

March 16, 2014

To: U.S. Chemical Safety Board

Re: Comments on January 29, 2014 Draft Report on the Tesoro Refinery Disaster

The undersigned organizations commend the **U.S. Chemical Safety Board (CSB)** for recommending that the U.S. Environmental Protection Agency (EPA) issue new rules requiring the use of inherently safer technology (IST) in their January 29, 2014 draft report on the fatal Tesoro refinery disaster which claimed the lives of seven workers:

http://www.csb.gov/assets/1/19/Tesoro_Anacortes_2014-Jan-29_Draft_for_Public_Comment.pdf

We strongly urge the CSB to retain these recommendations in its final report and incorporate similar recommendations in future reports. The only foolproof way to prevent tragic consequences is through the use of safer chemicals and processes. When safer alternatives are available, effective, and affordable, they should be required.

The EPA now has an additional incentive to act thanks to the President's August 1, 2013 Executive Order (EO) 13650, Improving Chemical Facility Safety and Security. The intention of this EO is "to improve and modernize key policies, regulations, and standards to enhance the safety and security of chemical facilities" to be included in a report to the White House due approximately May 1, 2014.

Section 112(r)(7)(A) of the Clean Air Act provides the EPA broad authority to regulate chemical facilities in order to prevent "accidental" discharges:

In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. Regulations promulgated under this paragraph may make distinctions between various types, classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to, the size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present at any stationary source. **Regulations promulgated pursuant to this subparagraph shall have an effective date, as determined by the Administrator, assuring compliance as expeditiously as practicable.** 42 U.S.C. § 7412(r)(7)(A).

This authority clearly encompasses the power to require the use of safer technology to reduce or eliminate quantities of extremely hazardous substances. The provision specifically authorizes the imposition of "design" and "operational" requirements, and further authorizes EPA to make distinctions among facilities based on "process controls, quantity of substances handled, [and] potency of substances." This authority is ideally suited to serve as the basis for regulations that require that facilities be designed and operated in such a manner as to minimize quantities of highly potent hazardous substances. And it permits regulation of any stationary source, thus permitting the agency to regulate without regard to whether "threshold" quantities of substances are present (as under regulations pursuant to § 112(r)(7)(B)) and without restrictions on the types of facilities subject to regulation (such as the limits imposed on DHS in establishing the CFATS regulations).

The EPA's authority is also consistent with the intent of Congress. As the Senate Report on the 1990 legislation that added § 112(r) to the Clean Air Act explains, such measures were viewed by Congress as the best way to achieve the statutory goal of preventing accidental releases:

The objectives of the proposed section ... include both the prevention of accidental releases and the minimization of the consequences which may result. Systems and measures which are effective in preventing accidents are preferable to those which are intended to minimize the consequences of a

release. ***Measures which entirely eliminate the presence of potential hazards (through substitution of less harmful substances or by minimizing the quantity of an extremely hazardous substance present at any one time), as opposed to those which merely provide additional containment, are the most preferred.***

On behalf of the workers and communities at risk, we thank you for your work on the Tesoro report and its recommendations on IST.

Sincerely,

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