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9 Attorneys for Petitioner,
10 TESORO REFINING & MARKETING
11 COMPANY LLC

12
13 **BEFORE THE HEARING BOARD OF**
14 **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

15 In the Matter of
16
17 Tesoro Refining & Marketing Company LLC
18 (Facility ID No. 800436)
19
20 Petitioner,

Case No. 4982-139

**[PROPOSED] FINDINGS AND
DECISION AND ORDER GRANTING
AN INTERIM VARIANCE**

Hearing: January 21, 2026
Time: Consent Calendar

21 The Petition for Interim Variance, filed on December 26, 2025 by petitioner Tesoro
22 Refining & Marketing Company LLC, was heard on the South Coast Air Quality Management
23 District Hearing Board's January 21, 2026 consent calendar, in accordance with the provisions of
24 California Health and Safety Code Section 40823. Five regular members of the Hearing Board
25 were present: Micah Ali, Chair; Robert Pearman, Esq., Vice Chair; Mohan Balagopalan; Cynthia
26 Verdugo-Peralta; and Dr. Jerry P. Abraham, M.D. MPH, CMQ. Petitioner, represented by
27 Viviana L. Heger, Esquire, did not appear. Respondent Executive Officer of the South Coast Air
28 Quality Management District ("District"), represented by Ryan P. Mansell, Principal Deputy
District Counsel, did not appear. The good cause finding on the matter was submitted for
consideration on the Consent Calendar before consideration of the findings set forth in California
Health and Safety Code Section 42352. The Declarations of Ryan Unmack and Seth Conley and
exhibits were received as evidence, the [Proposed] Findings and Decision and Order of the

1 Hearing Board were received in the record, and the case was submitted on consent.

2 The Hearing Board finds and declares as follows:

3 **I. NATURE OF BUSINESS AND LOCATION OF FACILITY**

4 Petitioner is in the business of petroleum refining and production of fuels and other
5 products at the Los Angeles Refinery-Wilmington Operations located at 2101 E. Pacific Coast
6 Highway in Wilmington, California (“Facility”). The Facility is subject to Petitioner’s June 26,
7 2025 Permit to Construct (“Permit”) and operated under Facility Identification No. 800436.

8 **II. EQUIPMENT THAT IS THE SUBJECT OF THE VARIANCE**

9 The interim variance involves a new Selective Catalytic Reduction (“SCR”) unit (Device
10 No. C1762) that reduces emissions of nitrogen oxides (“NOx”) from a new boiler known as
11 Boiler No. 12 (Device No. D1760) (jointly “Equipment”). The Equipment is essential to maintain
12 stable Facility operations. The boiler, a RECLAIM device,¹ uses refinery fuel gas to operate to
13 produce steam for refinery operations. Flue gases from the boiler are routed to the SCR to control
14 NOx emissions.

15 **III. SUMMARY**

16 Petitioner filed its petition for interim variance to allow more time to complete an
17 emission reduction project (“Project”) involving the Equipment. The recently constructed Project
18 initially achieved all projected emission reductions, drastically reducing emissions from an
19 average of approximately 100 parts per million (“ppm”) NOx per day to 3 ppm NOx per day in
20 November and early December; however, starting on December 22, 2025, the SCR’s performance
21 declined. The SCR is controlling NOx to between 15 to 45 ppm. The Equipment must be shut
22 down for further internal inspection and maintenance, but the Facility cannot shut down the
23 Equipment until it finalizes a maintenance strategy, including installing new catalyst in
24 approximately May 2026 to allow repairs and resume normal operations. Tesoro requires
25 variance relief to allow the Equipment to remain in operation until its regular variance can be
26 heard on February 19, 2026. In its regular variance, Petitioner plans to seek variance relief
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¹ RECLAIM refers to the REgional Clean Air Incentives Market regulation, Regulation XX.
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1 through approximately the end of May 2026 to allow for implementation of its repairs and SCR
2 maintenance strategy.

3 **FINDINGS OF FACT AND CONCLUSIONS**

4 Following are the facts and conclusions supporting the findings set forth in California
5 Health and Safety Code Section 42352 necessary to grant the variance. The Executive Officer did
6 not oppose the granting of the variance. The hearing was bifurcated to demonstrate that “good
7 cause” exists to justify the holding of a hearing on an interim variance petition in the absence of
8 notice to the public.

9 10 **IV. GOOD CAUSE FINDINGS**

- 11 **a. The petitioner for a variance is, or will be, in violation of Section 41701 or of**
12 **any rule, regulation, or order of the District or any federally enforceable**
13 **permit terms and conditions that are based on Section 41701 or of any**
14 **applicable rule or regulation of the District.**

15 Petitioner discovered on December 24, 2025 that Petitioner would be in violation of
16 conditions in its Permit for the Equipment starting on December 25, 2025. The violation of
17 Permit conditions in turn causes a violation of District Rules 203(b), 2004(f)(1), and 3002(c)(1)
18 because these rules require compliance with Permit conditions.

19 Petitioner is unable to comply with the following conditions:

20 i) Permit Condition No. A99.23 and the equipment description for Boiler No. 12, Device
21 No. D1760, provide a 2.5-ppmv NOx limit over 30 days, except during boiler commissioning,
22 startup, and shutdown periods. On December 24, 2025, Petitioner determined that on December
23 25, 2025 it would not be able to comply with this condition based on the SCR’s performance
24 since in November 2025.

25 ii) Permit Condition No. A99.22 and the equipment description for Boiler No. 12, Device
26 No. D1760, provide a 3-ppmv NOx limit daily, except during boiler commissioning, startup, and
27 shutdown periods. Petitioner was unable to comply with this limit beginning on December 25,
28 2025 when the startup period ended and the condition applied.

1 iii) Administrative Condition Nos. E.3, E.7, E.8, and K.8 require the boiler to meet permit
2 and rule limits. The first sentence of Administrative Condition E.3 provides that Petitioner's
3 permit "does not authorize the emissions of contaminants in excess of those allowed by Division
4 26 of the Health and Safety Code of California or the Rules and Regulations of the AQMD." The
5 first sentence of Administrative Condition E.7 provides that the facilities "shall maintain and
6 operate all equipment to ensure compliance with all emission limits as specified in this facility
7 permit." Administrative Condition No. E.8 requires equipment operating under the RECLAIM
8 program to comply with all applicable rules. Finally, Administrative Condition No. K.8 requires
9 that equipment comply with applicable rules and regulations. The boiler is not able to operate
10 within Permit limits and, therefore, the operations are not in compliance with District Rules
11 203(b), 2004(f)(1), and 3002(c)(1), which mandate compliance with permit limits.

12 iv) Administrative Condition No. E.4, which applies to the boiler and SCR, prohibits the
13 operation of equipment unless the associated air pollution control equipment is in "full use." The
14 SCR is not in full use.

15 **b. The circumstances leading to the violation could not reasonably have been**
16 **avoided by Petitioner, or anticipated in sufficient time to provide for public**
17 **notice of the variance hearing.**

18 The circumstances leading to these violations could not reasonably have been avoided by
19 Petitioner nor anticipated in sufficient time to provide the public notice of the variance hearing.
20 Petitioner commissioned the Equipment for service in November 2025 and initially experienced
21 success in stable operations and NOx control as low as 2.5 ppm. On December 18, 2025,
22 however, the boiler was shut down due to fuel gas flow restrictions associated with debris in a
23 fuel gas line. Proactively, from December 18 through December 22, 2025, Petitioner kept the
24 Equipment shutdown and inspected the Equipment to ensure it was in good operating order to
25 start up. During the weekend of December 20 and 21, 2025, Petitioner conducted maintenance
26 that included filling gaps in the catalyst beds of the SCR. Upon startup on December 22, 2025,
27 however, the SCR serving the boiler failed to operate as designed to reduce NOx to Permit levels.
28 In response, Petitioner attempted to resolved issues with plugging in the ammonia scrubber but
nonetheless observed elevated NOx. Petitioner adjusted SCR temperature and other variables to

1 enhance NOx performance and contacted the SCR manufacturer and vendor for the SCR catalyst
2 to seek further guidance. Despite these efforts, the device's emission control capabilities did not
3 improve over the next two days.

- 4 **c. Petitioner exercised diligence in petitioning for the interim variance and**
5 **scheduling the interim variance hearing; "diligence in petitioning for the**
6 **variance" shall mean that Petitioner filed a variance petition as soon as**
7 **feasible after the time Petitioner knew or should have known that a variance**
8 **would, more likely than not, be needed**

9 Petitioner exercised diligence by filing its Variance petition on December 26, 2026, within
10 48 hours of determining on December 24, 2025 that violation would result on December 25,
11 2025. On December 24, 2025, while completing startup activities, Petitioner determined that the
12 decline in the SCR's performance would cause the Equipment to violate the 30-day average NOx
13 limits in the Permit starting on December 25, 2025. Petitioner reported a breakdown to the
14 District and filed for variance relief two days later after the Christmas holiday. Based on the
15 foregoing, Petitioner discovered elevated NOx on December 22, 2025, and there has not been
16 sufficient time since December 22, 2025 to schedule a regular variance hearing because such a
17 hearing requires 30 days' notice. Accordingly, good cause exists to grant interim variance relief.

- 18 **d. A denial of the interim variance will result in either (a) an increase in the**
19 **emissions of air pollutants, an adverse impact to air quality, and/or an**
20 **adverse impact on public health or welfare; or (b) an unreasonable and**
21 **unavoidable adverse impact to Petitioner.**

22 If the Facility were denied interim variance relief, such a denial will result in an increase
23 in emissions of air pollutants, an adverse impact to air quality, and unreasonable adverse impact
24 to Petitioner. If the Facility were denied interim variance relief, the only remaining compliance
25 option would be an unplanned shut down of the Equipment. Unplanned shutdowns of the
26 Equipment would cause emissions greater than those associated with Petitioner's variance request
27 and would result in economic losses in excess of \$1.1 million per day. The Equipment is critical
28 to Petitioner's business, and, without operation of the Equipment, Petitioner would be unable to
29 maintain stable operations at the Facility.

30 Denial of the variance would pose a risk of adversely impacting Petitioner's ability to
31 produce fuel. Thus, denying the variance would result in unreasonable adverse impacts to
32 Petitioner and lead to increased emissions.

1 Upon finding Good Cause the Board then proceeded to the merits of the Interim Variance
2 and the six findings.

3 **V. INTERIM VARIANCE FINDINGS**

- 4 **a. The petitioner for a variance is, or will be, in violation of Section 41701 or of**
5 **any rule, regulation, or order of the District or any federally enforceable**
6 **permit terms and conditions that are based on Section 41701 or of any**
7 **applicable rule or regulation of the District.**

8 Petitioner discovered on December 24, 2025 that Petitioner would be in violation of
9 conditions in its Permit as specified in Section IV.a, above.

- 10 **b. Non-compliance with District Rules is due to conditions beyond the**
11 **reasonable control of the petitioner.**

12 Petitioner's non-compliance is due to conditions beyond its reasonable control. In order
13 to repair the SCR, the Equipment must be shut down for further internal inspection and
14 maintenance, but the refinery cannot shut down the Equipment until it finalizes a maintenance
15 strategy, including installing new catalyst by approximately May 2026 to allow repairs and
16 resume normal operations.

17 The Facility requires operation of the Equipment because the Facility needs steam from
18 the boiler to maintain stable refinery operation and needs to route fuel gas to the boiler to
19 maintain fuel-gas balance at the Facility. Petitioner has submitted the Declaration of Mr. Ryan
20 Unmack to demonstrate that an imbalance of either steam or fuel gas disrupts normal Facility
21 operations and will lead to emissions from equipment unplanned shutdowns and startup as well as
22 flaring. To avoid excess emissions, the Facility's only operationally prudent option is to keep the
23 Equipment operating until approximately May 2026 when repairs to the SCR will be
24 implemented. Stable operation of the Equipment under the variance will result in less emissions
25 than the consequences that would follow if the Equipment is shut down.

26 The Facility is engaged in a novel Project to reduce NOx. The Project is the first of its
27 kind within the Southern California air basin to be able to achieve such low NOx emissions. In
28 the past, boilers could continue to operate without emission control devices connected to them
because a facility, as whole, was required to meet a facility-wide RECLAIM emissions cap.

1 Now, for boilers, the RECLAIM cap-and-trade program will be phased out and replaced with
2 different phases of Rule 1109.1. The District has recognized that Rule 1109.1 compliance
3 projects are complex. Rule 1109.1 imposes emission limits for boilers not later than July 1, 2029.
4 (Rule 1109.1, Table 6-1, § 4, row 4, column 4.) Once the Project is completed, it will achieve
5 Rule 1109.1 limits approximately 3.5 years before the Rule 1109.1 deadline.

6 The refinery has never added an SCR to a boiler at the same time to achieve such low
7 NOx limits. Installing emission controls and new equipment at the same time adds complexity
8 because two new devices must be started up. Petitioner has submitted the Declaration of Seth
9 Conley to demonstrate the complexities and unanticipated setbacks associated with the startup
10 process for the Equipment. During the startup sequence of the boiler on December 18, 2025,
11 petitioner experienced failures associated with an emergency isolation/chopper valve that allowed
12 introduction of fuel gas. The chopper valve failure was repaired, and the Equipment underwent
13 further inspection, maintenance, and repairs between December 18 and December 22. Upon
14 startup activities on December 22, 2026, however, the SCR's performance did not achieve NOx
15 limits.

16 The Facility has developed a compliance strategy to address the decline in the SCR's
17 performance. Petitioner has submitted evidence in both declarations that repairs to the SCR
18 require a replacement of catalyst, which cannot be obtained until approximately April or May
19 2026. Catalyst is in high demand in the market due to data centers and other projects.

20
21 Petitioner continues to explore alternatives to obtaining an interim variance, such as
22 obtaining rental boilers to provide steam to the Facility. At this time, however, Petitioner has not
23 found an alternative that can become operational before the February 19, 2026 hearing on
24 Petitioner's Petition for Regular Variance request. Thus, interim variance relief is warranted until
25 the regular variance request can be heard.

- 26 c. **Requiring compliance would result in either (1) an arbitrary or unreasonable**
27 **taking of property or (2) the practical closing and elimination of a lawful**
28 **business.**

1 Denial of the variance would cause a closing of Petitioner's business at the Facility. If the
2 Facility were denied interim variance relief, the only remaining compliance option would be an
3 unplanned shut down of the Equipment, which would result in the impacts summarized in Section
4 IV.d, above. Thus, denying the variance would result in the practical closing and elimination of
5 Petitioner's lawful business.

6 **d. The closing or taking would be without corresponding benefit in reducing air**
7 **contaminants.**

8 Denial of the variance relief would cause irreparable harm to Petitioner with no
9 corresponding benefit in emissions reduction, in that (a) the Equipment is generating less NOx
10 emissions than the prior boilers, (b) denial of the Petition would treat Tesoro punitively while it is
11 planning to implement a strategy to complete implementation of an emission control Project that
12 has, and will continue to have, emission reduction benefits 3.5 years in advance of applicable
13 regulatory deadlines, and (c) without variance relief, Tesoro instead would be required to shut
14 down the Equipment causing a closing and taking of Tesoro's lawful business operations.

15 **e. The petitioner for the variance has given consideration to curtailing**
16 **operations of the source in lieu of obtaining a variance.**

17 Tesoro cannot curtail operations of the Equipment because the boiler is needed to
18 maintain steam and fuel gas balance to keep the refinery operating normally and to avoid
19 increased emissions at the refinery.

20 **f. During the period that the variance is in effect, the petitioner will reduce**
21 **excess emissions to the maximum extent feasible.**

22 Petitioner continues to reduce excess emissions to the maximum extent feasible. The
23 Project has drastically reduced emissions from 100 ppm NOx per day to between 15 to 45 ppm
24 NOx daily. Petitioner has implemented these NOx reductions 3.5 years in advance of the July 1,
25 2029 regulatory deadline that applies under District Rule 1109.1. The boiler is a RECLAIM
26 device. Petitioner's variance request will not result in excess emissions under RECLAIM.

27 **g. During the period that the variance is in effect, the petitioner will monitor or**
28 **otherwise quantify emission levels from the source, if requested to do so by the**
District, and report the emission levels to the District pursuant to a schedule
established by the District.

1 During the variance period, Petitioner will conduct all NOx emission monitoring and
2 reporting under RECLAIM.

3
4 **ORDER**

5 THEREFORE, good cause appearing, the Hearing Board orders as follows:

6 A. Petitioner is granted an interim variance for a period of 90 days, or until this
7 Board hears and decides Petitioner's request for a Regular Variance, whichever occurs first.
8 Petitioner is granted an interim variance (i) from District Rules 203(b), Rule 2004(f)(1), and Rule
9 3002(c)(1) as they pertain to Condition Nos. A99.22, A99.23 applicable to Boiler No. 12 (Device
10 No. D1760); (ii) from District Rules 203(b), Rule 2004(f)(1), and Rule 3002(c)(1) as they pertain
11 to Administrative Condition Nos. E.3, E.7, E.8, and K.8 applicable to Boiler No. 12 (Device No.
12 D1760); and (iii) from District Rules 203(b), Rule 2004(f)(1), and Rule 3002(c)(1) as they pertain
13 to Administrative Condition No. E.4 applicable to the boiler and SCR (Device Nos. Device No.
14 D1760 and C1762).

15 B. The variance granted herein is subject to the following conditions:

- 16 1. Petitioner shall report a Variance Notification to South Coast AQMD upon the start of the
17 interim variance period by calling 1-800-CUT-SMOG (Attention Inspector Oscar Nieto
18 Mora).
- 19 2. Petitioner shall phase in maintenance activities for the SCR (Device No. C1762) that
20 serves Boiler No. 12 (Device No. D1760) by shutting down Boiler No. 12 and SCR
21 (Device No. C1762) for SCR maintenance once all required equipment and catalyst arrive
22 and are ready to operate.
- 23 3. During the interim variance period, Petitioner shall, on a daily basis, monitor the SCR
24 (Device No. C1762) and Boiler No. 12 (Device No. D1760) when the units are in
25 operation and shall record one set of readings per day with regard to SCR inlet and outlet
26 temperature and pressure. For the first two weeks of the variance period, Petitioner shall
27 electronically mail to Inspector Oscar Nieto Mora (omora@aqmd.gov) every Wednesday
28 by 5 p.m. the temperature and pressure of the SCR for the past week. Thereafter, during

1 the interim variance period, so long as the temperature and pressure remain stable and
2 continuous within the average of the first two weeks, Petitioner shall continue to record
3 one set of readings per day with regard to SCR inlet and outlet temperature and pressure
4 and shall electronically notify Inspector Oscar Nieto Mora (omora@aqmd.gov) if the
5 temperature changes by more than 10% from the average of the first two weeks and/or if
6 pressure increases above 2 inches H₂O.

- 7 4. During the interim variance period, Petitioner shall, on a daily basis, monitor NO_x, NH₃,
8 CO, and O₂ emissions from the SCR (Device No. C1762) and Boiler No. 12 (Device No.
9 D1760) when the units are in operation. Petitioner shall electronically mail to Inspector
10 Oscar Nieto Mora (omora@aqmd.gov) every Wednesday by 5 p.m. the NO_x, NH₃, CO,
11 and O₂ emissions from the previous week of operation. Emissions shall be reported in the
12 following form for NO_x and CO: ppm 24-hour average, ppm 30-day average, and daily
13 mass emissions. Emissions shall be reported in the following form for NH₃: ppm 1-hour
14 average.
- 15 5. The Petitioner shall demonstrate compliance with the Facility BCAP NO_x Emission
16 Target or facility-wide NO_x mass emissions, during Phase I, of 1037 tons per year, as
17 limited under the SCAQMD Rule 1109.1 Compliance Plan. The demonstration shall be
18 based on a rolling 365-day daily average. Petitioner shall electronically mail to Inspector
19 Oscar Nieto Mora (omora@aqmd.gov) every Wednesday by 5 p.m. the total emissions
20 from all the affected facilities to show compliance with the BCAP Emissions Target.
- 21 6. Petitioner shall, as soon as practicable, finalize a maintenance strategy for the SCR
22 (Device No. C1762) which shall include consideration of a catalyst replacement and other
23 measures Petitioner's inspection determines to be necessary.
- 24 7. Petitioner shall commence planning and preparation to ensure that Petitioner submits to
25 South Coast AQMD, attention Inspector Oscar Nieto Mora (omora@aqmd.gov) a report
26 on the cause of the malfunction in the SCR (Device No. 1762) by January 24, 2026. The
27 Rule 430 Breakdown written report can also meet this requirement. Petitioner shall, in the
28

1 same manner, submit a report on the maintenance strategy to bring the unit back to normal
2 operation, by February 18, 2026. Such maintenance strategy shall consider availability of
3 resources known at the time of the report and allow flexibility for modifications or
4 amendments during the regular variance period.

- 5 8. Petitioner shall notify the District at 1-800-CUT-SMOG (Attention Inspector Oscar Nieto
6 Mora) and by e-mail to Inspector Oscar Nieto Mora (omora@aqmd.gov) at least 24 hours
7 prior to shutting down the SCR (Device No. C1762) to inspect and repair the SCR.
- 8 9. Prior to the start of the variance period, the facility shall hold sufficient RECLAIM
9 Trading Credits (“RTCs”) to offset expected excess emissions increases of NOx of
10 approximately 100 pounds of NOx per day for the interim variance period. The RTCs held
11 to satisfy this condition may not be transferred during this variance period. Within 30 days
12 of achieving final compliance, Petitioner shall calculate actual excess emissions during the
13 interim variance period and provide additional RTCs if the calculated NOx emissions are
14 determined to exceed emissions 100 pounds of NOx per day.
- 15 10. During maintenance activities, Petitioner shall work as quickly as possible, including on
16 weekends and during daylight and evening hours, to conduct work that enables Petitioner
17 to repair the SCR (Device No. C1762).
- 18 11. In the event that Boiler No. 12 (Device No. D1760) experiences a trip or malfunction
19 during the interim variance period that requires shutdown of the device and affected
20 refinery equipment, Petitioner shall (i) notify Inspector Oscar Nieto Mora
21 (omora@aqmd.gov) within one hour; (ii) report a breakdown pursuant to Rule 430 and
22 Rule 2004; and (iii) upon re-start of Boiler No. 12 (Device No. D1760) reduce NOx
23 emissions in other combustion devices in the refinery.
- 24 12. Petitioner shall provide records (*i.e.*, Outlet NOx, NH₃, CO, O₂) SCR stack temperature;
25 SCR differential pressure; boiler firing rate) electronically to Inspector Oscar Nieto Mora
26 (omora@aqmd.gov) showing stable operation of the SCR following maintenance and/or
27 replacement of catalyst.
28

1 13. If compliance is achieved during the interim variance period, Petitioner shall notify the
2 Clerk of the Hearing Board (clerkofboard@aqmd.gov) in writing, and notify Inspector
3 Oscar Nieto Mora via email(omora@aqmd.gov) or by calling 1-800-CUT-SMOG
4 (Attention: Oscar Nieto Mora) to report a Variance Notification of compliance within two
5 (2) hours of achieving final compliance.

6 14. Petitioner shall pay all applicable fees to the Clerk of the Hearing Board or the variance
7 shall be invalidated pursuant to Rule 303(k), except for excess emissions fees, which shall
8 be paid within fifteen (15) days of notification in writing that the fees are due, unless
9 otherwise ordered by the Hearing Board.
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11 Prepared by Viviana L. Heger
12 and reviewed by Ryan P. Mansell
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