Western States Petroleum Association
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Bob Brown
Director, Bay Area Region

May 8, 2017

Mr. Victor Douglas
Principal Air Quality Specialist
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105

via email at: vdouglas@baaqmd.gov

Re: Comments of the Western States Petroleum Association on Proposed Rule 12-16, and Draft Environmental Impact Report for Proposed Rules 11-18 and 12-16

Dear Mr. Douglas:

The Western States Petroleum Association (WSPA) is a non-profit trade association representing twenty-six companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California, Arizona, Nevada, Oregon, and Washington. Our members in the Bay Area have operations and facilities regulated by the Bay Area Air Quality Management District (District).

WSPA has significant concerns with regard to the District's proposed Regulation 12, Rule 16 (Rule 12-16), and the Draft Environmental Impact Report (DEIR) for Rule 11-18 and Rule 12-16, as described more fully in Attachments A, B, and C. WSPA understands that the District intends to vote only the adoption of Rule 12-16 at the end of May, and so our legal comments are focused on Rule 12-16 only. However, we are addressing the CEQA aspects of both Rule 12-16 *and* Rule 11-18, because the District's DEIR covers both rules.

WSPA appreciates the BAAQMD's consideration of our comments and we look forward to your responses. If you have any questions, please contact me at this office or Kevin Buchan at (925) 266-4083 or email kevin@wspa.org.

Sincerely,

cc: Kevin Buchan, WSPA

Enclosure: WSPA Comments on Proposed Rule 12-16 (Attachment A), and DEIR for Proposed Rules 12-16 and 11-18 (Attachments B and C)

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Attachment A: WSPA Legal Comments on Proposed Rule 12-16

As the District is aware, WSPA submitted comments on the District's Project Description for Rule 12-16 on September 9, 2016, and on the District's Proposed Draft Rule 12-16 on December 2, 2016. WSPA continues to have significant concerns with the conceptual goal of Rule 12-16 and with the practical implementation of the rule's provisions. In general, WSPA agrees with District Staff's assessment that Rule 12-16 would not withstand judicial scrutiny. Proposed Rule 12-16 is inconsistent with existing federal and state air programs, would not be in harmony with the state cap and trade program for greenhouse gas emissions, arbitrarily limits specific refinery emissions to levels that are not necessary to protect local communities, and is beyond the District's statutory authority.

WSPA has submitted multiple letters and sets of comments to the District discussing its concerns over the legality of imposing numeric caps on emissions of GHGs, PM_{10}, $PM_{2.5}$, NO_x, and SO_2 from petroleum refineries. WSPA summarizes its concerns here, and incorporates by reference its past comment letters on Rule 12-16.[1]

The Board Cannot Adopt Rule 12-16 Without Making the Six Statutory Findings Required under the California Health and Safety Code

Prior to adopting a new or amended rule, the District must make six statutory findings: necessity; authority; clarity; consistency; non-duplication; and reference. Cal. Health & Safety Code § 40727. The Staff Report to Rule 12-16 was prepared "[a]t the direction of the Board … to provide an assessment of the rule's consistency with the Air District's statutory authority." Staff Report, at 5. The Staff Report fails to make these required findings; in fact, it cannot, because District Staff have concluded that adoption of Rule 12-16 would likely be beyond the Air District's authority and/or arbitrary and capricious. *See* Staff Report, at 39. Assuming that the Board is considering Rule 12-16 for adoption, the Board cannot adopt proposed Rule 12-16 without first demonstrating that the rule is within the District's authority, and providing an opportunity for public review and comment on that analysis. *See id.* § 40727.2(a) & (i).

Numeric Emissions Caps are Not Necessary

The numeric emissions caps under proposed Rule 12-16 are not necessary to protect public health or to address an existing air quality concern in the Bay Area. Emissions of GHGs, PM_{10}, $PM_{2.5}$, NO_x, and SO_2 are already extensively regulated at the federal, state, and local level. As the Staff Report explains, these rules apply standards "that ensure emissions are effectively controlled." Staff Report, at 13. Further, the broad range of air quality regulations that have been adopted by the District, California Air Resources Board (CARB), and the U.S. Environmental Protection Agency (EPA) were designed to ensure that emissions decrease over time and air quality improves. And indeed, existing ambient monitoring data and emissions inventories demonstrate just that: there have been consistent decreases in emissions and

[1] WSPA Comment Letter on Proposed Reg. 6-5, 8-18, 9-14, 11-10, 12-15, and 12-16 (Nov. 23, 2015); Marne S. Sussman (Pillsbury Winthrop Shaw Pittman LLP), letter to Honorable Chair Mar, and Members of the Board of Directors, Bay Area Air Quality Management District, "Re: Legal Issues Pertaining to Refinery Emission Cap Option for Proposed Regulation 12-16" (July 19, 2016); WSPA Comment Letter on Draft Project Description for Regulation 12, Rule 16 and Regulation 11, Rule 18 (September 9, 2016); WSPA Comment Letter on Proposed Reg. 12-16 and 11-18 (Nov. 29, 2016).

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improvement in air quality in the Bay Area. *See, e.g.*, Staff Report, at 14 ("mass emissions generally have been substantially reduced over the past several decades").

Proposed Rule 12-16 does not address any *current* emissions problem. Rather, it is rooted in the *possibility* that refinery emissions will increase in the future based on an assumption that changes in crude oil sources (from traditional sources to heavier sources requiring more intensive processing) will affect refinery emissions. *See* Staff Report, at 9-10 ("The intent of Rule 12-16 is to discourage or prevent refineries in the Bay Area from making changes that would lead to increases in emissions of certain pollutants"). WSPA and its members have repeatedly pointed out in prior comment letters that the possibility that new sources of crude oil will result in increased emissions is not supported by the facts, because, as the Staff Report briefly mentions, each refinery is designed to process a certain range of crude oil feedstocks, and its emissions from these operations are limited by the terms of its permit. *See* Staff Report, at 8-9. Any physical changes made to refinery operations to accommodate a different crude feedstock would already trigger permitting requirements and new emissions limits under the District's existing New Source Review (NSR) rules.[2] Thus, increased emissions stemming from operational changes at a facility would already be within the District's permitting authority. The hypothesis that refinery emissions may increase in the future based on changes in crude slate therefore does not constitute a "need" for numeric emissions caps today, given the District's existing regulatory authority in this area.

Furthermore, the Board cannot legally adopt Rule 12-16 without supporting the need for selectively targeting petroleum refineries. WSPA agrees with the assessment in the Staff Report that the imposition of numeric emissions caps on petroleum refineries would effectively create "a different set of permitting rules" for refineries than other sources in the Bay Area "by limiting pollutants from one Bay Area industrial sector through a mechanism unique to that industry and [that is] unlike the mechanism for all other industrial sectors." Staff Report, at 37. Imposing a different regulatory scheme on refineries is not currently justified in either law or air quality science.

Proposed Rule 12-16 Would Conflict with Existing Local, State, and Federal Air Programs and Policies

Proposed Rule 12-16 is likely to restrict refinery emissions to levels that are lower than those authorized under the refineries' current operating permits. These permits were obtained in accordance with the District's existing regulatory program (the NSR program), following detailed technical analyses by the District of refinery operations and emissions data; by law, these permits incorporate emissions limits and control requirements that represent the most stringent of all existing regulatory requirements, within thresholds determined by District Staff to be protective of public health.

Proposed Rule 12-16 would establish a new emissions cap, not based on available technology or public health thresholds, but rather solely on historical emissions. This approach has no basis in science. Refineries have vested rights in operating consistent with the emissions levels in their legally obtained permits, and generally rely on being able to operate up to their permitted potential to emit if needed. Rule 12-16 would arbitrarily re-set those authorized limits, in direct conflict with the District's current permitting rules and policies, without any showing of necessity (as described above).

In addition, the Staff Report explains that, if adopted, the emissions limits shown for each pollutant in Rule § 12-16-300 would need to be adjusted over time for various reasons, including, for example, as

[2] *See* WSPA Comment Letter on Proposed Reg. 6-5, 8-18, 9-14, 11-10, 12-15, and 12-16, at pages 7-9 (Nov. 23, 2015); WSPA Comment Letter on Proposed Reg. 9-14 and 12-15, pages 9-11 (Feb. 22, 2016).

emissions measurement methods are improved, new information on criteria pollutants becomes available, or new regulations are adopted. Staff Report, at 23. However, no adjustments to the emissions limits would be made to accommodate new projects permitted through the NSR process, or recent projects permitted through the NSR process but still under construction. While this was an "intended consequence" of CBE's concept, it is an arbitrary and unjustified limitation on the permitting of new refinery projects. Staff Report, at 23. The Staff Report fails to describe how this limitation is necessary or within the District's authority. More importantly, this would directly conflict with existing policies and programs for permitting new projects in the Bay Area. The Clean Air Act (CAA) requires that the District's permitting program allow emissions increases at a facility as long as emissions are offset by an equal or greater amount of reductions of the same pollutant(s) from a location within the region. Staff Report, at 37. As the Staff Report explains, "Rule 12-16 would, in effect, eliminate that option for refineries and would require all emission increases to be offset within the individual facility." Staff Report, at 23. Thus, Rule 12-16 would directly conflict with the intent of the federal CAA and the District's NSR program to provide facilities with the maximum operational flexibility possible, within the constraints of the overall emissions limits that EPA, the State, and the District have determined are necessary to protect health and the environment. It would also disincentive refineries from investing in improvements to refinery facilities and technology, which technology could be intended to ultimately reduce a refinery's emissions.

GHG Caps are Ineffective, Counterproductive, and Inconsistent with Current State Efforts

Rule 12-16 would impose an enforceable limit on a refinery's direct emissions of GHGs. WSPA remains opposed to the localized regulation of GHG emissions from existing Bay Area refinery operations by the District. GHG emissions contribute to a global, not local, challenge; the local GHG regulation of refineries in the Bay Area Air Quality District are likely to simply shift GHG emissions elsewhere in the State or nation.[3] This has been recognized by District staff, the District's Advisory Council, CARB, and the Intergovernmental Panel on Climate Change.[4] Furthermore, the potential for rulemaking at multiple levels of government can lead to duplication of effort; or, of even more concern, regulations that work at cross purposes and undermine the effectiveness and efficiency of regulatory programs. WSPA supports pragmatic, market-based approaches to meeting California's climate goals, and is therefore concerned that the District's proposed GHG caps would undermine and interfere with the comprehensive refinery GHG regulations that CARB is developing as part of its state-wide GHG reduction scheme.

Given the significant existing efforts at the State level to regulate GHGs, Rule 12-16 raises significant concerns with the "authority," "consistency," and "nonduplication" requirements under the Health & Safety Code. As the Staff Report acknowledges, GHGs are regulated under the federal CAA and the California Global Warming Solutions Act (AB 32). AB 32 requires CARB to develop a comprehensive approach that California will take to reduce GHG emissions to levels mandated by the Legislature. In 2016, the California Legislature approved SB 32, which extends California's GHG emissions targets through 2030, with an objective of achieving a 40% reduction in emissions as compared to 1990 levels.

[3] Although local regulations may reduce Bay Area GHG emissions, there remains a real potential for these regulations to increase global GHG emissions, which would work at cross-purposes to California's climate goals. The five Bay Area refineries that are the target of these rules represent some of the most efficient, highly-regulated refineries in the world. Ordering these refineries to reduce GHG emissions may require them to pursue a variety of different options, including curtailing production operations (which would necessarily increase production elsewhere to meet the demand for the products these refineries create) to meet the proposed requirements. To the extent that these options simply result in more processing by refineries that are not local, they result in no reduction in global GHGs; indeed, they would likely increase overall GHG emissions, as non-California refineries increase production to offset the decreases in production from the Bay Area.

[4] *See* WSPA Comment Letter on Project Description for Reg. 12-16 and 11-18 (Sept. 9, 2016).

On January 20, 2017, CARB released its proposed "2017 Climate Change Scoping Plan Update" (the "Proposed Scoping Plan") – its fifth update to the Scoping Plan, which specifically implements the new targets imposed by SB 32.[5] CARB has announced numerous public hearings on the Proposed Scoping Plan to take place in 2017, and is currently engaged in extensive efforts to improve and finalize the Proposed Scoping Plan and amendments to CARB's current GHG regulations. The cornerstone of the Proposed Scoping Plan is California's Cap-and-Trade Program, which is a comprehensive, economy-wide program to reduce GHG emissions in California.

In addition to AB 32 and SB 32, AB 197 compels CARB to prioritize "[e]mission reduction rules and regulations that result in direct emission reductions at large stationary sources of greenhouse gas emissions." Cal. H&S Code § 38562.5. Again, the Proposed Scoping Plan addresses these obligations, imposing "prescriptive regulations for refineries that would reduce greenhouse gases" and other air emissions, and in particular targeting a "20 percent reduction in greenhouse gas emissions from the refinery sector." Proposed Scoping Plan at ES3, ES5. The Legislature's decision to authorize CARB – and not the District – to seek these direct GHG emissions reductions continues its longstanding strategy of harmonizing GHG reductions at the *state* level, not within individual air districts.[6]

Even assuming the District had the authority to implement Rule 12-16, at best, that rule would merely duplicate the program developed by CARB, in violation of the "nonduplication" requirement. At worst, Rule 12-16 has the potential to interfere with CARB's efforts to implement its own regulations in a reasoned and effective manner, in violation of the "consistency" requirement. CARB is not planning to adopt refinery-focused GHG measures until at least late June, 2017. WSPA is concerned that the District's decision to proceed with GHG emissions caps at this time – before CARB itself has evaluated the available options and determined the most appropriate course of action – will instead create a duplicative, potentially inconsistent, and unnecessary regulatory scheme, and interfere with an orderly implementation of the Proposed Scoping Plan.

Further, refineries already are extensively regulated for GHG emissions. They are subject to California's Cap-and-Trade program; they must comply with CARB's Low Carbon Fuel Standard (which already regulates the carbon intensity of transportation fuels); and they will soon be subject to another statewide program aimed at further direct reductions in refinery GHG emissions once CARB determines the appropriate course of action. Given CARB's prior success in reducing GHG emissions across California, and the Legislature's express grant of authority to CARB to regulate in this area, the District's efforts are unnecessary, disruptive, and will impose a layer of burdensome bureaucracy that has little or no environmental benefit.

Rule 12-16 is Not Within the District's Authority to Adopt

In proposing a new rule or regulation, H&SC § 40001 requires that the District "determine that there is a problem that the proposed rule or regulation will alleviate and that the rule or regulation will promote the attainment or maintenance of state or federal ambient air quality standards[.]" *Id.* § 40001(c). As discussed above, the District has not identified an air quality problem that would justify the numeric emissions caps in Rule 12-16, nor has the District demonstrated that Rule 12-16 would promote the attainment or maintenance of the NAAQS. This is because Rule 12-16 addresses a problem that *may*

[5] *See* CARB, 2017 Climate Change Scoping Plan Update (Jan. 20, 2017), *available at* https://www.arb.ca.gov/cc/scopingplan/2030sp_pp_final.pdf

[6] While CARB may elect "to partner with California's local air districts," it has yet to determine whether to do so and is currently considering a range of possibilities.

occur; the District does not have the authority under the federal Clean Air Act to adopt regulations that do not address existing air quality issues.

Emissions Caps Based on Historical Emissions are Technically Problematic

WPSA incorporates by reference its discussion of this issue in WSPA's comment letter dated November 29, 2016.

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Attachment B: WSPA Legal Comments on the DEIR for Rules 11-18 and 12-16

The California Environmental Quality Act ("CEQA") requires the District to consider the whole of a Project, including both direct and indirect environmental impacts from the entire project. Public Resources Code, § 21000 *et seq*. CEQA is further implemented by the CEQA Guidelines, Title 14, California Code of Regulations, § 15000 *et seq.* Proposed Rules 12-16 and 11-18 are part of a suite of regulations identified by the District as the Petroleum Refinery Emissions Reduction Strategy (Refinery Strategy). The combined suite of regulations is part of a larger plan to reduce purported refinery emissions in the Bay Area by at least 20% within just a few years.

WSPA has previously provided CEQA comments for proposed Rules 12-16 and 11-18, which comments are incorporated by reference here.[7] The following comments pertain to the District's March 2017 Draft Environmental Impact Report (DEIR) for proposed Rules 12-16 and 11-18. The various substantive issues WSPA raises below clearly show that the District has not complied with CEQA in preparing and analyzing Rules 12-16 and 11-18.

CEQA prohibits "segmenting" projects to create the appearance of a lesser degree of impact. Agencies must consider and evaluate "the whole of an action" when they adopt new rules and cannot chop up actions into smaller components to minimize impacts or evade review. Cal. Code Regs. tit. 14, § 15378(a). To date, the District has consistently segmented and limited its analyses to individual rules, excluding consideration of the rules it has recently adopted as part of the "Refinery Strategy" (Rules 6-5, 8-18, 11-10, 12-15 and 9-14) and the rules currently under development (Rule 13-1) pursuant to this same strategy. WSPA has previously commented upon the segmenting issue, and WSPA incorporates those comments by reference here.[8] However, the March 2017 DEIR for Rules 12-16 and 11-18 attempts to review two regulations within the same DEIR, with confusing results. The District attempts to review, in its words, two Projects (asserting that each Rule is a separate project) in one EIR. The project description is therefore confusing and does not properly inform the public what project is being considered. The District needs to provide the citation in CEQA that allows for two separate projects to be reviewed in an EIR that is not, for example, a programmatic EIR.

The District cannot piecemeal the analysis of environmental impacts from the Petroleum Refinery Emissions Reduction Strategy project that are clearly derived to work toward the common goal of a 20% emissions reduction target. Furthermore, the District must ensure that its analysis and findings are based upon credible substantive evidence, that a reasonable range of alternatives are considered, that the project decisions meet the purpose and need, significant impacts are avoided or mitigated and that the whole of the action is identified and analyzed. The District has failed to meet the requirements for preparing an EIR that properly informs the decision-maker and the public.

The District should have prepared an EIR for the Refinery Strategy project. "The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." Pub. Res. Code § 21061. The EIR is the informational document that must be considered by the public agency prior to its approval or disapproval of the project. Without a true analysis of the whole

[7] *See* references in footnote 1.
[8] *See* references in footnote 1; *see also* WSPA Comment Letter on Proposed Reg. 9-14 and 12-15 (Feb. 22, 2016); WSPA Comment Letter on Proposed Reg. 12-15 (Apr. 8, 2016); WSPA Comment Letter on Proposed Reg 13-1 (Apr. 21, 2017).

project, it is impossible to quantify and understand the magnitude of the impact the adopted and proposed changes will have on the environment.

The following comments highlight WSPA's substantive issues with the District's analysis in the DEIR. Please also see Attachment C for WSPA's technical comments with the District's DEIR:

Page 1-1, Executive Summary, first paragraph.

The DEIR states: "*Though refinery emissions have declined over time, it is possible that, as refinery operations change in the future, emissions of these pollutants could increase.*"

Comment: It is more likely that emissions will continue to decline. Existing permit conditions, regulations and plans are in place that limit emissions and allow for offsets. Furthermore, any new projects that might increase emissions would be regulated under the District's existing NSR program and would require the installation of controls and compliance with strict emissions limits.

Pages 1-1 and 1-2.

(a) **Comment**: The District states that the development of these rules was included as Action Item 4 in the Air District's Work Plan for Action Items Related to Accidental Releases from Industrial Facilities. This same Action Item is, according to the District, the genesis for the District's Petroleum Refinery Emissions Reduction Strategy (Refinery Project), which is a project to reduce refinery emissions by 20%. The Staff Report also makes clear that the District believes that the suite of rules (the Refinery Project) are bundled to achieve the common goal of a 20% reduction. WSPA and its members have filed multiple lawsuits challenging the District's adoption of various aspects of the Refinery Project as violating CEQA in light of the District's failure to develop a comprehensive EIR for the entire Refinery Project.[9] Because Rules 12-16 and 11-18 are part of the same Project, the impacts must be considered together with the impacts from the other Refinery Project rules.

As the cited pages describe, the District is proposing Rule 11-18 as an alternative to Rule 12-16. However, the District's Staff Report concludes that Rule 12-16 is likely contrary to law, arbitrary and capricious, and will not improve air quality. *See* Staff Report, at 36 – 37. The District states that there is no factual support for selectively targeting the petroleum refinery industry for emissions caps, that the rule would conflict with existing permits and regulations in place that address the issue and that Rule 12-16 is unlikely to improve air quality in refinery communities. *See* Staff Report, at 36-37. As described in Attachment A, WSPA agrees with the District's assessment of Rule 12-16. However, to the extent that the Board relies on the DEIR for purposes of adopting or rejecting Rule 12-16, the DEIR needs to articulate the purpose and need/objectives for Rule 12-16 and then provide a more thorough explanation as to why the Rule should not be adopted given its failure to meet the purpose and need.

(b) **Comment**: The Staff Report explains that the District does not believe that Rule 12-16 will be effective and will not improve air quality in refinery communities. *See* Staff Report, at 1, 14. The DEIR explains that for the No Project alternative for Rule 12-16, the control of the identified emissions would

[9] Western States Petroleum Association , et al. v Bay Area Air Quality Management District (filed in Contra Costa County Superior Court, case number N16-0963); Valero Refining Company—California, Tesoro Refining & Marketing Company, LLC, and Phillips 66 Company v. Bay Area Air Quality Management District (filed in Contra Costa Superior Court, case number N16-0095).

continue to be addressed by the District's current programs, including "the rules and rule amendments of the Refinery Strategy". *See* DEIR, at 1-15 (Section 1.5.2). The District states that the primary differences between Rule 12-16 and the No Project alternative is that the collection of identified measures that the District would continue to use if Rule 12-16 is not adopted "would not only prevent the increase of climate and combustion criteria pollutants, but would result in substantial decreases of these pollutants over time" whereas Rule 12-16 does not require emissions reductions.

In order for the Board to adopt Rule 12-16, the District would need to articulate why Rule 12-16 is necessary, what the actual purpose and need for the project is and why this proposed regulation (that conflicts with other regulatory procedures and will not improve air quality in refinery communities) is warranted.

Page 1-5, Section 1.3.3, Project Objectives.

Comments: Regarding the objectives of Rule 11-18 (Toxic Risk Reduction Rule), how does the District intend to define, identify and quantify "overburdened communities" as stated in the second bullet point? There is no discussion of this issue in the DEIR. In addition, regarding the Health Risk Assessment objectives (to "provide transparency and clarity to the process" and "provide the public opportunity to comment"), the District must articulate what Rule 11-18 would provide that is not already required by the public rulemaking process and CEQA.

The objectives of Rule 12-16 also are captured in existing permits and regulations such as the New Source Review requirements. The objectives conflict with existing regulations and programs such as Cap and Trade and offsets. The District needs to explain how Rule 12-16 will not conflict with or violate existing permits, regulations, and statewide programs.

Page 1-10, Section 1.4.2.2, Greenhouse Gas Emissions Impacts.

Comment: The analysis in the DEIR states that the proposed refinery limitations in Rule 12-16 would not be expected to conflict with CARB's Cap and Trade Program because covered entities could continue to use GHG credits for compliance purposes and that GHG increases could continue to be offset. However, under Rule 12-16, a refinery "*shall not emit greenhouse gas emissions that exceed the emissions limits shown in Table 12-16-301*." *See also* Staff Report at 37-38 ("…*there is a significant argument that a fixed numeric cap for criteria pollutants conflicts with these federal and state provisions that allow facilities to increase emissions if certain conditions are met. It may be difficult to legally justify the necessity for such a measure…")*

The District needs to clarify how the emissions cap listed in Rule § 12-16-301 allows refineries to use GHG credits for compliance purposes, as asserted on page 1-10 of the DEIR.

Page 1-14, Section 1.5.1, Project Alternatives for Proposed Rule 11-18.

The DEIR states that portions of 11-18 could be implemented under the Air District's AB 2588 – Air Toxics "Hot Spots" Program. The District states that with Alternative 1.2, the District would establish risk action levels at 25/M for cancer risk and 2.5 for hazard indices.

Comment: The District needs to ensure that Alternative 1.2 does not conflict with other District regulations and is feasible.

Page 2-7, Section 2.4.2, Project Description.

Comment: The project description is confusing. The DEIR states that District staff does not recommend adoption of Rule 12-16 and instead recommends adoption of Rule 11-18. *See* DEIR, at 2-1.

Furthermore, Section 4.0 of the DEIR contains a discussion of project alternatives. Tables 4-2a on page 4-18 and 4-2b on page 4-19 have a column identified as the "proposed project" but no clear "proposed project" has been identified. The District appears to be putting forth two proposed projects in the same DEIR. The District is actually proposing alternatives for the decision maker: Alternative 1 is to adopt Rule 12-16 (or variations of Rule 12-16); Alternative 2 is to adopt Rule 11-18 (or variations of Rule 11-18); Alternative 3 is to adopt both; and Alternative 4 is to adopt Rule 11-18 together with Rule 13-1, which rule is still under development. Note that neither the alternatives discussion or Tables 4-2a or 4-2b include the alternative to adopt Rules 12-16 and 11-18 together, yet there is discussion of this alternative in the document.

The situation is even more confusing since the decision maker and the public are to review the information to assess what alternative best fits the purpose and need of the project; but here there are, as the District asserts, two projects in the DEIR. The DEIR is flawed because it confuses "alternatives" with "project" and does not provide for a clear purpose and need for the actual proposed project; as noted above, the project is actually the Refinery Project.

Page 2-8, Table 2.4-1, Implementation Phases.

Comment: Appears to be an error for diesel IC Engines under the HRA column. What is the correct range of years so the correct information can be reviewed?

Page 3.1-4, Section 3.1.5, Cumulative Impacts.

Comment: The District needs to articulate how this DEIR evaluates the cumulative environmental impacts associated with the planning and implementation of other air quality rules recently adopted and reasonably foreseeable similar regulations (Refinery Project Rules 6-5, 11-10, 8-18, 12-15, and 9-14), proposed regulations (Rule 13-1), and any planned regulations or amendments to regulation (Rules 2-1 and 2-2, for example). Furthermore, the DEIR is flawed because it identifies Rule 13-1 as an alternative but does not perform a cumulative impact analysis with any of the Refinery Project rules, or even Rule 11-18, which is included as an Alternative in this DEIR.

Page 3.2-9: TABLE 3.2-4, "2011 Air Emission Inventory – Annual Average".

The footnote to Table 3.2-4 states that the source of the information is from "Bay Area Emission Inventory Summary Report: Criteria Air Pollutants (BAAQMD, 2014)". The following paragraph then cites a BAAQMD 2017 statement: "*Approximately 84 percent of NOx emissions in the Bay Area are produced by the combustion of fuels. Mobile sources of NOx include motor vehicles, aircraft, trains, ships, recreation boats, industrial and construction equipment, farm equipment, off-road recreational vehicles, and other equipment. NOx and VOC emissions have been reduced for both stationary and mobile sources. Stationary sources of VOC and NOx have been substantially reduced due to stringent District regulations (BAAQMD, 2017).*"

Comment: The District should use more recent data for this EIR than the 2011 emission inventory. The District needs to state why it is using 2011 annual emissions data for a 2014 Inventory Summary Report in a 2017 DEIR. Furthermore, the District follows Table 3.2-4 with a discussion of how the air has improved and cites percentages. However, the source of that information is not provided and needs to be

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provided. The public and the decision-maker should be provided with the most current data to properly assess the impacts and mitigation.

Page 3.2-17 (top of the page) and Page 3.2-22, Section 3.2.3.2, Operational Emissions.

Comment: Rules 12-16 and 11-18 are part of the Refinery Project, which project is designed to reduce emissions at refineries by 20%. The example on the pages given above, that one control measure may result in increasing criteria pollutant emissions and the opportunity to offset, applies to the Refinery Project. The Refinery Project's suite of regulations must be reviewed in a cumulative and comprehensive manner in order to determine whether there is a significant impact upon the environment and to properly inform the decision maker and public. *See* CEQA Guidelines § 15130. The Refinery Project shares a common goal and identifies regulations that will be amended and/or created in order to achieve that goal. Rules 12-16 and 11-18 must be analyzed for cumulative impacts, not just between the two, but together with the recently adopted Refinery Project rules (6-5, 11-10, 8-18, 12-15, and 9-14), proposed regulations (Rule 13-1) and any planned regulations or amendments to regulation (Rules 2-1 and 2-2, for example).

An example of how the Refinery Project's suite of regulations could cumulatively negatively impact the environment, and therefore must be cumulatively analyzed, is exhibited on DEIR page 3.2-37. The language states that "*As summarized in Tables 3.2-19 and 3.2-20, Rule 11-18 and Rule 12-16, respectively, could produce substantial construction air quality impacts if larger types of air pollution control equipment are installed. This impact would be compounded if more than one piece of air pollution control equipment is installed on the same day or both rules are adopted. Again, because Rule 11-18 would potentially regulate a substantially greater number of industrial sources, it would create greater air quality impacts than Rule 12-16.*"

Another example is shown on 3.2-39: "***Conclusion:*** *Based on the construction emissions shown for each rule in Tables 3.2-19 and 3.2-20, it is concluded that NOx construction air quality impacts may be significant under either rule scenario and potentially more significant if both rules are adopted.*" (emphasis added). The District also needs to address the significance compared with the other Refinery Project rules.

Finally, the analysis on page 3.2-53 in section 3.2.6.1.1 only refers to construction impacts and only to the two rules in the document (Rules 12-16 and 11-18). There are construction and operational impacts that should be analyzed with the suite of Refinery Project rules which may be considerable when analyzed cumulatively.

The District needs to properly analyze the cumulative impacts of these rules along with the other Refinery Project rules and inform the decision maker and the public regarding impacts and proposed mitigation measures. This comment also applies throughout the DEIR, for example to sections 3.3 (Greenhouse Gas emissions), section 3.4 (hazardous materials), and section 3.5 (hydrology and water quality).

Section 3.2.3, Significance Criteria.

Comment: With respect to Rule 11-18, the DEIR does not address any significance criteria for toxic air contaminants (i.e., cancer risk, acute and chronic health indices). It is not possible to properly determine impacts if there are no significance criteria. Section 3.2.6.2 further states that "In addition, reductions in TAC emissions would be expected due to implementation of Rule 11-18, but those emission reductions and the related health risk benefits cannot be estimated at this time." Rule 11-18 is not properly analyzed in this DEIR.

Page 3.2-31, Section 3.2.4.1.2.

The DEIR states: "*It is assumed that the proposed project has the potential to result in the construction of up to three to five WGS units under Rule 11-18 or three to five units under Rule 12-16*."

Comment: What is the basis for this assumption? Additionally, since Rule 11-18 would apply to many industries and facilities, why is the assumption the same for Rule 11-18 as for Rule 12-16, which only applies to five refineries and three ancillary facilities?

Page 3.3-15, Section 3.3.4.

The DIER states: "*Due to the complexity of conditions and interactions affecting global climate change, it is not possible to predict the specific impact, if any, attributable to GHG emissions associated with a single project. Although the geographic scope of this GHG emissions impact analysis in this EIR is the State of California, it is the cumulative effects of all global GHG emissions sources that have the potential result in global climate change. For this reason, GHG emission impacts contributing to global climate change are considered a cumulative impact analysis rather than a project-specific analysis."*

Comment: The District is not analyzing how the Refinery Project's suite of regulations impacts the environment regarding GHG emission impacts contributing to global climate change, which "are considered a cumulative impact analysis rather than a project-specific analysis." The DEIR fails to comply with CEQA by only attempting to cumulatively consider these two regulations. CEQA Guidelines § 15355 defines cumulative impacts as: "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

(a) The individual effects may be changes resulting from a single project or a number of separate projects.
(b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonable foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over time."

Rules 12-16 and 11-18 are both part of the Refinery Emissions Reduction Strategy, they are closely related to the "suite of regulations" identified by the District, and they have the same common goal to reduce refinery emissions. Therefore, a cumulative analysis is necessary that includes the recently adopted Refinery Project rules (6-5, 11-10, 8-18, 12-15, and 9-14), proposed regulations (13-1), and any planned regulations or amendments to regulation (2-1 and 2-2, for example). *See* CEQA Guidelines § 15130.

Comment: The GHG impact analysis is inadequate because it does not evaluate the impact Rule 12-16 will have on global GHG emissions. The DEIR maintains that "GHG emission impacts contributing to global climate change are considered a cumulative impact analysis rather than a project-specific analysis." DEIR, at 3.3-15. The DEIR must properly analyze impacts from GHG emissions in compliance with CEQA Guidelines § 15064.4.

In this regard, the DEIR has failed to address at least one way the Project may increase global GHGs: leakage. As recognized by the IPCC and CARB, and defined by the IPCC, leakage is the "phenomena whereby the reduction in emissions (relative to a baseline) in a jurisdiction/sector associated with the implementation of mitigation policy is offset to some degree by an increase outside the jurisdiction/sector through induced changes in consumption, production, prices, land use and/or trade across the

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jurisdictions/sectors. Leakage can occur at a number of levels, be it a project, state, province, nation, or world region."[10]

As discussed in the legal comments on Draft Rule 12-16 in Attachment A of this comment letter, California refineries are already extensively regulated. To the extent that Rule 12-16 imposes a cap and thereby restricts the ability of California refiners to meet demand, that demand will be made up by other refiners, therefore there would be no benefit on global GHG emissions. This impact is supported by substantial evidence. For example, at the October 19, 2016 BAAQMD Board of Directors meeting, the California Energy Commission gave a presentation entitled "California Refinery Overview and SF Bay Area Crude Oil Slate", which explained that following the February 2015 explosion at the ExxonMobil Torrance refinery's FCC, the decrease in southern California refinery production of gasoline was offset by Bay Area refinery gasoline production and a 10-fold increase in foreign imports.[11]

A mass GHG limit on Bay Area refineries, as proposed in Regulation 12-16, would also limit the ability for Bay Area refinery gasoline production to offset a supply shortage. Under Rule 12-16, supply shortages would result in more gasoline being produced outside of California and transported into California, which would in turn increase the GHG intensity of gasoline supply in California due to increased transportation needs. A similar and reasonably foreseeable situation can occur if unexpected and/or planned maintenance events at California refineries occur simultaneously among different refineries, which would also decrease gasoline production from California refineries. Should such an occurrence happen, the refineries that increase production to meet the shortfall may not be as efficient.

Page 3.3-26, Section 3.3.4.3, Potential Conflicts With State GHG Compliance Plans.

Comment: This is a carefully articulated and artificial finding. The District is basing its conclusion on historic data that the refineries have not exceeded the proposed Rules 12-16 emissions caps and, therefore, proposed 12-16 will not conflict with the existing State Cap and Trade program. At the outset, this assumption is faulty; the current emissions caps are based on historic levels of production, which may or may not reflect future demand; furthermore, as discussed above in WSPA's legal comments, the emissions caps are designed to be adjusted downwards in the future in response to a number of factors, and may not be increased even in response to new projects or production at a refinery. Thus, it is entirely possible, if not probable, that the Rule 12-16 caps will at some point become more stringent than the Cap and Trade program would otherwise authorize. The District is not informing the public about how such a conflict would be handled. The District needs to specifically answer the following question: Can the refinery use Cap and Trade and other offset programs as they are legally authorized to obtain credits that place them legally under the cap even though they actually exceed the Rule 12-16 cap? California's ability to meet its GHG reduction limits under AB 32 and related regulatory mandates call for the use of such programs as Cap and Trade. Rule 12-16 separates the Bay Area refineries from the rest of the industries in California by prohibiting these few entities from participating in a legally approved statewide program to meet statewide goals. This is a conflict with existing plans and violates CEQA.

Page 3.5-16: Rule 12-16.

The DEIR states: "*If any refineries are shown to exceed the refinery-wide emissions limits for PM2.5, PM10, NOx or SO2, it is expected that refinery operators would install new, or modify their existing air pollution control equipment in order to reduce emissions as required by Regulation 12-16. Additional*

[10] https://www.ipcc.ch/pdf/assessment-report/ar5/wg3/ipcc_wg3_ar5_annex-i.pdf
[11] https://www.eia.gov/todayinenergy/detail.php?id=23312

water demand and wastewater generation impacts are expected to result from the operation of several of the possible control technologies that would most likely be used including wet electrostatic precipitators (ESPs) and wet gas scrubbers (see Table 3.5-1)."

Comment: It is possible that the thresholds identified in Table 3.5-1 would be exceeded due to the required retrofits, and the analysis in the DEIR states there are many unknowns. What appears to be known is that Rules 11-18 and 12-16 together would exceed the threshold for water usage which is a significant impact for a regulation that the District does not support. Furthermore, the recommended mitigation measures are not expected to reduce the level of significance.

Page 3.5-23, Section 3.5.5.2.

The DEIR states: *"Therefore, the proposed project will remain significant after mitigation for water demand."*

Comment: What does "proposed project" refer to in this sentence? Is the proposed project Rule 12-16, 11-18 or both? The District needs to identify the actual project. Furthermore, note that for both Rules 12-16 and 11-18, the recommended mitigation will not reduce the significant impact for water demand. The District must weigh and analyze the expected improvement by adopting the Rules against the significant impact on water demand even after mitigation.

Page 4-3, Section 4.1.

Comment: This section states that the alternatives are limited by the nature of the project. CEQA requires an analysis of a reasonable range of feasible alternatives to accomplish the purpose and need of the project. Here for example, the discussion in this section states that a portion of the proposed rules could be implemented under other existing or planned requirements/measures. The analysis does not identify what elements of the proposed rules could be handled by these other requirements or measures and when identified, may result in other feasible alternatives, significant impacts or appropriate mitigation. Such analysis may also question whether the remaining rule elements actually satisfy the objectives.

Page 4-5, Alternative 2.1, Regulation 12-16.

Comment: The District's inclusion of the "Rules and rule amendments in the Refinery Strategy" in this section demonstrates the District's understanding that the Refinery Strategy is a project under CEQA, in that the rules and amendments are designed for a common purpose. What the District fails to do, however, is to properly analyze the potential significant impacts from the cumulative actions of this suite of regulations.

Page 4-6, Alternative 2.1, Regulation 12-16.

The DEIR states: *"The primary differences between Rule 12-16 and the No Project Alternative (12-16) is that the collection of measures listed referenced above would not only prevent the increase of climate and combustion criteria pollutants, but would result in substantial decreases of these pollutants over time (the proposal does not require emissions reductions)."*

Comment: The District's discussion makes it clear that Rule 12-16 is not needed. There are already regulations in place or more comprehensive planned regulations. If the District is to demonstrate the necessity of the proposed rule, it must articulate why the rule would improve air quality more than the

current and other proposed regulations (see examples provided in Section 4.3.1.1, 4.3.1.2, and 4.3.1.3) or existing federal and state permit requirements, and why this additional air quality reduction merits creating a significant impact with water usage. The DEIR not only fails to make this demonstration, it affirms that such a demonstration cannot be made.

Page 4-7 Section 4.3.2, Alternative 2.2.

The DEIR states: "…*This alternative would consist of a combination of the environmental benefits and impacts of adopting and implementing proposed Rule 12-16 and draft Rule 13-1*."

Comment: The District should clarify whether Rule 12-16 is part of this alternative as stated in the first sentence or if this is a typographical error. If 12-16 is part of this alternative, the District should explain the impacts and the analysis in the alternative.

Page 4-13, Section 4.5.2.

Comment: The District discusses how the Rule 12-16 No Project alternative will not have a significant impact upon the environment if Rules 11-18 and 13-1 are adopted together, but does not discuss in the alternatives analysis the impact of Rules 11-18 and 13-1 being adopted together. The District needs to assess the cumulative impacts of the Rules 11-18 and 13-1 alternative, along with the other Refinery Project rules, to comply with CEQA.

Page 4-18, Section 4.8.2, Comparison of Alternatives.

Comment: The District concludes that combining Rule 11-18 and 13-1 is the preferred alternative. However, throughout this DEIR, the District reviews Rules 12-16, 11-18 and a combination of Rules 12-16 and 11-18. The District does not analyze the cumulative impacts of Rules 11-18 and 13-1 being implemented or any necessary mitigation measures. In fact, Rule 13-1 does not appear in Table 1-1 on page 1-18. The District fails to comply with CEQA by not properly analyzing the Alternative.

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Attachment C: WPSA Technical Comments on the DEIR for Rules 11-18 & 12-16

Executive Summary

Greenhouse Gases (GHGs)

The cumulative impact associated with GHG emissions is dependent on global GHG. California refineries are more efficient than most other refineries, and Bay Area regulations which limit Bay Area refineries' production and shift production to less efficient refineries outside the Bay Area will increase global GHG even though the reduce GHG in the Bay Area.

Policies to address global fuel demand in the lowest GHG manner should instead favor production at the most efficient refineries. Capping emissions at the Bay Area refineries could easily inhibit the ability of the refineries to make changes needed to produce lower-carbon fuels, and GHGs associated with consumers' fuel use are far higher than the GHGs associated with the fuels' production at the refineries.

The DEIR includes no analysis of the extent to which the proposed regulations to reduce emissions from Bay Area refineries may result in increases in global GHG and the associated cumulative impacts, and needs to do so. The DEIR is inadequate because it was not "prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences" (as required by 14 CCR 15151). WSPA made these same comments on the draft PEIR for the District's 2017 Clean Air Plan and the District did not respond to them, even though a response is required by 14 CCR 15088(a). Without such a cumulative impacts analysis, the DEIR also does not provide a "good-faith effort at full disclosure" as required by 14 CCR 15003(i).

Air Toxics

The stated goal behind Regulation 11-18 is to make it unacceptable for existing facilities to impact any location with an estimated potential for[12] a total 10-in-a-million lifetime cancer risk, despite the fact that the EIR for the District's 2017 Clean Air Plan identified that a new project increasing potential existing risk by less than 100-in-a-million is not "significant" under CEQA.[13] Under CEQA, this means that the District determined—"based to the extent possible on scientific and factual data"[14]—that increasing the potential for existing risk by less than 100-in-a-million is not a "substantial, or potentially substantial, adverse change".[15]

[12] As identified in OEHHA's 2015 Risk Assessment Guidelines, "there is a great deal of uncertainty associated with the process of risk assessment....The assumptions used in these guidelines are designed to err on the side of health protection in order to avoid underestimation of risk to the public....Risk estimates generated by [a Health Risk Assessment] should not be interpreted as the expected rates in the exposed population but rather as estimate of potential f or disease, based on current knowledge and a number of assumptions." (pp. 1-5 and 1-6 of the "Guidance Manual for Preparation of Health Risk Assessments")

[13] BAAQMD, Final Program Environmental Impact Report for "Spare the Air – Cool the Climate" State Clearinghouse No. 2016062046, April 2017, Section 3.2.4.

[14] Per 14 CCR 15604(b). WSPA commented that the EIR for the Clean Air Plan did not include this basis and needed to, but the District did not respond to that comment (even though a response is required by 14 CCR 15088(a)).

[15] This is from the definition of "significant effect on the environment" at 14 CCR 15382.

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Section 3.2.6.2 of the DEIR for Regulations 11-18 and 12-16 concludes that potential TAC emissions are "less than significant", but provides no evaluation of this. In fact, the section does not even provide significance criteria for TACs or state where to find such analysis in the DEIR, if it does exist. The lack of evaluation and the conclusions are inconsistent with the fact that the District currently requires projects with emissions of as little as 0.26 pounds per year of diesel exhaust PM to conduct a Health Risk Assessment to determine whether they are above or below 10-in-a-million risk thresholds [16]. In addition, the District's emissions calculations in Appendix B of the DEIR include scenarios with emissions of off-road diesel PM emissions exceeding ten times that amount (2.6 pounds) per day.[17]

The District identifies Regulation 11-18 as "address[ing] concerns about health risks to the refinery communities". WSPA believes that a far more productive way to address concerns would be for the District to provide context and consistency in their communications regarding the significance of these potential risks.

Detailed Comments

There is a statement in Section 3.2.1.4.1 of the DEIR that "many scientists believe that there are not 'safe' levels of exposure to carcinogens without some risk to causing cancer". The District does not provide a citation for the statement as required by 14 CCR § 15148. There is no practical means of measuring a zero-risk health impacts threshold, and this is not the same as saying that there are not 'safe' levels; such logic would lead one to believe that essentially nothing is safe. WSPA commented similarly on the draft PEIR for the District's 2017 Clean Air Plan and the District did not respond to it as required by 14 CCR 15088(a).

The second and third paragraphs in Section 3.2.1.2.4 of the "Environmental Setting" include two paragraphs of statements that are uncited and imply causality without any quantitative information on whether those correlations are causal. This is especially the case for the range of PM concentrations in the Bay Area that has been raised by multiple authors in peer-reviewed literature.[18]

WSPA raised this concern previously in our comments on the District's Clean Air Plan[19]. The District's response to our comments was, "*Our scientists review a wide range of documents....We are, of course, always happy to discuss data and uncertainties in analysis, taking in to account ways that particulate matter impacts may be overstated or underestimated*"[20] . Language reflecting this response does not appear to have been added to the Plan or provided in the Program EIR for the Plan.

The statement in Section 3.2.1.4.1 that "*the proportion of cancer deaths attributable to air pollution has not been estimated using epidemiological methods*" is misleading. An upper bound ("potential for") estimate of contracting cancer from air pollution has been estimated by the District, and the value is so

[16] Per BAAQMD Regulation 2-5.
[17] The District's "FCCU with SCR" evaluation shows 4.12 lb PM_{10}/day from off-road diesel equipment. The District's other scenarios also show daily PM_{10} emissions from off-road diesel equipment far in excess of the District's annual 0.26 lb threshold.
[18] See, for example, articles in Special Issue on Air Pollution Health Risks, *Risk Analysis* **36(9)** (2016).
[19] B. Brown (Director, Bay Area Region, WSPA), letter to Ms. Christy Riviere (Senior Environmental Planner, BAAQMD) "Re: WSPA Comments on 2017 Draft Clean Air Plan/Regional Climate Protection Strategy", March 9, 2017.
[20] BAAQMD, "Response to Public Comments", Appendix B to the 2017 Clean Air Plan, p. 97.

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low that it is too small to be detectable by epidemiological methods. District needs to reference the source for their assertions rather than just implying that the proportion is a complete unknown.

The statement in Section 3.2.1.4.1 about "*the estimated lifetime cancer risk for Bay Area residents....declined from 4,100 cases per million in 1990 to 690 cases per million people in 2014*" is inaccurate. OEHHA (which developed the guidance upon which Bay Area bases its assessments) has specifically stated that "*Risk estimates generated by [a Health Risk Assessment] should not be interpreted as the expected rates in the exposed population but rather as estimate of potential f or disease, based on current knowledge and a number of assumptions*" (pp. 1-5 and 1-6 of OEHHA's "Guidance Manual for Preparation of Health Risk Assessments").

Figure 3.2-12 identifies diesel PM as the predominant TAC of concern from the perspective of risk, but Table 3.2-5 provides no information regarding what monitoring data that estimate was derived from. We have not been able to locate the cited report "BAAQMD, 2016. Toxic Air Contaminant Air Monitoring Data for 2014", and request the BAAQMD make it publicly available.

Table 3.2-5 of the DEIR identifies the air toxic with the highest concentration as ethyl alcohol. It is not clear if the District is proposing to include ethyl alcohol in Rule 11-18. Currently, ethyl alcohol is not one of the Hazardous Air Pollutants (HAPs) identified by US EPA. It is not currently listed as a Toxic Air Contaminant (TAC) as defined in H&SC 39655(a) nor is listed in ARB regulations at 17 CCR 93000), and is not identified as a reportable substance in Appendix A of OEHHA's Guidance Manual for Preparation of Health Risk Assessments, and is not listed in BAAQMD's Regulation 2-5 for Toxic Air Contaminants.

The cumulative impacts analysis in Section 3.3.1 of the DEIR does not "*reflect the severity of impacts and their likelihood of occurrence*" as required by 14 CCR §15130(b), and needs to include available information. WSPA made this comment on the draft PEIR for the District's 2017 Clean Air Plan and the District did not respond to it as required by 14 CCR 15088(a).

Section 3.3.3 of the DEIR includes a paragraph that identifies a project level GHG threshold for stationary source projects of 10,000 metric tonnes of CO_2e, citing the District's 2010 CEQA Air Quality Guidelines. Those Guidelines identified a threshold of 10,000 metric tonnes of CO_2e per year of operational emissions. As identified on the District's CEQA webpage, the District was ordered to "*set aside the Thresholds and is no longer recommending that these Thresholds be used as a general measure of project's significant air quality impacts*".

Section 4.1 of the DEIR identifies the objectives for proposed rule 11-18 inaccurately. The objective is not to reduce exposure "*to the lowest levels achievable*"; if that were true, there wouldn't be any risk thresholds identified in the rule. The rule is written to reduce exposure from stationary sources to less than the risk thresholds identified in the rule, which are not based on any scientific or technical analysis of what level of "potential for risk" is safe or achievable.

The District's stated objective to "*ensure the facilities that impact the most sensitive and overburdened communities reduce their associated health risk in an efficient and expedited manner*" is misleading, given that all facilities in the air basin have some impact on regional air quality. Rule 11-18 identifies a

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level of impact that a facility may cause to a single receptor, which is approximately 1.4% of the risk associated with the background air quality[21], and then is required to expeditiously reduce its impact.

Section 4.1 of the DEIR identifies the objectives for proposed rule 12-16 inaccurately. To state that the objective is to protect "*air quality*" and "*public health*" is to imply that the existing myriad of Federal, State, and District air rules and permitting requirements that have accumulated over the last several decades and are statutorily required to do exactly that have been inadequate, and that the District has been failing to do its job for the last 62 years. And as noted in our cover letter for these comments, the restriction of GHG emissions from the refineries' sites does not necessarily protect the climate; it could instead cause increases in global GHG. This was the case with the Low Carbon Fuel Standard Brazilian ethanol mandate that WSPA identified in its comment letter on the 2017 Draft Clean Air Plan Program EIR. Transportation fuels are a global market that involve global steps (from exploration and production to refining and distribution), and anything that involves perturbing one of those steps may have unforeseen consequences elsewhere.

Section 4.2.1 is not an accurate depiction of the no-project alternative for Regulation 11-18 and therefore it and the corresponding analysis in Section 4.4.1.1 do not comply with the CEQA regulations at 14 CCR 15126.6(e), which require that *"...The 'no project' analysis shall discuss the existing conditions at the time the notice of preparation is published...as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services...."* It is reasonably expected that US EPA will fulfill its statutory requirement under Section 112(d)(6) of the Clean Air Act to periodically review and revise its Maximum Achievable Control Technology (MACT) standards for Hazardous Air Pollutants (HAP). Additionally, the California ARB will continue to fulfill its statutory requirement under H&SC §39665 *et seq.* to periodically review/revise/update its Air Toxics Control Measures (ATCMs). Lastly, there will also be TAC emissions reductions associated with all of other existing regulatory programs at the Federal, State, and District level that reduce criteria pollutants since almost all TACs are also either criteria pollutants or precursors to criteria pollutants.

These programs are the primary reason that TAC emissions have decreased so substantially since the time the AB2588 requirements were promulgated nearly three decades ago (as shown in the District's Figure 3-1), and Sections 4.2.1 and 4.4.1.1 assume that none of them exist and/or are not reasonably expected to occur in the foreseeable future. WSPA made similar comments on the draft PEIR for the District's 2017 Clean Air Plan and the District did not respond to it as required by 14 CCR 15088(a).

Section 4.3.1 states that there are no facility-wide emissions limits on refineries; that is incorrect. There are facility-wide emissions limits, either spelled out explicitly in permits or as a result of equipment-specific emissions limits and/or equipment capacities ("potential to emit"). The District has already issued permits to the refineries and the entire point of these permits was to ensure the protection of public health if the refineries were to operate up to those maximum limits.

[21] This percentage was calculated by dividing the 10-in-a-million threshold by the 690-in-a-million background level shown in Figure 3.2-1.