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June 12, 2017

By E-Mail and Courier

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

Re: Request for Extension of Time for Consideration of and Public Comment on Revised Proposed BAAQMD Rule 12-16 With Comments on Proposed Rule

Dear Mr. Douglas:

This firm represents Shell Martinez Refinery (Shell) with respect to the District's consideration of revised proposed Rule 12-16. The two purposes of this letter are (1) to request an extension of the time allowed by the District for the public hearing and the public comment period for the revised version of proposed revised Rule 12-16; and (2) to submit substantive comments on this new version.

First and foremost, we believe the District's administrative actions in suddenly and dramatically revising the proposed rule and accelerating the public hearing and public comment period are arbitrary and capricious and violate the procedural requirements of California Health & Safety Code Sections 40725 and 40726 as well as the District's Public Participation Plan (which posits a public comment period of at least 30 to 90 days).

The version of proposed Rule 12-16 that was considered at the District's public hearing on May 31, 2016 is radically different from the version scheduled for consideration on June 21st. While the rule nominally retains the same nomenclature, it bears little resemblance to the original. In effect, this version is essentially a total rewrite and should have been treated as entirely new proposed regulation.

As referenced above, there should have been at least 30 days' notice for the public hearing and at least a 30-day public comment period. This substantially rewritten proposed rule was not placed on the District's June 21st public hearing agenda until a notice was posted on the District's website on June 6, 2017, ***only 15 days before the hearing***. In addition, the notice stated that public comments would be accepted only through 5 PM today, Monday, June 12, 2017. In effect, this allows ***only four(4) business days*** for public comments. The Notice of Continued Public Hearing also states a revised Draft EIR is available on the Air District's website, but this revised Draft EIR has not been found.

Notwithstanding the foregoing request and without waiving any objections, Shell hereby submits the following comments on revised proposed Rule 12-16.

THE REVISED PROPOSED REGULATION

The Revised Proposed Regulation is substantially different from previously released proposed regulations.

The BAAQMD has made substantial revisions to the proposed Regulation 12-16 in its latest released Revised Proposed Regulation 12 Rule 16. The changes completely change the purpose, intent, methodologies, and regulatory compliance requirements from previous versions. Interested parties have not been given a proper amount of time to consider and comment on these changes. In addition, these changes are not consistent with the issues addressed by the DEIR that was published for the previous version of this proposed rule. Some of the substantial changes with this revised regulation are described below.

The focus of the regulation has changed from capping criteria pollutants to exclusively capping greenhouse gases (GHG) emissions.

The stated rationale presented in the staff report for removing the criteria pollutant caps was the staff's apparent concern that the regulation may not be legally defensible since it would be in conflict with existing permit rules. This is consistent with the staff's strongly-worded objection to the original version of this proposed regulation in prior staff reports. The staff report goes on to claim that a GHG cap does not similarly conflict with any local, state or federal regulations with the possible exception of the cap and trade program. This is directly inconsistent with the staff's opposition to the original version of Regulation 12-16. In fact, the cap and trade program conflict is a serious conflict that could impact the integrity of the program and is discussed in further detail in these comments.

The methodology to determine GHG emission caps has changed and does not adequately address annual variation in emissions for the facilities.

The emission caps previously were based on the maximum annual emissions from 2011-2015 adjusted upward with a 7% operating variation. While the previously proposed emission cap was flawed, the revised method for deriving the GHG emission cap has even more serious flaws. The proposed GHG emission cap is now based on the ***average*** of 2011-2015 GHG emissions reported under California's GHG Mandatory Reporting Rule (GHG MRR) plus three standard deviations based on the five years of data and another additional 3% to account for operating variation and growth. This 3% is in conjunction with the "possible near-term growth in demand for transportation fuels. The Energy Information Administration (EIA) projects that overall demand for transportation fuels in the Western United States will peak at a level 2.7 percent higher than the demand in 2015."

A single adjustment was made for Chevron Richmond for 2012-2013 due to a fire that caused some equipment to be in operational for some time. However, no other adjustments for refineries that had any other amount of down time was considered. Refineries typically rotate taking large units out of service to do major maintenance and repair events known as turnarounds. Depending on the units involved, this can last for several weeks which impacts not only production volume, but also efficiency during these time periods. Depending on the unit a typical turnaround time frame can be every 5-8 years and some even longer. If a major unit that substantially impacts the amount of GHG production and efficiency of the refinery was taken down during the five year time period considered for establishing the emissions cap the value of the emission cap could be set artificially low as it does not adequately consider this longer time scale of variation. Those refineries whose major process units with higher potential that impact GHG emissions did not go down during the five-year baseline period will have an artificially higher emissions cap compared to the other refineries that did have major process units out of service during the time period.

The use of only three standard deviations for only five or fewer data points per refinery as a representation of process operating variation at a refinery is flawed as it is not a long enough time period to represent normal processing variation given the extended turnaround schedules. In addition, the data does not take into account the significant economic downturn that occurred during the baseline period which resulted in lower production levels due to decreased demand. Finally, because the GHG MRR requirements have changed over the baseline period, the emissions should be normalized to reflect the current methods used for CARB GHG MRR.

The concept of carbon intensity backstop has been added and is not adequately defined.

This was added in the event of projects permitted before January 1, 2017 that may not have been operating at full capacity during the baseline period. If the owner/operator can show that the carbon intensity of the facility is within three standard deviations of the baseline carbon intensity, then the facility may subtract the associated GHG emissions "within permitted limits attributable to increases in utilization of any Permitted Future Operational Source." In addition, "emissions attributable to sources that operate solely to comply with the District, State, or federal air pollution control regulations and that operate pursuant to a District Authority to Construct issued after the date of adoption of this Rule" will also be subtracted from the facility's GHG emissions.

Restricting the carbon intensity within three standard deviations of the baseline carbon intensity has no basis as there is no reason to believe that the permitted projects would only be restricted to a carbon intensity of three standard deviations. The District should consider the theoretical carbon intensity based on the maximum operation throughput of the permitted equipment that has not operated at full capacity as this equipment investment was already authorized.

GHG emissions. There are only limited exceptions specifically identified in the cap and trade regulation that allows information to be released, mainly related to utility reporting of electricity and consumption for residential users. The California Air Resources Board (CARB) is specific on when it releases the results of the GHG emissions from mandatory reporting regulation to ensure that all facilities information is released at the same time and gives all auction participants the same amount of time to develop bidding strategies.

Requiring a select number of facilities to report their GHG emissions on a quarterly basis will unfairly disadvantage these companies in the cap and trade auctions. This will impact their own and potentially influence other facility bidding strategies and may result in disrupting the settlement price at a quarterly auction. For instance, let's say that a refinery had a major turnaround event that substantially decreased production at the facility and therefore resulted in a quarter with substantially lower than usual GHG emissions. This knowledge may cause other facilities participating in the quarterly auction to lower the price of the bids since they know that a major buyer of GHG allowances may not be needing as many allowances to cover their emissions this quarter. If enough companies do this, the settlement price for that quarter's auction will be altered.

The Staff report fails to discuss Low Carbon Fuel Standard as a relevant applicable regulation.

The staff report summarizes key local, state and federal regulations that may be applicable and concludes that only the cap and trade program may have some conflicts. The staff report fails to analyze and discuss California's Low Carbon Fuel Standard (LCFS) which is applicable to the refining facilities in addition to the statewide cap and trade program. The LCFS standards are expressed in terms of the "carbon intensity" of gasoline and diesel fuel and their respective substitutes. The LCFS is based on the principle that each fuel has "lifecycle" GHG emissions. This lifecycle assessment examines the GHG emissions associated with the production, transportation, and use of a given fuel. The lifecycle assessment includes direct emissions associated with producing, transporting, and using the fuels, as well as changes in land use for some biofuels. The LCFS is a declining standard for transportation fuel over time. Placing GHG emissions caps does not allow the facilities that are subject to Rule 12-16 to adequately use the full range of life-cycle decisions in order to meet the LCFS requirements and therefore are at a disadvantage compared to other facilities within the state in complying with this regulation. For instance, a specific source of raw material may have a low level of GHG emissions associated with its production from the ground and transportation, but require some additional refining to make suitable for transportation fuels. However, the net life-cycle reduction, may be lower compared to an alternative raw material that would result in less emissions at the refinery, but higher emissions from production, transportation or use of the fuels. Thus, a targeted limitation on GHG emissions from a Bay Area refinery may paradoxically result in *increased* global GHG emissions.

The GHG emission methodology is not adequately defined in the regulation

The methodology for reporting GHG emissions is not adequately defined in proposed Rule 12-16. There is reference to two different methodologies, the GHG MRR and Rule 12-15. The methodologies do not report the same set of sources, nor is the same method and assumptions for calculating emissions used. The GHG emissions cap is based on emissions reported using the MRR methodologies. If the emissions are to be calculated using the sources and methods defined in Rule 12-15, then an adjustment needs to be made to the proposed caps to account for the differences in methodologies.

The GHG MRR has undergone several revisions since its inception that have resulted in changes to the methodology and there are additional changes proposed for the future. At a minimum, the baseline data used to derive the caps needs to be modified to normalize the five baseline year emissions on the same methodology basis. In addition, there needs to be a well-defined method for adjusting the cap levels to account for future changes in methodology. This needs to specify what are the triggers and mechanisms that will be used to alter the emission caps and methodologies used for reporting such that facilities have enough notice to plan and ensure that they would not end a year in violation of the caps due to inconsistent and poorly communicated application of emission methodology changes and cap adjustments.

The new revised proposed regulation does not address nuances in definitions of reporting entities under MRR that may be different than Title V permit entity.

The GHG MRR has complex definitions of reporting entities and has allowed for different combinations of reporting of emissions by facilities operated by the same parent company as long as all GHG emissions are reported. The oil and gas industry has many different aspects from the upstream processing, refining and fuel terminals all of which have to be reported under the MRR. However, depending on the complexity and integration of these different aspects, even if these sources are operating adjacent to each other and in some cases operating under the same Title V permit, they may be reporting them under different entities for purposes of the MRR. For instance, a facility may report at the corporate level the selling of blended fuel as this involves marine terminals, fuel terminals, etc. while another facility may report these with the refinery. These various definitions of GHG emission reporting and differences between Title V facilities and GHG MRR facilities need to be redefined and reconciled. In addition, the GHG emissions basis of the caps must be adjusted to account for the inclusion of different sources.

BAAQMD has not properly followed CEQA by not responding to comments received on the DEIR and not recirculating the EIR given the substantial changes in the proposed regulation since the publication of the DEIR.

BAAQMD received numerous comment letters on the draft EIR that was prepared to address the previously proposed version of Regulation 12-16 and Regulation 11-18. There has not been any publication responding to the comments received and how they are addressed or considered in the EIR. This is a requirement of CEQA that this be included when certifying a final EIR.

Since the District has substantially changed the scope and methodology of Regulation 12-16, the District did not correspondingly address the proposed changes in the DEIR project description and goals. The DEIR should be revised to specifically address the substantial changes in the proposed regulation and be recirculated for additional public comment.

Leakage of GHG emissions and increase of GHG emissions on a global scale is likely with this regulation.

GHG emissions, unlike criteria pollutants, are a global problem and GHG emission reduction regulations need to ensure that they will result in a net global reduction and not just a local reduction. This concept is known as emissions leakage. If the local refineries are unable to produce sufficient quantities of products in the future, the products will likely be created outside of BAAQMD's jurisdiction. In addition to these products incurring indirect GHG emissions associated with transportation of the products to the BAAQMD region, they may also be produced at facilities that are less efficient and have higher carbon intensities and GHG emissions than those produced by the facilities subject to this regulation. Another example of leakage would be if a facility decided it was no longer feasible to continue operation in the BAAQMD region and the demand for these products were again provided by potentially higher GHG emitting facilities outside of the BAAQMD region where there are no restrictive caps set on the facilities. These situations could result in an overall increase in the global GHG emissions despite the decrease in GHG emissions in the BAAQMD region. The local decrease will not have an impact on the global GHG issue since they would be more than replaced elsewhere with a net increase in GHG emissions.

This regulation has the real possibility of causing facilities and refineries in particular to cease operations in the region. The result of this leakage needs to be evaluated in the DEIR as an alternative and included in the analysis of the proposed necessity and socioeconomic evaluation of the regulation. It is unclear if the impact of this would be a net benefit to the environment given socioeconomic impacts, additional transportation of goods and materials with increased air emissions and hazards to the area compared to the reduction in local air emissions that may occur. Transportation including goods movements is a dominant source of air quality emissions in far greater quantities than individual facility sources.

BAAQMD does not provide adequate support for the proposed 3 percent threshold allowance, nor does it consider whether an alternative to setting the caps at any other level might eliminate concerns of fuel shortage in the event of unanticipated long-term temporary loss of production or the ability to provide future adequate fuel supply to the local market. These important consequences and their potential environmental impacts should be evaluated and considered so that the possibility of unanticipated relocation (i.e., leakage) of emissions is minimized.

The regulation will impede the refineries' participation and effectiveness of Statewide long-term goals and policies for GHG reductions with respect to refineries and fossil fuels use.

The regulation does not adequately account for the statewide GHG goals and policies that this regulation may interfere with and put these facilities at an unfair disadvantage compared to other facilities in the state. Reduction in GHG emissions are important on the global scale and not the local scale. While some types of reductions locally may have a co-benefit reduction of criteria pollutants and toxic air contaminants, it is not guaranteed to be the case. In fact, implementation of pollution control technology to reduce criteria pollutants and toxic air contaminants can potentially result in increased GHG emissions either directly or indirectly through increased electricity use, water use, waste or transportation of pollution control equipment to the facility. This regulation is short sighted in that it does not allow for the full consideration of the options to reduce GHG emissions in the state and from the refinery sector as a whole. For instance, it may be more efficient to increase production at a specific refinery while decreasing production at a substantially less efficient refinery located outside of the BAAQMD region. The largest and most economical real reductions in GHGs will occur when facilities can be grouped together on a larger scale to determine where it is most economically efficient to implement GHG reductions. This local regulation undermines the ability for full market participation in developing the most efficient solution.

The state is currently investigating the best options to continue reductions in GHG emissions from stationary sources through an expanded cap and trade program, potential targeted reductions at large stationary sources including refineries, or a carbon tax. In the draft 2017 Climate Change Scoping Plan Update (ARB January 20, 2017), ARB acknowledges the complexities of proposing a regulation to specifically reduce GHG emissions from refineries by stating that the actual measure would need to accommodate unique circumstances at individual facilities. Furthermore, ARB states that it would take time to develop and implement regulations for this measure and the effectiveness could be different depending on the specific opportunities for reductions that would also have to account for other increases in GHG emissions such as biofuel production. In conclusion, the revised regulation proposed by BAAQMD has been imprudently rushed through the administrative process and is simply not fully developed, nor does it fully consider the unique circumstances at individual facilities and the specific opportunities for reductions.

In order to reach California overall GHG emission reduction goals, targeting reductions in emissions from refineries is not efficient and requires broader changes in transportation and demand for fossil fuels. The combustion of transportation fuels contributes over 40% of the statewide emissions. This demand would need to substantially change in order to eliminate the need for refineries to operate. Unless there are other substantial changes, this demand in the interim is most efficiently met by the local refineries which are more GHG-emission efficient than potential other sources of transportation fuel and potentially more favorable in the transportation life-cycle.

Therefore, based on the foregoing, we believe the District's actions do not permit minimally adequate public participation in the development of this proposed rule and respectfully request that (1) the public hearing be postponed at least 30 days; and (2) the public comment period be extended for at least an additional 30 days.

Very truly yours,

Keith M. Casto

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Enclosure
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