

The District has prepared the following responses to the comments contained in this letter.

Each comment consists of 1) a suggestion for action or change, and 2) the argument, if any, supporting the suggestion.

The comments identified by the District have been numbered. Refer to the attached copy of the original comment letter for the comment numbers. Some responses below refer to District responses found in the Consolidated Responses to Comments (“CRC”) document. References to that document will be in one of two forms. A reference will be either to a section in the introductory portion of that document (e.g., “see CRC § 1.A.”) or to a numbered response to specific comments (e.g., “see CRC Response #155”).

	<b>Response</b>
1.	The District has addressed errors and inconsistencies where it has found them or where commenters have pointed them out. The District views this as a useful result of the public comment process.
2.	The format for the District’s response to comments is similar to that employed by EPA in its rulemakings, and has proven useful both the public and EPA. The Overview section of the consolidated responses is just that. It does not stand in lieu of responses to any specific comment received. Comments were segregated by facility to the extent indicated in the comment. The author of each comment was generally not indicated in the summary of the comment because that information was considered inconsequential.
3.	Other than a longer comment period, it is unclear what this comment is suggesting that did not occur. Reviewers were able to see the entire text of the permit, and also had access to redline/strikeout version that showed where specific changes had been made relative to the version that had previously been publicly noticed.
4.	The position taken in the comment – that the permit issued must be the identical to what was publicly noticed – does not comport with the District’s understanding of general administrative law principles. Meaningful public review entails that well-reasoned comments carry substantial weight and may affect the substance of the final action relative to that which was proposed. Though principles of “notice and comment” require that the final action bear a sufficient resemblance to the proposed action, the District is unaware of precedent supporting the view that any substantive change between a proposed and final action necessitates a new public notice.
5.	The argument supporting a suggested change does not provide sufficient information or analysis to support the change. No change has been made to the permit. All comments submitted earlier have been addressed.
6.	The District addressed the issue of whether the requirement to obtain a preconstruction permit is an “applicable requirement” in Section 3.D of the CRC. Though the commenter disagrees with the District’s interpretation of that phrase, the District believes this disagreement over semantics is without substantive import. One issue raised in this and similar comments seems to be whether a Title V permit can issue if a facility is required to obtain a preconstruction permit but has not yet obtained the needed permit. In the District’s view, if such a situation existed and was supported by fact, then the Title V permit would have to include, at the least, a schedule of compliance with milestones for obtaining the needed permit. The District does not agree, however, that Title V creates an obligation on the permitting authority to investigate all possible NSR violations and essentially prove their non-existence as prerequisite to issuing the Title V permit. To the extent this is the commenter’s assertion, the District believes it is without legal support. Moreover, from a policy standpoint, it would make no sense to hold issuance of the Title V permit (itself an important enforcement tool) hostage to completion of a potentially interminable effort to prove a negative, namely, the absence of preconstruction permitting violations.
7.	The District disagrees with what it takes to be the commenter’s underlying argument, namely, that any documents that relate to a Title V facility and that are subject to release under the PRA must be considered relevant to the Title V permit issuance, and must be produced during the public comment period. Given the limited time and resources available to produce the large volume of documents requested <i>during the public comment period</i> , the District did its best to produce as much as it could according to the priorities articulated by the requestors. A request to produce the entirety of the refinery files retained by the District cannot be complied with in the space of 90 days. From a Title

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	V standpoint, this is not a necessary occurrence.
8.	The District fails to understand the commenter's analogy to the <u>NYPIRG</u> case. Consistent with Part 70, Regulation 2-6 provides that, absent a District finding to the contrary, applications shall be deemed complete 60 days after their submittal. Whether or not applications are deemed complete, the District has authority to request further information from the facility. The District has not argued "harmless error" because it has not acknowledged any error in this regard. It is the District's view that, as a legal matter, the time to contest the adequacy of the applications has long since passed. The proper focus now is on the adequacy of the issued permit.
9.	The argument supporting a suggested change is factually incorrect. No change has been made to the permit. All recertifications required under 2-6-426 have been submitted.
10.	The argument supporting a suggested change does not provide sufficient information or analysis to support the change. No change has been made to the permit. The comment did not identify any sources that should have been included, but were not. [see NEW inserted responses 10a, and 10b below]
10a.	The Supremacy Clause is not at issue. The Part 70 regulations set forth minimum criteria for approval of state and local Title V programs. EPA approves a state or local program by finding that those minimum criteria have been met. It follows that the permitting authority acts consistently with Part 70 when it complies with its approved program. The passage quoted from an EPA objection appears to address whether SIP-approved provisions can be supplanted as applicable requirements. The passage is thus off-topic relative to the commenter's argument.
10b.	The comment asserts that because the compliance plan language of Part 70 calls upon the permit to describe the compliance status of the facility, it follows that the permitting authority has an obligation to investigate and identify all instances of non-compliance. The District disagrees. The quoted language from Part 70 means that documented instances of ongoing non-compliance would have to be addressed in the permit. In any event, the point is academic. The only violations that can be discussed are those that are known and documented.
11.	The argument supporting a suggested change is factually incorrect. No change has been made to the permit. The District may investigate allegations of noncompliance, which may in turn lead to substantiation of violations and subsequent action regarding the Title V permit. However, the District does not have authority to deny a permit or establish a schedule of compliance based on allegations alone. See CRC Section 3.
12.	The argument supporting a suggested change is incorrect as a matter of law. No change has been made to the permit. The District evaluates issues concerning evidentiary support for proving violations on a case by case basis. Though any specific number drawn from the emissions inventory number might be accurate, the process by which the inventory is created and maintained does, standing alone, provide a sufficient level of confidence. The District would not use an emissions inventory statistic for purposes of determining compliance without further verification of its accuracy. Qualification for permit exemptions should be judged based on the most credible evidence available. In many cases, the best information available to determine exemption status derives from the emissions inventory.
13.	The argument supporting a suggested change is incorrect as a matter of law. No change has been made to the permit. For sources that are in compliance when the permits are issued, the requirement for a schedule of compliance is satisfied by the statement that the source will continue to comply that is contained in Section V.
14.	The District's prior response still stands. The comment is too vague to respond to.
15.	The argument supporting a suggested change is incorrect as a matter of law. No change has been made to the permit. The accuracy or lack thereof of the emission inventory is not a bar to issuance of a valid permit. Whether the emissions inventory needs correction must be answered by examining whether it adequately serves its intended purpose as a planning tool.
16.	The argument supporting a suggested change is incorrect as a matter of law. No change has been made to the permit. See CRC Section 3.
17.	The comment incorrectly names ConocoPhillips. The comment should be directed at the Chevron permit. The argument supporting a suggested change is incorrect as a matter of fact. No change has been made to the permit. There is no agreement between the District and any of the refineries that would preclude prosecution of unresolved NSR violations. Furthermore, the comment's characterization of the revised firing rates as "known NSR violations" is incorrect. At most, they are "suspected" NSR violations. Further investigation is needed to

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	determine whether the higher firing rates are the result of physical modifications or changes in method of operation.
18.	The argument supporting a suggested change is incorrect as a matter of fact. No change has been made to the permit. The throughput levels for grandfathered sources are not limits, and therefore neither permit nor prohibit a change in throughput. NSR is triggered by a change in method of operation or physical modification, not a change in throughput. The throughput capacities included in the Title V permit represent design or demonstrated capacities. Where the demonstrated capacity is higher than the design, the District may undertake an investigation to determine whether a physical modification or change in operation has occurred. If that is the case, the District must then determine whether an emission increase has resulted. Only then may the District determine that an NSR violation has occurred. See CRC Response 89. The change in approach to grandfathered sources was, in part, a response to this and other commenters who expressed concern that the Title V permits may be construed as authorizing NSR increases. In response, the District has made it abundantly clear in the permit and supporting documents that this is not the case. In light of this, the District fails to understand the commenter's continued objections regarding this issue.
19.	The argument supporting a suggested change is incorrect as a matter of fact. No change has been made to the permit. The throughput levels for grandfathered sources are not limits, and therefore neither permit nor prohibit a change in throughput. See previous response.
20.	The argument supporting a suggested change is incorrect as a matter of fact. No change has been made to the permit. The throughput levels for grandfathered sources are not limits, and therefore neither permit nor prohibit a change in throughput. See previous response.
21.	The argument supporting a suggested change is incorrect as a matter of fact. No change has been made to the permit. The throughput levels for grandfathered sources are not limits, and therefore neither permit nor prohibit a change in throughput. See previous response. Furthermore, the Title V permit is not a project, because it cannot "cause" either a direct or indirect physical change in the environment. Title V is, by its nature, a compilation of existing requirements and permits, and not a cause of new ones.
22.	The argument supporting a suggested change is incorrect as a matter of law. No change has been made to the permit. Because the throughput threshold are state-only requirements, they cannot be a bar to issuance of the Title V permit. Reporting thresholds for grandfathered sources were established pursuant to the District's 2-1-403 authority, and not in satisfaction of any Title V requirement. Prior to the advent of Title V, the thresholds would have been established in non-Title V District permits under that authority. Here, the thresholds were established under that authority simultaneously with their incorporation into the Title V permit. The District acknowledges that reporting thresholds are not as useful as emissions limits, but believes they will be useful nonetheless. The thresholds create a reporting obligation that previously did not exist, and that will at least serve as an alert that further investigation regarding compliance with NSR is warranted. The District has made it abundantly clear in the permits, in the statement of basis, and in responses to comments, that compliance with the thresholds is not to be construed as indicating compliance with NSR.
23.	The argument supporting a suggested change is incorrect as a matter of law. No change has been made to the permit. The comment is based on a speculative and inaccurate portrayal of the use of the thresholds and their evidentiary and regulatory status.
24.	The comment suggests a change that clarifies or improves the permit, but cannot be made at this time. No change has been made to the permit. The District will consider incorporating the suggestion at a later date. As explained above, establishment of reporting thresholds for grandfathered sources is not required under Title V or any other District regulation. It follows that the District may establish such thresholds for only certain sources, and may postpone establishment for those sources where further investigation is needed.
25.	If ongoing violations exist at the time permits are to be issued, the District will take appropriate action. In general, however, the District does not interpret the directive that Title V permits "assure compliance" as meaning that the permit is invalid because future violations may occur. See CRC, Section 3.
26.	The argument supporting a suggested change does not provide sufficient information or analysis to support the change. No change has been made to the permit. The comment has not suggested an alternative monitoring condition, nor provided a basis for selecting it in preference to the one proposed by the District.
27.	The argument supporting a suggested change is incorrect as a matter of law. No change has been

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	made to the permit. The District did not have the legal authority to impose the conditions in the first place.
28.	The argument supporting a suggested change is incorrect as a matter of law. No change has been made to the permit. See CRC Response 177.
29.	The argument supporting a suggested change is incorrect as a matter of law. No change has been made to the permit. A judicial consent decree is not an applicable requirement, and it cannot be otherwise incorporated (as, for instance, a schedule of compliance) due to the fact that the District lacks the ability to enforce it. See CRC Response 178.
30.	See response to comment 27 above.
31.	The argument supporting a suggested change is incorrect as a matter of fact. No change has been made to the permit. The underlying odor problem has been resolved. Furthermore, the District lacks the authority to prohibit complying activities on the speculative ground that they may someday be non-complying.
32.	The argument supporting a suggested change is incorrect as a matter of law. No change has been made to the permit. The legal basis for the suggestion is incorrect: no legal basis for imposing the requested monitoring exists.
33.	The argument supporting a suggested change is incorrect as a matter of fact. No change has been made to the permit. The comment mischaracterizes the response to comments. The permit conditions are included in the permit. See CRC Response 192.
34.	The argument supporting a suggested change does not provide sufficient information or analysis to support the change. No change has been made to the permit. In several instances, the District has revised or eliminated permit shields from the refinery Title V permits in response to comments received. However, this comment did not specify a basis for re-examination of any particular shield provision.