emissions monitoring of the sulfuric acid mist.
17 Why -- why are you using source tests instead of
18 requiring CEMS for sulfuric acid mist?

19 A As far as I know, there is no way of
20 continuously measuring sulfuric acid mist.

21 Q And on that basis, you went to the
22 quarterly source tests to determine --

23 A We went to periodic source tests, and
24 the frequency that we selected for periodic source
25 tests is quarterly. Yes.

1 MS. NARDI: Thanks. Mr. Hammonds, do
2 you have -- Mr. Hammonds is, of course, an
3 environmental engineer, and has worked with Mr.
4 Hill on this permit in detail, and he may have
5 additional questions.

6 CROSS EXAMINATION

7 BY MR. HAMMONDS:

8 Q Just one other area. The air district
9 has lots of permits with lots of sources in the
10 Bay Area, obviously. Would you contrast this
11 permit and the enforceability, which seems to be
12 the topic raised here, with other permits that the
13 air district has? Is this very lenient, is this
14 typical, is this -- how would you contrast this?

15 A This is -- this is typical of our energy
16 permits. It's -- the energy permits are sort of
17 evolving all together, all the energy permits we
18 do, we -- we do the same way. In terms of the
19 level of detail, this approaches the level of
20 detail of some of our Title 5 permits, which are
21 -- are very detailed. One of the reasons is that
22 for large facilities, our hope is to take these
23 permits and move them directly into Title 5 almost
24 verbatim, with very little additional work. If
25 we're going to do the work once, we want to do it

1 only once.

2 So this is -- this is a fairly detailed
3 permit, in -- in the spectrum of all of the
4 permits that we do. So I guess that answers your
5 question.

6 Q The -- the questions that have been
7 raised would say that this is not practically
8 enforceable. Would those kind of accusations be
9 just as valid on most of the other permits that
10 are written by the district?

11 A I -- I can say that we have permits that
12 we have issued that do have the blanket cap with
13 really no way of determining whether or not that
14 cap is being complied with. One of the things
15 that we're doing in the Title 5 process is
16 identifying those and fixing them. But this is
17 the way we're fixing them. We're fixing them by
18 adding monitoring requirements to the cap to make
19 it possible for us to determine whether or not the
20 cap is being complied with.

21 MR. HAMMONDS: Anything else?

22 MS. NARDI: I don't think I have any
23 additional questions. Thank you.

24 COMMISSIONER LAURIE: Thank you.

25 Mr. Wolfe.

1 MR. WOLFE: I just have a couple, and
2 then I think Dr. Fox has a few.

3 CROSS EXAMINATION

4 BY MR. WOLFE:

5 Q Mr. Hill, you just said that, in
6 response to the question from Mr. Hammonds, that
7 you have permits in the district that have blanket
8 caps like this, without specifying the compliance
9 methods.

10 A Yes.

11 Q And you said that part of the purpose of
12 the Title 5 program that's upcoming is to fix
13 that.

14 A The -- the purpose of the Title 5
15 program is to take all the applicable requirements
16 that apply to the facility and put them in one
17 place, and to clean up the permit conditions that
18 -- that aren't enforceable, or that -- for which
19 we have no authority. So, yes.

20 Q Okay. So -- so permits that have
21 blanket caps and nothing more need fixing, and the
22 Title 5 is -- is the process that the district's
23 going to use to fix that.

24 A Well, that's the -- that's the process
25 that we used for the larger facilities.

1 Q Okay. And so -- so this permit is one
2 of those permits that has a blanket cap and some
3 degree of -- of specification that's less than
4 ideal, and part of what's going to happen in the
5 Title 5 process is, again, to fix that deficiency?

6 A No, I --

7 MR. KRAMER: Object. The question
8 misstates the testimony.

9 MR. WOLFE: Well, I'm just asking him to
10 clarify.

11 MR. KRAMER: Okay. Sounded like you
12 were summarizing his testimony.

13 THE WITNESS: No, I -- I don't think so.
14 I don't think that this permit is deficient, and I
15 think when we have the discussion with EPA on
16 these issue that they've raised, I think they will
17 be satisfied with what we've got in the permit and
18 in the ancillary program, the manual of procedures
19 and our source test approaches.

20 So I -- I don't -- if there is a problem
21 in here, then we would fix it. But, you know, the
22 -- the tools that we've built into this permit are
23 the tools that we're using to fix the other caps.

24 BY MR. WOLFE:

25 Q Okay. You referenced the manual of

1 procedures.

2 A Uh-huh.

3 Q That specifies procedures for certain
4 pollutants. And for the pollutants that it does
5 not specify, you said that you relied on the
6 expertise of your -- of your source test people.
7 Is that correct?

8 A Yes, that's correct. There are also --
9 there are also other EPA methods that are not
10 built into our manual of procedures.

11 Q Are the applicable methods specified in
12 the manual of procedures summarized, referenced,
13 or incorporated into this FDOC?

14 A No, they're not, except to the extent
15 that there are references everywhere. There's a
16 -- a testing methodology referred to. It refers
17 back to the district's approval. The way this
18 works is when a facility is going to do a source
19 test, or when they're going to set up a CEM, they
20 have to talk to our source test people. They have
21 to submit a plan, we have to approve it, and the
22 criteria that we use for approving it are laid out
23 in the manual of procedures.

24 Q I understand that. I'm just asking
25 whether those specific methods, what you just

1 described, are -- are summarized, reproduced, or
2 referenced in the FDOC, or in this PMPD.

3 A In the -- except -- you know, I can't
4 point to a place, but by inference, all of our
5 regulations are applicable to this facility, and
6 --

7 Q But not explicitly.

8 A That's --

9 Q Okay.

10 A I -- I can't swear to that, but --

11 Q Okay. And you did state, in response to
12 a question from Commissioner Laurie, that the
13 methods that your source test people, that they're
14 employing, which -- well, let me first ask. Those
15 also are not explicitly described in the permit.

16 A That's right.

17 Q But they could articulate those and --
18 and present them, and they could, in theory, if
19 the Commission were so inclined, be reproduced or
20 referenced --

21 A If --

22 Q -- in the PMPD.

23 A Yes. Yes.

24 Q Okay. One last question from me.

25 Commissioner Laurie asked you what tools the

1 district had at its disposable -- at its disposal
2 to determine compliance. And what I thought I
3 heard you say in response is you -- you pointed
4 the Commissioner to Condition AQ-22, which had the
5 annual caps.

6 A Uh-huh.

7 Q And I'm not an expert, but what I heard
8 was you were saying that the tools that would be
9 used to determine compliance with the caps were
10 the caps. That essentially, because there was a
11 cap here that couldn't be -- I was wondering if
12 you could walk me through exactly how you would
13 determine compliance here.

14 A That's -- that's a fair question. Pick
15 a pollutant.

16 Q PM10.

17 A Okay. We will do four source tests in
18 the first year. After the first source test we
19 will have an emission factor that we will use.
20 And we will multiply that emission factor times
21 the fuel usage for -- for the -- for the turbines.
22 I -- my understanding is that the first source
23 test is going -- has been set up so that it
24 involves just firing the turbines, just firing the
25 HRSGs, firing the turbines and the HRSGs at the

1 same time, and doing those on natural gas and on
2 -- on fuel gas.

3 So what we capture is some range of sort
4 of the limits of the variability of what we
5 expected -- the operation of the facility. We
6 will develop an emission factor for each of those,
7 for particulates, for each of those conditions.
8 We will interpolate for mixed fuel usage an
9 interpolated emission factor.

10 Basically, what we'll wind up with is
11 the facility will keep track of how much fuel gas
12 they use, how much natural gas they use, each of
13 those will have an emission factor associated with
14 it. And they will keep track of how much they use
15 on a daily basis for the daily limits, and they
16 will -- in their log books they will look
17 backwards 365 days, and do an average for the
18 average limits and determine whether or not
19 they're in compliance with that limit.

20 Q So is what you just described to me
21 fairly characterized as a narrative description of
22 what -- of how the district will arrive at the,
23 quote, unquote, district determined emission
24 factor for PM10?

25 A Yeah. The -- the emission factors for

1 PM10 will be based on the -- the source testing --

2 Q Okay.

3 A -- I just -- that I described.

4 Q And there will be some interpolation to
5 account, or to -- I guess account for the
6 variability of the fuel gas.

7 A Yes.

8 Q Okay. Is any of that referenced or
9 summarized explicitly in the FDOC or in the
10 Revised PMPD?

11 A No. That's sort of a standard
12 procedure. We've been doing this for years.

13 MR. WOLFE: Okay. Dr. Fox is going to
14 have a few quick questions, if that's all right.

15 COMMISSIONER LAURIE: Okay. Let me note
16 that it is -- it's very contrary to my normal
17 procedure to allow one expert to query another,
18 because we end up with debates. We did allow it
19 in one instance, and thus I will allow a brief set
20 of questions.

21 If it goes beyond that brief set, then
22 Mr. Wolfe, I expect you to consult with your
23 expert and you will ask the questions.

24 MR. WOLFE: Thank you.

25 DR. FOX: I just have a few questions

1 that I need to clarify some issues in my mind, so
2 I can draft these conditions on the coffee break.

3 COMMISSIONER LAURIE: And, Ms. Fox, I
4 will ask that you pose your comments in the form
5 of questions. Okay.

6 DR. FOX: Sure.

7 COMMISSIONER LAURIE: Thank you.

8 CROSS EXAMINATION

9 BY DR. FOX:

10 Q Okay. I'm going to try to explain my
11 point of confusion, and maybe you can --

12 A Okay.

13 Q -- help me out.

14 COMMISSIONER LAURIE: No. No, no, no,
15 no, no, no. No. No. I can't have you explain
16 anything. I need to have you think, and then put
17 your thoughts in the form of a question. I do not
18 want your thoughts expressed on the record,
19 because you already had your opportunity to
20 testify, and we're not going to use this as an
21 additional opportunity.

22 So think about what you want to say, and
23 then just ask questions. That's the only reason
24 you're up at the table at this moment.

25 DR. FOX: Okay.

1 BY DR. FOX:

2 Q Condition 23B, establishes the procedure
3 that will be used to determine compliance with
4 Conditions 19F, 19G, 19H, 20, and parts of 22;
5 correct?

6 A Yes.

7 Q Okay. That condition is the condition
8 that establishes a 365 day rolling average
9 determined on a daily basis; correct?

10 A Yes.

11 Q Okay. So that means that that condition
12 applies to, in the case of PM10, Condition 19H;
13 correct?

14 A Okay.

15 Q And in the case of SO2, 19G; correct?

16 A These are -- yeah. 19 -- let me look at
17 those --

18 Q 19G.

19 A -- two -- 19H doesn't have an annual
20 limit in it. 19H just has the 24-hour and hourly
21 -- oh, no, it does have an average. You're right,
22 it does have the --

23 Q And Condition 23 would also be used to
24 determine compliance with the sulfuric acid mist
25 when -- in Condition 20; correct?

1 A Right.

2 Q Okay.

3 A It'll be used for -- for determining
4 compliance with virtually any of the emission
5 limits that are in -- in the permit.

6 Q Okay. Now, Mr. Shean asked you a
7 question about PM10 annual emissions in Condition
8 --

9 HEARING OFFICER SHEAN: Twenty-two.

10 BY DR. FOX:

11 Q -- 22A. Which establishes a cap on
12 annual PM10 emissions of 6.803 tons per year;
13 correct?

14 A That's correct.

15 Q For Phase 1, right?

16 A Uh-huh.

17 Q And for Phase 2 it establishes a cap
18 also of 6.803 tons per year for the second
19 turbine; correct?

20 A Yes.

21 Q And how is that limit to be complied
22 with?

23 A Exactly the same way.

24 Q But Condition 22 states that those two
25 caps would be based on source test results, does

1 it not?

2 A Right. The source test results are what
3 the emission factors are based on. And so the --
4 these -- compliance with these is determined on --
5 based on the emission factors which are based on
6 the source test results.

7 Q So in Condition 23, which again is the
8 365 day rolling average condition, it states that
9 this particular compliance method is -- is
10 applicable to parts of Condition 22, which we were
11 just talking about. Right?

12 A Right.

13 Q Which parts is it applicable to?

14 A It's applicable to any part that has an
15 emission limit in it.

16 Q Okay. So --

17 A That would be 22A, and -- let's see --

18 Q Is there anything in Condition 22 that
19 would -- would not be covered by the compliance
20 method in 23?

21 A Not really. There's -- there's a
22 reporting requirement in 22D, but that's -- that
23 wouldn't be covered by that, but that's -- well,
24 no. Actually, that's part of it, too. So it's,
25 you know, pretty much everything that's in 22 will

1 be -- will be demonstrated through that -- that
2 emission calculation. The only thing that
3 wouldn't be would be the -- the only thing that
4 wouldn't be would be the pollutants like NOx and
5 CO that are -- that are measured using CEMs.
6 Okay. Since those are measured directly, you
7 don't need this parametric calculation procedure.
8 That's why it says parts of 22.

9 Q Okay. Then, so in Condition 22, the
10 parenthetical that occurs after the PM10 caps do
11 not imply that compliance with the PM10 limit is
12 to be based on the source test. That
13 parenthetical is only there to indicate that the
14 district approved emission factors would be
15 determined based on the source tests. Is that
16 correct?

17 A Yes. That's -- this is -- this is
18 showing where the -- what we are monitoring
19 directly to -- to determine whether or not they're
20 in compliance. For the -- for the places where
21 we're calculating emission factors you also need
22 to know -- in order to calculate those emissions.
23 But if -- if your concern is that we're going to
24 have a source test and say yes, they're in
25 compliance with their annual emission because they

1 passed the source test, that's not what that
2 means.

3 Q Okay. And I think I have one more. Is
4 there any place in this permit which requires that
5 the facility shut down when the caps in Condition
6 22 are reached?

7 A Yes. It says, total emissions shall not
8 exceed the following annual limits. That says if
9 you go over that, you're in violation, and we do
10 not allow operation in violation. I mean, it's --

11 Q What normally happens when a permit
12 limit is exceeded?

13 A These permit limits, it gets really ugly
14 really fast, because these permit limits are based
15 on offsets that have been provided. And if they
16 operate in excess of these levels, they need --
17 they get cited, they get -- if they go over
18 thresholds, like PSD thresholds, it's going to
19 become very, very messy because they'll have to
20 get a PSD permit at that time. The PSD threshold
21 is one that you can't go over and come back down
22 below. So violation of the permit, particularly
23 when this gets ensconced in the Title 5 permit,
24 can become a very ugly thing for the facility.

25 Q Is there any place in this permit where

1 it states that when these limits are exceeded the
2 facility has to shut down while it gets additional
3 offsets, or revises its permit?

4 A No, there is not.

5 Q And isn't it true that normally when a
6 facility exceeds its permit, that the most typical
7 outcome is a petition to the Hearing Board?

8 A It -- well, no, that's not the most
9 frequent occurrence. The most frequent occurrence
10 is they come back into compliance.

11 Q Have you ever seen a situation where
12 when a facility exceeded its limit, it shut down?

13 A Yes, I have. In fact, I'm dealing with
14 one right now.

15 Q Which facility would that be?

16 A It's Hedway Technologies.

17 Q Is that common?

18 A Common. It's not unique, it's not the
19 most -- most frequent response. The most frequent
20 response is to correct the non-compliance.

21 Q And how would that normally be done?

22 A Well, most non-compliance is exceedence
23 of an emission limit, so whatever was causing the
24 exceedence would be repaired, or the facility
25 would -- would take the unit down temporarily to

1 fix it. That's -- that's the normal -- normal
2 mode.

3 If they can't do that, then they do what
4 you were just -- you were suggesting, which is
5 they go to the Hearing Board and seek a variance.
6 The requirements for a variance, however, involve
7 not having -- they have to meet several
8 requirements, which include conditions beyond
9 their control. And if -- if the facility were
10 exceeding its limit for -- if they were exceeding
11 the limits because they were operating too many
12 hours, that would -- that would not qualify for a
13 variance.

14 Q I only have a few more questions. You
15 -- you testified that in the first year there
16 would be four quarterly source tests; right?

17 A Yes.

18 Q And by the end of those four quarterly
19 tests, source tests, you testified that you would
20 have developed the district approved emission
21 factor; correct?

22 A The way we expect to do that is we will
23 develop an emission factor from the first set of
24 source tests, and then when we get the second set
25 of data we will look at the combined data and

1 refine those emission factors. We'll continue to
2 do that as long as we're getting new data. We
3 will try to refine the factors to be as
4 representative as we can possibly make them to the
5 actual operation.

6 Q So how would you implement Condition 23
7 before you have the results of the first quarterly
8 source test?

9 A We would use the emission factors that
10 we assumed in the report.

11 Q In --

12 A In the analysis.,

13 Q -- in the FDOC.

14 A Yeah.

15 Q And what are those emission factors
16 based on?

17 A They're based on -- in some cases vendor
18 guarantees. They're based on some -- well,
19 they're mostly based on vendor guarantees and the
20 representations of the Applicant, as reviewed by
21 our engineers.

22 Q Okay. Does the district's manual of
23 procedures have any standard test method for
24 ammonium sulfate?

25 A No.

1 Q How about sulfuric acid mist?

2 A No. Nobody does.

3 Q How about total sulfur?

4 A Yes.

5 Q What is that method?

6 A I don't know.

7 Q The method that is proposed here in
8 Condition 1 -- no, 2B, is what is referred to as
9 TRS Gas Chromatograph CEMs.

10 A Uh-huh.

11 Q Is that the district standard total
12 sulfur method?

13 A That's the test method that we've
14 applied, that we've approved for use in this
15 facility.

16 Q But is it in the district's book of
17 standard methods?

18 A I would expect not. I would -- I would
19 expect that that is not, and I think it's not --

20 Q Do you know whether or not that's a
21 standard test method, like ASTM, or --

22 A It's a gas chromatograph. I'm not sure
23 -- I mean, it's been reviewed by our source test
24 people as measuring the actual TRS content. I'm
25 not a source test expert. I have to confess to

1 that.

2 DR. FOX: I have no further questions.

3 COMMISSIONER LAURIE: Could you give me
4 your name again, please? I -- I apologize.

5 MS. DEAN: Sure. I'm Dana Dean, I'm
6 with the Good Neighbor Steering Committee.

7 I think I just have three questions.

8 CROSS EXAMINATION

9 BY MS. DEAN:

10 Q First, on page -- now, I think I told
11 you guys I turned 40, I've got to put the glasses
12 on. On page 48 --

13 A Thank you for sharing that.

14 Q -- number 21, I had a question about the
15 last sentence in the little paragraph. The test
16 should verify emissions compliance at 80 percent
17 or more of maximum firing on --

18 A Uh-huh.

19 Q -- and then it goes on. How did you
20 arrive at the 80 percent figure? Why are you --
21 and why are you using that?

22 A You know, I don't know what the origin
23 of that is.

24 Q Uh-huh.

25 A It's the -- it's the normal -- it's sort

1 of the normal operating -- for a unit 24 hours a
2 day, at the maximum, burn it up. You'd wear it
3 down too fast if you do that. So you usually, you
4 -- you design equipment to fire its baseload
5 operation at something between 70 to 85, 90
6 percent. It's just sort of an engineering -- for
7 making sure that the unit is not constantly being
8 stressed.

9 Q Uh-huh.

10 A And so this 80 percent would be what we
11 would expect this unit to be firing at year-round,
12 as its baseload operation.

13 Q But it could be 90 percent?

14 A It could be. We would expect it
15 occasionally to go up to 100 percent, or even
16 higher, for -- to respond to demand.

17 Q So if occasionally it goes up to 100
18 percent, why would you not then test it at 100
19 percent, to get the --

20 A Because --

21 Q -- what seems to me to be a greater
22 emissions number. Maybe I'm --

23 A Well, it's not necessarily the case that
24 they're going to be firing -- that -- that firing
25 harder results in higher emissions. For some

1 pollutants, firing harder means that the emissions
2 drop. What we're trying to capture here is the
3 emissions in the mode that it's going to be used
4 in most of the time, so that we have the most
5 accurate characterization.

6 Q Okay. And then on page 13, the last
7 paragraph, source test initial and quarterly for
8 at least the first year, et cetera. You talked a
9 lot about that. I don't really understand what
10 happens after the first year. What -- what causes
11 that to continue or not continue?

12 A We have built into this permit quarterly
13 source tests, which are designed to revert to
14 annual source tests once -- if the -- if the data
15 that we gather, the quarterly source tests, show a
16 minimal variability. In other words, if the data
17 seems to indicate that the emissions don't vary
18 very much, then you feel comfortable reducing the
19 frequency. If, on the other hand, the source test
20 results are highly variable, or we don't feel that
21 the emission factors really capture all of the --
22 the parameters that affect the emissions, then we
23 will continue quarterly source tests, and -- to
24 try to -- to try to capture that variability.

25 Q Is that reasoning set out anywhere in

1 here?

2 A It is -- it may be discussed in the
3 Staff report. Well, this is a Staff report. I
4 don't see it here, so --

5 Q So it's -- it's a subjective kind of --
6 okay.

7 A Oh, you mean the criteria. No. It's --
8 we're going to -- at the end -- at the end of the
9 first year we're going to look at the data and say
10 does this look reasonably consistent, or is it
11 variable enough to justify, but it is a
12 subjective. We don't have an objective criterion
13 on that.

14 Q Okay. And then, finally, also on the --
15 district determined emissions factors. Okay. So
16 I understand that we don't have a particular
17 factor for any of these at this moment in time,
18 and that it's something that's going to be created
19 as you go along.

20 A That's right.

21 Q Okay. If -- so it's not something that
22 any party at this moment could evaluate or make
23 comment on.

24 A Well, you can -- you can, and some
25 people have made comments on --

1 Q On its absence. But the actual
2 emissions --

3 A -- on the proposed values that we'll use
4 until we have data.

5 Q Uh-huh.

6 A But in terms of the actual factors that
7 we use, no, there isn't any opportunity.

8 Q So if in a year from now I'm unhappy
9 with your emissions factor, there's really no
10 method to --

11 A What -- you will actually have the
12 opportunity to examine that about a year from now,
13 when we issue the Title 5 permit.

14 Q Uh-huh.

15 A So there will be -- there --

16 Q But as it applies to the FDOC, there's
17 none.

18 A Not in the FDOC, no. If -- if -- but a
19 year a from now, when we're issuing the Title 5
20 permit, this is going to be --

21 Q I'll be there. Yeah.

22 A -- you'll be there.

23 MS. DEAN: Okay. That's all I have,
24 actually.

25 COMMISSIONER LAURIE: Mr. Shean.

1 HEARING OFFICER SHEAN: Okay. Anything
2 from any other party?

3 MR. WOLFE: Do we get an opportunity for
4 redirect?

5 HEARING OFFICER SHEAN: Of Ms. Fox?

6 MR. WOLFE: I think she only has two
7 points she needs to raise.

8 HEARING OFFICER SHEAN: Okay. But
9 nothing from any other party?

10 MS. NARDI: We have nothing further.
11 Thank you.

12 HEARING OFFICER SHEAN: Okay. Maybe
13 before you do that, Mr. Hammonds, is he going to
14 --

15 MS. NARDI: Well, what I'd like to do is
16 I'd like to make the same kind of a general
17 statement that Mr. Wolfe did, and have Mr.
18 Hammonds available for questions. But I'll wait
19 my turn. Go ahead and do redirect of Dr. Fox.

20 HEARING OFFICER SHEAN: Okay.

21 FURTHER REDIRECT EXAMINATION

22 BY MR. WOLFE:

23 Q Dr. Fox, are there any points that
24 you've heard raised by Mr. Hill that you wish to
25 rebut?

1 A There are some points raised by Mr. Hill
2 that I would like to comment on.

3 Q Please do so.

4 A Mr. Hill testified that he believed that
5 the Louisiana-Pacific case, which deals with
6 blanket emission caps, is distinguishable from
7 this case, because here we don't have a blanket
8 emission cap. And I don't agree with that. And
9 the constituent that makes the best case is PM10.

10 In the case of PM10, the annual emission
11 cap that the Applicant is using is based on a
12 source test of a non-representative turbine with a
13 lower firing rate, and fuel that has natural gas
14 rather than refinery fuel gas. And that PM10
15 emission factor, which is 1.55 pounds per hour, is
16 not representative in any manner of the PM10
17 emission factor that you will see from this
18 facility, for a couple of reasons.

19 First, this facility, it's a different
20 model of LM6000 turbine that uses water injection.
21 Second, it's fired on refinery fuel gas with
22 substantially more sulfur. Most of the PM10 from
23 this facility will come from the sulfur. When you
24 burn fuel with sulfur, it -- it's converted to
25 SO₂, which goes to SO₃, which forms sulfuric acid,

1 and is measured at PM10.

2 Normal natural gas has, you know, three
3 to four ppm sulfur in it. This fuel has 35 annual
4 average 51 ppm sulfur, or substantially more, so
5 you can reasonably expect that the PM10 emissions
6 are going to be substantially higher.

7 And then finally, the firing rate that
8 was used to calculate the 1.55 pounds per hour
9 which is used to calculate the annual cap here,
10 was a much lower firing rate than this unit, which
11 is bigger. Burns more fuel. So the cap is based
12 on an unrepresentative and unrealistic number,
13 which is basically picked out of mid-air. We
14 compiled some 20 source tests on units that are
15 representative, that show that the PM10 emissions
16 will be much higher.

17 COMMISSIONER LAURIE: Let me interrupt
18 for a minute.

19 Mr. Wolfe, this is not redirect. This
20 is called recalling the witness. Ms. Fox already
21 testified, and what you're now doing is you have
22 recalled Ms. Fox. I will allow that for a very
23 limited purpose. I would encourage you to limit
24 your questions, because I won't allow a full set
25 of testimony as -- as she had previously done.

1 Because then I will call Mr. Hill back, and then
2 -- then we're liable to do this again.

3 This is not called redirect.

4 MR. WOLFE: I understand. I
5 mischaracterized it as redirect. What I meant was
6 rebuttal, and I'm going to ask Dr. Fox to limit
7 her direct -- additional rebuttal testimony only
8 to those points that were raised by Mr. Hill in
9 his examination.

10 Continue.

11 DR. FOX: I think this point addresses
12 that. Anyway, to cut to the chase. The PM10
13 emission factor that is used in here to calculate
14 the annual cap, which is used to limit emissions
15 below the PSD significance threshold, is a blanket
16 cap with no means to achieve it, because there are
17 20-plus source tests in the record that show that
18 this facility will have much higher PM10 emissions
19 and there's no visible means in this permit, or in
20 this FDOC, to achieve it. The only way it can be
21 achieved is by limiting the operation in some way,
22 blending in fuel or, you know, cutting back the
23 fuel use, or whatever.

24 So, to me, the Louisiana-Pacific case is
25 dead set on in this case. And then --

1 BY MR. WOLFE:

2 Q And so your point, then, is that there
3 needs to be something included in the permit, an
4 enforcement methodology that is currently -- to
5 clarify what will happen when cap is exceeded.

6 A Absolutely. I think the permit needs to
7 be modified to make it clear that when that cap is
8 reached, that the facility shut down.

9 Q Anything further?

10 A The -- let me look here. No.

11 MR. WOLFE: Thank you. Thank you,
12 Commissioner Laurie.

13 COMMISSIONER LAURIE: Mr. Kramer.

14 MR. KRAMER: One cross examination, or

15 --

16 CROSS EXAMINATION

17 BY MR. KRAMER:

18 Q Dr. Fox, these inaccurate emissions
19 factors that you believe are going to be used, how
20 long do you understand those will be used for?

21 A The inaccurate emission factors would be
22 used for the first quarter.

23 Q And how -- I gather that you think the
24 factors really should be higher.

25 A I believe the PM10 emissions from this

1 facility will be higher, and that the emission cap
2 itself is not achievable. And my concern is, is
3 that there's no way to determine continuous
4 compliance with that cap, based on the 365 day
5 rolling average method, or quarterly and/or annual
6 source tests.

7 Q I didn't think my question was that
8 compound, but -- so what factor would you use for
9 PM10, if you don't like .155? Or is that for NOx?

10 MR. LAYTON: No, that's PM10.

11 BY MR. KRAMER:

12 Q Okay. What would you use instead?

13 A The factor that I would use, I
14 calculated in our comments, and my recollection is
15 it's five pounds per hour, five, six pounds per
16 hour -- 5.53 pounds per hour.

17 Q Okay. So even if you're right, at the
18 end of the quarter they're not going to have
19 exceeded the 6.8, is that the standard you're
20 talking about, tons per year; correct?

21 A I'd have to run the calculations, and I
22 -- it's possible that you could. Does anyone have
23 a calculator?

24 COMMISSIONER LAURIE: Mr. Hill.

25 (Inaudible asides.)

1 DR. FOX: Is this reverse --

2 MR. KRAMER: Yes, it is. I'm sorry. It
3 is reverse --

4 DR. FOX: No, you would -- the emissions
5 based on 5.53 pounds per hour at the end of the
6 first quarter would be 6.1 tons per year.

7 BY MR. KRAMER:

8 Q Okay. So -- and at the end of the
9 quarter, the district's going to come out with a
10 factor based on source tests. And then that's the
11 factor they're going to use, and that would be
12 used retroactively for the fuel that was burned
13 through the first quarter. Correct?

14 A Yes. But you don't know what factor
15 that's going to be. And if -- if it turns out to
16 be 5.53 pounds per hour, or larger, a week or more
17 of operation would put you over the six-plus ton
18 per year limit in Condition --

19 Q Nineteen -- or, I beg your pardon, 22
20 it is.

21 A -- 22.

22 Q Okay. And if the district is correct
23 that they can shut down this operation when they
24 do the math and discover they -- over some part of
25 the first year they've exceeded the -- the limits,

1 who's at risk here? Air quality, or Valero?

2 A I would have no concern, no problem at
3 all with this permit if there was a explicit
4 statement in it that made it clear that the
5 facility would shut down when these limits were
6 reached.

7 Q Well, do you see that kind of statement
8 in other permits?

9 A Yes, I have.

10 Q From the Bay Area District?

11 A Not from the Bay Area District, but I
12 have seen them in other permits. It's pretty
13 common when you have a -- a synthetic minor permit
14 like this, where you are trying to stay below a
15 threshold, it's very common. In fact, it's the
16 law that you have to have both an emission cap and
17 an operational limit. The purpose of the
18 operational limit being to assure that you
19 actually stay below the cap. And it's --

20 MS. NARDI: Mr. Laurie, may I register
21 an objection? We -- we have no objections to the
22 qualifications of Dr. Fox to talk about technical
23 issues, but, to my knowledge, she's not qualified
24 to opine about conclusions of law, and we would
25 object to her last statement.

1 MR. WOLFE: I'm not sure what she was
2 offering was a conclusion of law. I think she was
3 summarizing her familiarity with -- with other
4 permits and what they contain, in terms of --

5 COMMISSIONER LAURIE: Overruled up to
6 this point, but the point is well taken. Proceed.

7 MR. KRAMER: Well, she had drifted off
8 into describing what she thought the law required
9 in a properly issued permit.

10 COMMISSIONER LAURIE: Well, I mean, an
11 expert knows the law relating to their field of --
12 of study, and you can't be an expert in a
13 technical field without knowing what the law says
14 you can interpret it. I think that -- that's
15 different than being a legal expert, but it is a
16 fine line.

17 Please feel free to object if you feel
18 Ms. Fox steps over that line again, and we'll
19 examine it on a question by question basis.

20 Proceed.

21 MR. KRAMER: I have no further
22 questions.

23 COMMISSIONER LAURIE: Thank you.

24 Ms. Nardi.

25 HEARING OFFICER SHEAN: Okay. Do you

1 want to go with Mr. Hammonds?

2 MS. NARDI: Yes. And what I'd like to
3 here is I would like to provide an overview
4 response to the discussion that we've had in the
5 last hour and a half.

6 COMMISSIONER LAURIE: Let -- let me ask.
7 Are we done with the questioning of Ms. Fox?

8 MS. DEAN: I have no -- actually, no, I
9 didn't. But I was going to ask, is it possible
10 that we could take like a five-minute break, since
11 we've been at this for an hour and a half?

12 COMMISSIONER LAURIE: We were planning
13 on taking a break, but weren't doing it right now.
14 Is it your preference that we take a break now and
15 --

16 MS. DEAN: Yeah, it is my preference,
17 but --

18 COMMISSIONER LAURIE: Okay. What we
19 will --

20 MS. DEAN: -- I'll go with the
21 consensus.

22 COMMISSIONER LAURIE: We will do that
23 now.

24 Let me ask the parties. We can take a
25 five-minute break, or we can take a longer break

1 if you think it would be a benefit for the outcome
2 of this case. What is your preference?

3 MS. NARDI: Based on our involvement in
4 this case, I think a short break would probably be
5 sufficient.

6 COMMISSIONER LAURIE: Okay. We'll take
7 a five-minute break.

8 (Off the record.)

9 COMMISSIONER LAURIE: Mr. Shean, where
10 are we?

11 HEARING OFFICER SHEAN: Well, before Mr.
12 Hammonds beings, let me just thank Valero on
13 behalf of the Committee and all who are present
14 here for the goodies you provided today, and have
15 provided in the past. Today, in particular, just
16 provides that needed caffeine and sugar boost that
17 will get us through to the end of the proceeding.

18 COMMISSIONER LAURIE: I'm glad you put
19 that on the record, Mr. Shean.

20 HEARING OFFICER SHEAN: And I've had
21 several cookies, but I'm below my \$25 annual limit
22 from this particular Applicant.

23 All right.

24 MS. NARDI: Thank you.

25 Valero would like to respond to the

1 issues that Mr. Wolfe has raised on behalf of
2 CURE. And Mr. Wolfe started out by explaining
3 that there were two key issues. The first was
4 CURE's view that this permit does not comply with
5 federal law, and I'd like to address that. The
6 second issue is whether this permit is practically
7 enforceable, and I'd also like to address that
8 issue.

9 With respect to whether this permit
10 complies with federal law, I would respectfully
11 suggest that perhaps the best judge of that
12 determination is the Federal EPA itself. And it
13 is true that Federal EPA had concerns about this
14 permit after the Preliminary Determination of
15 Compliance was issued. And Federal EPA sent two
16 letters to the Bay Area Air Quality Management
17 District in September, outlining its concerns.
18 And it's fair to say that they were some of the
19 same concerns that we've talked about here today.

20 And Mr. Mars, Todd Mars from EPA,
21 actually came to one of our evidentiary hearings
22 and expressed some of these concerns on behalf of
23 the Federal EPA. What happened after that was the
24 Bay Area Air Quality Management District, which,
25 as we know, has been delegated authority in the

1 State of California in our geographic area to
2 implement the Federal Clean Air Act, had
3 discussions with Federal EPA. It responded both
4 to the EPA comments and also to the comments filed
5 by CURE. And Mr. Hill, from the BAAQMD, explained
6 to you some particular ways in which CURE's
7 comments were actually incorporated into the Final
8 Determination of Compliance. For example, we went
9 from annual source testing to quarterly source
10 testing.

11 Federal EPA sent the -- Mr. Caswell, the
12 Project Manager at the California Energy
13 Commission, a letter dated October 16, and this
14 letter says, and I'm just reading from it. "I am
15 writing to you concerning the Revised PMPD.
16 Specifically, EPA would have no objection if the
17 Commission moved forward with granting approval of
18 this project. Thank you for the help and
19 information that you and your staff have provided
20 during our review of this project."

21 It seems very clear to Valero that
22 Federal EPA has considered all of the various
23 issues that have been raised. They were a
24 participant in this proceeding, and that they
25 would not have sent such a letter if they believed

1 that this permit was in violation of federal law.
2 So we think that a court would defer, and we would
3 also suggest that the California Energy Commission
4 can properly accept and defer to the Federal EPA's
5 own determination in this case.

6 That's just the first point.

7 As to the second point, CURE has
8 objected that this permit is not enforceable from
9 a practical point of view. And we have had a long
10 detailed discussion in the last hour and a half.
11 In particular, Mr. Hill, from the Bay Area Air
12 Quality Management District, has explained in some
13 detail why that is not true. This is not a case
14 of a simple blanket emission limit. We are aware,
15 and the Louisiana-Pacific case is an example, of
16 abuses, perhaps, that were committed by states
17 where permits were issued that were one line
18 permits, do not exceed X PSD threshold. And that
19 was viewed as not properly protective, because it
20 didn't provide objective ways in which you can
21 verify and monitor whether there was compliance
22 with that overall PSD not to exceed threshold
23 number.

24 But that is not this permit. There are
25 57 individual conditions in this permit. To recap

1 briefly, Mr. Hill explained that the Air District
2 itself believes that their inspectors can
3 practically enforce the permit. They will do so
4 by requiring Valero to conduct quarterly source
5 tests. That's four times a year that they will
6 come out -- excuse me, that Valero will conduct
7 source tests. And what they plan to do is to
8 develop, in effect, a custom emissions factor that
9 is specific to this equipment and the fuel that
10 goes into it, the refinery fuel gas.

11 And Mr. Hill explained how that's going
12 to be done. They're going to have a different set
13 of representative conditions as they do these
14 source tests. They're going to develop that
15 emissions factor. They're going to require
16 Valero, as the Applicant, to keep track of how
17 much refinery fuel gas, how much natural gas it
18 uses, and log that on a daily basis, and their
19 inspectors are going to be able to use that
20 information to verify and monitor whether, in
21 fact, the refinery is in compliance with the
22 overall annual emissions limit.

23 So we strongly object to the statement
24 that this is a sham permit, or that there's not
25 verifiable objective ways in which this permit can

1 be -- can be enforced.

2 The third thing that I wanted to do was
3 to respond to the specific suggestions that Dr.
4 Fox made, and just for the record explain Valero's
5 position with respect to each of them, so that
6 there's no confusion.

7 First, Dr. Fox suggested that CURE would
8 like to see a daily average on sulfuric acid mist
9 emissions. And that is not acceptable to Valero.
10 And I think Mr. Hill explained in part why that is
11 not acceptable, because there are no ways of
12 continuously monitoring. He said there are -- he
13 does not know of, and no one knows of a way in
14 which you can continuously, on a daily basis,
15 monitor sulfuric acid mist emissions, so that
16 would not be acceptable to Valero.

17 Second, Dr. Fox said that the monitoring
18 methods that the Air District will use need to be
19 addressed and specified, and written into the FDOC
20 and to the CEC approval, and we disagree with
21 that.

22 And third, Dr. Fox suggested that CURE
23 would like to see a condition that says that the
24 Title 5 permit for the Benicia Refinery has to be
25 issued before we can begin construction on the --

1 this project, the cogeneration project.

2 That -- that is unacceptable to Valero,
3 and --

4 COMMISSIONER LAURIE: Let me ask a
5 question. I thought I heard construction prior to
6 Phase 2.

7 MR. WOLFE: That's correct.

8 MS. NARDI: Prior to Phase 2. All
9 right. Well, I mean, I think -- think the same
10 principle will apply, and I'll let Mr. Hammonds
11 correct me if I've got it wrong.

12 But there's no reason to do that. That
13 would place a -- what we see as an unreasonable
14 hurdle. EPA itself has asked that certain
15 monitoring methods be specified and placed in the
16 Title 5 permit, but they themselves, Federal EPA,
17 view it as separate from the permit that's being
18 issued here. And so we don't see any reason to
19 place that as a hurdle to our project.

20 I had originally thought, and thank you
21 for the correction, that CURE was asking that we
22 have the Title 5 permit before we begin
23 construction at all, and I think Mr. Hill
24 explained that the Title 5 permit is slated for
25 early summer of 2002. Even as to Phase 2, that

1 might make it difficult for us to get this thing
2 constructed by December 31, 2002, which presently
3 is the working deadline if we're a four-month
4 project.

5 So that would -- those three things
6 would be unacceptable to Valero.

7 The next thing I wanted to do was to
8 lodge essentially a procedural objection. We have
9 some level of frustration that we're here today,
10 on October 29th, without specific language being
11 offered by CURE to amend the PMPD. And I checked
12 my notes as we were speaking, and the FDOC came
13 out in e-mail form on October 5th, according to my
14 e-mail notes. And here we are, October 29th, and
15 it seems to me that there's been an adequate
16 amount of time to generate not general concerns,
17 and we've had many round table discussions about
18 these general concerns, but very specific language
19 that Valero is the Applicant, and the CEC Staff,
20 and the Commissioners and the Hearing Officer
21 could look at.

22 So we object to the fact that we are
23 here today without specific language, and being
24 asked to respond without having in front of us the
25 particular changes that the Intervenor would like

1 to make to the -- to the PMPD.

2 And, finally, I'd like to say just a few
3 words in conclusion about this project as an
4 overall, because I think it is actually important
5 to not lose sight of the forest for the trees.

6 This is a good project. This is a
7 project that will -- is fully offset, from an air
8 quality point of view. Some of the projects that
9 are being processed currently through the CEC have
10 had the difficulty of not being able to acquire
11 emission offsets, and they've had to go to banks
12 and money and promises to buy offsets. That is
13 not this project. We have within the refinery the
14 ability to fully offset this project. And I
15 believe it was Mr. Layton who, in answering a
16 question from the public, said the air will be
17 cleaner in Benicia after this project is
18 constructed and operated. Someone asked what's
19 the bottom line air quality effect, and that was,
20 as I recall, his answer.

21 And I think that's the right answer.
22 The project is being required to meet stringent
23 emission limitations, best available control
24 technology determinations have been made. And we
25 have a very tough set of permit limits which put

1 us really on the frontier, I think, of what can be
2 done with refinery fuel gas.

3 So in terms of the big picture, I think
4 it's very important to keep in mind that this is
5 overall a good project, it will result in a net
6 air quality benefit, and that there has been a lot
7 of public participation, and the air permit was
8 changed, modified, and perhaps made tougher and
9 better as a result of the public participation
10 from the Good Neighbors, from the Intervenors,
11 from the Air District, from Federal EPA. But
12 Valero is satisfied that we now have a permit that
13 is in compliance with federal law, practically
14 enforceable, and we suggest to the Commission that
15 it should be fully acceptable.

16 COMMISSIONER LAURIE: Staff, closing
17 comments?

18 MR. KRAMER: No.

19 HEARING OFFICER SHEAN: Is Sam going to
20 testify?

21 MS. NARDI: No, I don't -- I don't think
22 we need Mr. Hammonds to testify. Thank you.

23 HEARING OFFICER SHEAN: Okay.

24 COMMISSIONER LAURIE: Mr. Wolfe, closing
25 comments?

1 MR. WOLFE: I won't repeat what I said
2 in our opening comments.

3 Just by way of summary, the federal
4 requirement that we're -- that we believe is not
5 being met here is the requirement that practical
6 enforceability be demonstrated and articulated in
7 the permit so not just the district or the CEC
8 CPM, but members of the public, including us, can
9 see in front of us how the responsible enforcing
10 bodies can take action, under what circumstances
11 they will take action, and what the consequences
12 of that action will be.

13 We think that's something that can be
14 remedied. We, frankly, can't ourselves present
15 language on the fly to correct these deficiencies.
16 We don't know what the district was thinking when
17 it came -- when it said that it was going to come
18 up with a district approved emissions factor. I
19 think, frankly, the onus is on the district to
20 show us what it proposes to do to come up with a
21 factor, and allow us to comment on it. And then
22 we can present our own language and red line or
23 strike out once we see that.

24 We think it was incumbent on the
25 district, pursuant to EPA guidance, to state which

1 methods, whether in its methods manual, or whether
2 it's source test people who know what they're
3 doing, something they came up with, we thought it
4 was incumbent on them to show us that in the
5 permit. If not in the permit, at least in the
6 response to comments. But we didn't get it in
7 either place. So to the extent that we were
8 remiss in coming forward today with actual
9 language, my apologies. I frankly don't know what
10 more we could've done.

11 I do think we could offer very brief
12 changes to the existing conditions to clarify the
13 frequency of compliance for sulfuric acid mist,
14 but I don't think there's any prejudice to our not
15 bringing that forward in advance. I think it's a
16 question of adding a few words to the existing
17 condition. And as I said, we're perfectly willing
18 to go forward with that at this point.

19 COMMISSIONER LAURIE: Okay. Anything
20 else?

21 MR. WOLFE: That should do it. Thank
22 you.

23 COMMISSIONER LAURIE: Thank you.

24 Ms. Dean.

25 MS. DEAN: Thank you.

1 First, I'm going to mention that I may
2 not be able to be at the full Commission hearing
3 tomorrow. It's Halloween, so it's a little bit of
4 a conflict there. So I may make some broader
5 comments, just because I would really like to have
6 them on the record, some record, somewhere.

7 But as I stated at the last Commission
8 hearing, I'm very impressed with the process that
9 I've seen here. I'm astounded, on a certain
10 level, that so much has happened in what amounts
11 to four and a half months. And maybe what I
12 didn't articulate clearly before was the
13 application, the document that we first saw, was
14 not one that we would be able to support on a
15 number of levels. And it is because of, honestly,
16 primarily CURE's intervention and CURE's efforts
17 and the impressive response from the regulatory
18 agencies that I think we've moved a long way.

19 Now, again, I'm a layperson. But from
20 my perspective, we've come -- we've made a
21 dramatic difference in some health protective
22 arenas that are of concern to us, so we're very
23 pleased with that. And honestly, I think I said
24 in the paper that Valero had the class to step up
25 and -- and do what needed to be done.

1 But having said that, I -- I am still
2 concerned that a couple of the areas that CURE has
3 brought up are not being addressed in the most
4 health protective manner, and that's all I'm
5 really concerned about. So as to the legality of
6 the procedural concerns that we've had, or when
7 PSD is triggered or not, I can't really speak to
8 that. But I can speak to my concerns and the
9 concerns of the public in Benicia, that the most
10 health protective standards available, that are
11 reasonable, given the emergency circumstance that
12 we're in, are what we'd like to see.

13 And so in looking at the three or four
14 areas that Dr. Fox brought up, and in considering
15 Valero's comments, it seems to me that a couple of
16 these are not unreasonable, are not -- a couple of
17 -- of changes in a word or two.

18 For example, let's see. Valero seemed
19 particularly concerned that SAM daily monitoring
20 would be untenable. And as Mr. Hill described it,
21 I can understand the difference there, and I see
22 that maybe it makes no real impact in the end how
23 that's done.

24 The Title 5 condition, however, to me
25 makes the whole thing more comfortable. I can

1 tell you that I also have had conversations with
2 the staff at EPA, and it's true that they're very
3 interested in seeing a couple of changes made for
4 the Title 5 considerations, and like -- like my
5 group had felt that we want to move -- everybody
6 does feel like this is a decent project, and we do
7 want to move forward, so we're not going to put up
8 stumbling blocks. But absent any consideration
9 that Bay Area Air Quality Management District
10 really controls when that Title 5 permit is
11 issued, I'd say that was a good idea, that
12 condition for the second phase to go in. Because
13 it will correct any of those lingering doubts as
14 to those two or three issues that the EPA was
15 concerned about.

16 And, let's see. There's one other that
17 I'm missing. I would also feel a lot more
18 comfortable if there was clear language for
19 reduction of the operation, specific to -- as a
20 specific method of limiting potential to emit.
21 Again, I can't speak to whether that's necessary,
22 but I can speak to the fact that that appears to
23 me to be reasonable, and we'd feel very
24 comfortable with that.

25 So I guess finally, I will say that once

1 again, I have tremendous respect for everybody
2 who's sitting in this room and everybody who
3 worked on the project. And that's it. Thank you.

4 COMMISSIONER LAURIE: Thank you. Ms.
5 Dean, the Committee very much appreciates the
6 professional manner in which you and your group
7 have participated in this case.

8 MS. DEAN: Thank you.

9 COMMISSIONER LAURIE: Any member of the
10 public wish to offer comment at this time?

11 Seeing none, Mr. Shean, the floor is
12 yours for comment, next steps, story-telling.

13 (Laughter.)

14 HEARING OFFICER SHEAN: The next step I
15 think will be tomorrow, the full Commission is
16 going to gather to vote on the Revised Presiding
17 Member's Proposed Decision. I think the Committee
18 is going to meet and discuss the matters that
19 we've heard today in advance of that meeting, to
20 see if it's appropriate to make any further
21 changes. If the Committee does, we will
22 disseminate those in advance of the meeting so
23 that every party can see what those are.

24 But otherwise, I think what we can do is
25 fairly rely upon what's been called the Final

1 Revised Presiding Member's Proposed Decision. And
2 we are Item Number 9, I believe, on tomorrow's
3 calendar. Some of the items in advance of Number
4 9 have been postponed to other meetings, so I
5 would suspect that we will get to the Valero
6 matter fairly early. So --

7 COMMISSIONER LAURIE: And there will be
8 three Commissioners present, two Commissioners
9 calling in, Commissioners -- the Chairman and
10 Commissioner Moore will be calling in. I'll be
11 presiding over the three that are physically in
12 attendance.

13 HEARING OFFICER SHEAN: So other than
14 that, I think we're -- did you have a procedural
15 point?

16 MR. WOLFE: Just one last observation.
17 I -- I just wanted to say for the record that I am
18 -- I am highly mindful that everyone here today
19 would much rather have been someplace else. And
20 I'm also mindful that the reason that we are all
21 here today is to address concerns that we, CURE,
22 primarily, wanted to vocalize for the Committee's
23 benefit, recognizing that it gave other
24 Intervenors the opportunity. And I just wanted to
25 express my -- my sincerest gratitude for the

1 accommodation. I realize it wasn't necessarily
2 something that people were happy to do, and I just
3 wanted to acknowledge the effort and again express
4 my gratitude for it.

5 COMMISSIONER LAURIE: Mr. Shean, I
6 wouldn't rather be anywhere else. Would you
7 rather be anywhere else?

8 HEARING OFFICER SHEAN: This is heaven.

9 MS. DEAN: I would say that I was very
10 happy to be here, and I thank you.

11 COMMISSIONER LAURIE: Okay.

12 MS. NARDI: I actually have several
13 procedural questions I wanted to ask when we're
14 done with the air quality substance.

15 One is that Mr. Hammonds, we filed a
16 supplemental declaration of Mr. Hammonds and
17 served it last week by your deadline, and --

18 HEARING OFFICER SHEAN: Yes.

19 MS. NARDI: -- if you would like us to
20 move it into evidence, we're allowed to do that,
21 or if it's already been docketed and accepted into
22 the Commission's record we can dispense with that.

23 HEARING OFFICER SHEAN: Is there any
24 objection to the admission of Mr. Hammonds' --

25 MR. WOLFE: There's -- there's no

1 objection.

2 Question for clarification. My
3 understanding was the outcome of the meeting on
4 the 17th was that this was not going to be taken
5 up as a four-month project. Was I mistaken in
6 that?

7 HEARING OFFICER SHEAN: Well, I think
8 people have different views on what -- what the
9 effect of that was, both within the Commission and
10 outside the Commission.

11 COMMISSIONER LAURIE: Time out. What
12 are you -- what are you referring to?

13 MR. WOLFE: The -- there was a debate in
14 front of the Commission on the 17th as to whether
15 it was appropriate to license the project under
16 the four-month process, suspending some conditions
17 or not. And my understanding was that the motion
18 to do so failed, and that the practical
19 consequence is that it was going to be taken up
20 under the 12-month process, and that the very
21 reason for -- for giving another two weeks was to
22 make sure that the procedural requirements of the
23 12-month were satisfied.

24 COMMISSIONER LAURIE: I -- I am not
25 satisfied that someone cannot make the motion,

1 make the same motion again. I would not expect
2 that the law bars the Commission from that
3 consideration.

4 MS. NARDI: To -- to follow up that
5 point. Valero did, in fact, file a brief, and
6 I'll go ahead if I need to and formally make the
7 motion. We are asking the Commission to
8 reconsider the processing of this application as a
9 four-month project, and we filed a brief last week
10 that lays out in some detail the basis on which
11 we're asking that the Commission do that.

12 So, to clarify, we would like to put
13 that in front of the Commission for its
14 consideration tomorrow.

15 COMMISSIONER LAURIE: We'll ask General
16 Counsel as to whether or not it has to be in the
17 form of reconsideration. I'm not sure about that,
18 at this point. Had a motion been made and passed
19 to either approve the project or deny the project,
20 I would speculate that in order to revisit the
21 question there would have to be a motion for
22 reconsideration. But all we had was a motion to
23 approve the project. That failed.

24 Now, if we wanted to deny the project,
25 there should've been a motion to deny the project,

1 and if that would've passed, then there would've
2 had to be a motion for reconsideration.

3 But from a procedural perspective, I
4 think the appropriate -- and I will make inquiry
5 of General Counsel tomorrow as to whether or not
6 the matter has to be formally reconsidered in
7 order to consider the four-month process.

8 MS. NARDI: Thank you. That's very
9 useful. And so whether it's a reconsideration or
10 simply a request on behalf of the Applicant, we
11 would make it.

12 The last question I had is procedural.
13 At the last hearing that we had in Sacramento
14 before the full Commission, Mr. Joseph, from CURE,
15 expressed concern that the Commission itself had
16 not responded to the specific written comments
17 that CURE filed on the air permit, the PDOC and
18 the FDOC. And it was my understanding that the
19 Commission's response was the response, the
20 detailed response that the Bay Area Air Quality
21 Management District prepared and which was
22 docketed in this action.

23 And so I would put out for your
24 consideration if there's -- if that is, in fact,
25 the case, it may be useful for the Commission to

1 clarify that its response to the comments is the
2 Bay Area Air Quality Management District's
3 detailed response to comments. They put out
4 several letters, we can hunt for the dates of
5 them, that responded in full to each of the EPA
6 comments and each of the CURE comments.

7 COMMISSIONER LAURIE: Thank you.

8 Anything else?

9 MR. KRAMER: No.

10 COMMISSIONER LAURIE: Ladies and
11 gentlemen, the evidentiary record is closed, and
12 the meeting stands adjourned. Thank you very much
13 for your participation.

14 (Thereupon the hearing was adjourned
15 at 5:30 p.m.)

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Hearing, nor in any way interested in the outcome of said Hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of November, 2001.

JAMES RAMOS

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

□