July 11, 2013

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Mr. Brian Bateman
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Re: Comments on the Bay Area Air Quality Management District's Preliminary Draft Regulation 12, Rule 15: Petroleum Refining Emissions Tracking

Dear Mr. Bateman:

Tesoro Refining & Marketing Company LLC (hereinafter, "Tesoro") appreciates the opportunity to provide these comments on the Bay Area Air Quality Management District's ("BAAQMD" or the "District") Preliminary Draft Regulation 12, Rule 15: Petroleum Refining Emissions Tracking Rule ("RETR" or "Draft Rule").

I. INTRODUCTION AND SUMMARY

Tesoro is one of the largest petroleum refiners in California and operates the Golden Eagle Refinery ("GER"), which is the second-largest refinery in the San Francisco Bay Area. GER—located in Martinez—can process up to 166,000 barrels of petroleum per day. Further, Tesoro is active in the local community and supports 700 full-time, high-quality jobs.

The Draft Rule would require each Bay Area refiner to prepare, submit, and adhere to an emissions reduction plan if any emission increase at the refinery exceeds any trigger-level for criteria pollutants, toxic air contaminants ("TACs"), or greenhouse gases ("GHGs"). *See* RETR 12-15-405, 12-15-301; *see also* BAAQMD, Workshop Report: Preliminary Draft Air District Regulation 12, Rule 15: Petroleum Refining Emissions Tracking, at 8-10 (Mar. 2013) ("RETR Workshop Report").

Tesoro supports the comments submitted by the Western States Petroleum Association ("WSPA") on behalf of its members regarding RETR. Tesoro submits these additional comments because the Draft Rule would conflict with the carefully crafted regime for permitting emissions sources in the Bay Area, as well as broader State-wide efforts to reduce emissions of both GHGs and criteria pollutants. In particular, and as described in more detail below, Tesoro's comments are as follows:

- The Draft Rule Conflicts With Existing Laws For Analyzing New Projects: Any new project at a Bay Area refinery must undertake a new source review ("NSR") applicability analysis and, if the project triggers NSR, the refiner must adhere to strict measures (including requirements for controlling air emissions) to construct the new project. Additionally, any new project must undergo review under the California Environmental

Quality Act ("CEQA"), which requires implementation of all feasible mitigation of any significant environmental impacts, including GHGs and criteria pollutants. RETR would effectively supplant these existing legal mechanisms solely with respect to petroleum refineries and would require analogous reductions to these other laws, even in the absence of any change in facility operations or other project that would trigger review under the NSR program or CEQA. The District has insufficiently justified creating a dual system where refineries must adhere to the extremely cumbersome RETR while every other stationary source in the Bay Area must only comply with existing legal requirements.

- The Draft Rule Conflicts With Existing Title V Permit Limits: Currently, Bay Area petroleum refineries are subject to Major Facility Review Permits ("Title V Permits"), which contain federal and District air emissions control requirements. A refinery could conceivably trigger RETR's emissions reduction obligations solely due to production increases resulting from increased customer demand, without any change to the refinery's crude slate or any new project to increase refining capacity. While such increases could occur in compliance with the emissions and throughput limits imposed by the refinery's existing Title V Permit, under the Draft Rule, they would essentially be rendered unlawful. Because RETR would make it impossible for refineries to assure compliance through adherence to the limits appearing in their Title V Permits, RETR would run afoul of refineries' rights in those permits and, accordingly, should not be adopted.

- The Draft Rule Is Duplicative Of Existing Requirements: Existing federal, state, and local requirements adequately control air pollution and are resulting in higher air quality in the Bay Area. RETR would risk imposing additional and duplicative requirements on refineries, which are already subject to several overlapping measures designed to reduce their emissions, such as the Global Warming Solutions Act of 2006 ("AB 32"). Moreover, the Draft Rule would mute the price signal of CARB's Cap-and-Trade Program and Low Carbon Fuel Standard ("LCFS") and possibly prevent changes in feedstock composition or refinery operations needed to comply with CARB's requirements under AB 32.

Beyond the general issues with the proposed rule noted above, Tesoro believes that the rule as crafted has issues. Below are several examples of issues associated with the rule.

- The Draft Rule's Trigger-Levels Are Set At Low Levels: The Draft Rule's trigger levels are set at low levels when the complexity of a petroleum refinery operation is considered. For instance, the trigger-level for particulate matter of less than 2.5 microns in diameter ("$PM_{2.5}$") could be difficult to model and effectively bar any increase in emissions in an area that is already affected by $PM_{2.5}$ emissions from other nearby sources. Additionally, the GHG trigger-level is low, even if the 10-ton per year ("tpy") carbon dioxide equivalent ("CO_2e") trigger level appearing in the Draft Rule is increased to 10,000 metric tpy CO_2e.

- The Draft Rule's Definition For Petroleum Refinery Must Be Amended: The definition of "Petroleum Refinery" includes auxiliary facilities and requires a Refinery Owner/ Operator to comply with the RETR with respect to such auxiliary facilities. Auxiliary facilities, such as cogeneration facilities or hydrogen plants, may be owned and operated by a third party. It is problematic to require the Refinery Owner/ Operator to institute emissions reduction measures at auxiliary facilities that are owned and operated by third parties. Moreover, it is equally problematic for increases occurring at such auxiliary facilities to trigger the requirements of RETR for the entire refinery, as could conceivably occur if, for example, a hydrogen plant operator should increase its production to meet demand for use of hydrogen as a transportation fuel attributable to CARB's Advanced Clean Cars program. Therefore, the definition of "Refinery" must change.

- The Draft Rule's Monitoring Requirements Are Unnecessary: RETR would delegate to District staff the task of developing monitoring guidelines for the required fence line and community monitoring programs required. By not proposing such guidelines along with the Draft Rule, the required monitoring programs could produce data that fail to accurately reflect the refinery's emissions and contributions to regional air quality. It also prevents the regulated community from providing constructive feedback on ways to improve a proposed monitoring program.

II. DISCUSSION

A. The Draft Rule Conflicts With Existing Legal Mechanisms For Analyzing The Air Quality Impacts And Permitting Of Projects

The District states that emissions changes due to, *inter alia*, "the addition of additional emissions controls, equipment changes (e.g., replacements, modernizations, and expansions)... changes in feed stocks used and the mix or products produced due to business decisions" should all be considered in establishing whether or not mitigation is required under RETR. [RETR Workshop Report, at page 5]. Under the federal, state, and BAAQMD rules, there is already a comprehensive, intricately-woven regime for addressing refinery modifications that potentially increase emissions: NSR. *See id.*, App. A, at 3-4 (listing Regulation 2, Rule 2: New Source Review as one of many existing legal mechanisms for regulating air pollutants from petroleum refineries).

The District's NSR rule[1] carefully balances the interest of existing sources in the certainty that they can continue to operate under the expectations and terms of their initial development and

[1] BAAQMD recently amended its NSR and Title V permit programs, as set forth at BAAQMD Regulation 2 (Permits), Rule 1 (General Requirements), Rule 2 (New Source Review), Rule 4 (Emissions Banking) and Rule 6 (Major Facility Review). BAAQMD adopted the amendments to Regulation 2 on December 19, 2012. Until EPA approves the amendments as part of the California State Implementation Plan, the existing NSR and Title V rules in Regulation 2 will continue to be the District's effective and legally binding permitting rules.

the interest of the public in ensuring that new sources meet rigorous air quality standards. In particular, BAAQMD's NSR program sets forth the standards for determining whether a change constitutes a "modification" and an emission increase can be attributed to it,[2] and the appropriate thresholds for when major modifications[3] trigger NSR for both attainment and nonattainment pollutants.[4] In turn, applicants triggering the requirements of nonattainment NSR must achieve the lowest achievable emission rate ("LAER", which is equivalent to District Best Available Control Technology ("BACT"))[5], offset new emissions with creditable emissions reductions[6], and certify that all major sources owned or operated by the applicant in the same state are in compliance with all legal requirements.[7] Applicants triggering Prevention of Significant Deterioration (PSD) review must achieve District BACT[8] and demonstrate, through an air quality analysis that the major modification will not interfere with the attainment or maintenance of any National Ambient Air Quality Standard ("NAAQS").[9]

District rules, such as the NSR rule, ensure that new projects at major facilities adhere to the most stringent emission limitation while offsetting emissions increases (under nonattainment NSR review) or demonstrating that the project will not interfere with the NAAQS (under PSD review). Such rules, along with fuels and automobile regulations, are leading to cleaner air. As the District itself notes, "[f]or ozone and $PM_{2.5}$, the two pollutants for which the Bay Area is designated as non-attainment, the District's emissions projections show an increase in emissions from stationary sources in future years, *while at the same time showing overall reductions in total emissions* leading towards attainment and maintenance of the NAAQS."[10] (Emphasis added.) Existing legal requirements, such as NSR, will help ensure progress towards attaining

[2] *See* BAAQMD Reg. 2-1-234.1; 2-2-302; 2-2-303.

[3] A "major modification" includes any physical or operational change at an existing major facility that will result in an increase of greater than 40 tpy of nitrogen oxides ("NOx") or 15 tpy of particulate matter less than 10 microns in diameter ("PM_{10}"), *inter alia*. *See id.* 2-2-221.

[4] *See id.* 2-2-314 (nonattainment NSR applicability) and 2-2-315 (Prevention of Significant Deterioration ("PSD") Applicability).

[5] *Id.* 2-2-301; 2-2-206.

[6] *Id.* 2-2-302. Offsets can be generated either through contemporaneous emissions reductions or emission reduction credits ("ERCs"). *See* Regulation 2-2-605 for the procedure for generating ERCs.

[7] *Id.* 2-2-307.

[8] *See* note 5 *supra*.

[9] BAAQMD Reg. 2-2-304; 2-2-414.

[10] *See* BAAQMD, Final Staff Report, Updates to BAAQMD New Source Review and Title V Permitting Programs, Regulation 2; Rules 1, 2, 4, and 6, at 84 (Sep. 26, 2012), *available at*: http://www.baaqmd.gov/~/media/Files/Engineering/Proposed%20Reg%202%20Changes/Public%20Hearing/Final%20Reg%202%20Updates%20Staff%20Report%20September%2026%202012.ashx?la=en.

the ozone and $PM_{2.5}$ NAAQS and maintaining attainment with other NAAQS, obviating the need for the RETR.

The Draft Rule would not only require refineries to develop an emissions reduction plan for emissions increases resulting from new projects, but, rather, for *any* increase in emissions, regardless of the cause. The Draft Rule states that "[a] refinery owner/operator shall submit to the APCO an emission reduction plan…within 90 days of the APCO's approval of a refinery on-going emissions inventory report if that report identifies that emissions of criteria pollutants, TACs, or GHGs from the refinery have increased relative to the baseline period in excess of trigger-levels." RETR 12-15-405. Regardless of the fact that the District states that "[t]he intent of the [RETR] is *not* to trigger mitigation requirements based on changes in emissions that occur due to [] cyclical factors [such as business cycles that affect the demand for products produced]"[11], there is no exemption from the Draft Rule's requirement to submit an emission reduction plan if the triggering emissions increase is due solely to increased production at the refinery. Nor is there any exemption from such a requirement and the concomitant emission reduction requirements for increases attributable to projects that have undergone District NSR and been required to mitigate their emissions pursuant to CEQA. [12] Even if a particular project were to offset any increase in nonattainment pollutants pursuant to the District's NSR program and mitigate any significant environmental impacts attributable to its emissions of GHGs and criteria pollutants, it could still trigger the emission reduction planning and reduction requirements under RETR.

In sum, the Draft Rule reflects an "about-face" to the existing legal paradigm for permitting of stationary source emissions, triggering emissions reduction obligations in the absence of any physical change or change in the method of operation. The District has not provided justification for making such a departure from the approach reflected by the existing NSR program and CEQA for assuring that changes occurring at petroleum refineries do not adversely impact air quality or frustrate the Bay Area's attainment of air quality standards.

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[11] RETR Workshop Report, at 5 (emphasis added).

[12] Under CEQA, an analysis must be prepared prior to the approval of any new refinery project, which includes consideration of air emissions mitigation measures. The CEQA Guidelines (14 Cal. Code Reg. §§ 15000 *et seq.*) define a "project" as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that [includes] … [a]n activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." 14 Cal. Code Reg. § 15378(a)(3). In conjunction with the environmental impact report ("EIR") for a project, the lead agency must adopt findings regarding mitigation measures, project alternatives, and any unavoidable impacts. Pub. Res. Code § 21081; 14 Cal. Code Reg. §§ 15091-15092. The CEQA Guidelines require consideration of mitigation measures to reduce energy consumption and the impacts from air pollutants, including GHGs. *See, e.g.,* Pub. Res. Code § 21100(b)(3); 14 Cal. Code Reg. § 15126.4(c). The consideration of such mitigation measures for new CEQA projects is another reason why the RETR is unnecessary and conflicts with the existing legal regime.

Further, the Draft Rule is not analogous to the District's regulations governing flares.[13] Unlike the flaring rules, which targeted a specific type of emissions source at refineries and established standards for such emissions, the Draft Rule would impose a *de facto* cap on refinery-wide emissions and essentially supplant the existing permitting regime, rendering existing permits meaningless and precluding a refinery from making any change that might increase emissions above the trigger levels, even if otherwise permitted to do so. The District provides no justification for singling out petroleum refineries and essentially changing the permitting rules solely with respect to them. Tesoro would submit that the District has no authority under either the Health and Safety Code or the Clean Air Act to abandon the existing framework for permitting of stationary sources and establish what is essentially a wholly new paradigm that would disallow any future emission increase from one source category.

By effectively supplanting the District's NSR program and CEQA for refineries, RETR would run afoul of both the "consistency" and "nonduplication" requirements imposed by California law.[14] Further, by essentially eliminating the ability of any refinery to ever increase its emissions in reliance upon offsets, RETR turns its back on the approach set forth by both California law and the Clean Air Act, imposing a *de facto* construction moratorium upon any refinery expansion when none is authorized or warranted under such laws.[15]

Finally, the District recently completed substantial amendments to its NSR regulations.[16] The amended rules reflect the outcome of significant public participation and technical workgroup meetings, in which Tesoro was an active participant. Much effort went into developing refinements to the District's NSR program that will provide greater certainty with respect to when and whether specific physical or operational changes trigger the requirements of NSR. In particular, the District clarified that, for sources not previously subject to an enforceable limitation on emissions, a "modification" does not include a change that results in no increase in

[13] *See* RETR Workshop Report, at 9 (describing the requirement for all feasible mitigation under the Draft Rule as identical to Regulation 12, Rule 12, which applies to refinery flares); *id.*, App. B, at 4 (describing RETR as incorporating elements similar to Regulation 12, Rule 12).

[14] *See* Health & Saf. Code §§ 40727(b)(4)-(5). The District has made no effort to satisfy the other procedural requirements set forth by California law, including the "necessity" requirement (*id.* § 40727(b)(1)), the requirement to conduct a socioeconomic impact analysis (*id.* § 40728.5), and the requirement to demonstrate that RETR will promote attainment of the state or federal ambient air quality standards (*id.* § 40001(c)).

[15] *See, e.g.*, 40 Code of Federal Regulations ("CFR") § 52.24 (setting forth requirements for when a construction moratorium shall apply in a nonattainment area).

[16] *See* note 1 *supra*.

the source's potential to emit, even if that potential should exceed historical emissions levels.[17] Tesoro is concerned that this rule will require petroleum refiners alone to be subject to emission reduction requirements in the absence of any physical or operational change that might otherwise trigger NSR.

B. The Draft Rule Conflicts With Existing Title V Permits

The Draft Rule conflicts with the regulatory framework for major stationary sources, including all Bay Area refineries, to undergo Title V review and comply with the terms of their Title V Permits. *See* BAAQMD Reg. 2-6-301. Title V Permits are intended to encompass all federal, state, and District air quality requirements. *Id.* 2-6-202. Indeed, the District has established extensive requirements regarding what information Title V Permits must contain, consistent with federal regulations. *Id.* 2-6-409. However, none of these requirements suggests that, once a Title V Permit was issued, the District would then establish new *de facto* limitations on facility emissions and operations equivalent to historical emissions.

As the District is aware, the District has imposed "grandfathered" throughput limits in each refinery's Title V Permit, along with a standard condition that clarifies that an exceedance of these limits does not constitute a violation and does not establish a presumption that a modification has occurred; nor does compliance with the limit establish a presumption that such a modification has not occurred.[18] These limits were based on information in the District's possession at the time of issuance of the Title V Permit.[19] While these grandfathered throughput limits are not "firm" limits, they do trigger a reporting obligation and, in practice, a requirement to demonstrate that no change has occurred that should have undergone NSR review.

Now, the District would essentially render this standard condition moot and require that any change resulting in an emission increase above historic operating levels trigger a causal analysis and obligation to reduce emissions to back below the trigger levels, irrespective of whether or not any modification has occurred. In this respect, the Draft Rule is inconsistent with the existing rules for revocation and reopener of Title V Permits. Under Regulation 2-6-314, the District can only revoke a permit by "request[ing] the Hearing Board to hold a hearing to determine whether a major facility permit should be revoked if it is found that the holder of the permit is violating any provision in the permit or any applicable requirement." Further, under Regulation 2-6-415, the District may only reopen and reissue a Title V Permit for cause, with

[17] *See* BAAQMD Reg. 2-1-234.1.2 (adopted but not yet effective); *see also* BAAQMD, Final Staff Report, Updates to BAAQMD New Source Review and Title V Permitting Programs, Regulation 2; Rules 1, 2, 4, and 6, at 25-29 (describing rationale for adopting revisions to 2-1-234).

[18] *See, e.g.*, Major Facility Review Permit Issued To Tesoro Refining and Marketing Company, Facility #B2758 & Facility #B2759, Standard Condition J.2 (Jun. 28, 2011).

[19] *Id.*

notice to the permittee. The Draft Rule effectively creates a mechanism for reopening and revoking Title V Permits, without satisfying any of the procedural requirements for doing so.

According to Regulation 2-6-416, "[o]nce a major facility review permit is issued to a facility…the terms and conditions of that permit shall remain valid for a period of five years from the date of issuance…" Moreover, operation in accordance with the terms of a Title V Permit is tantamount to operation in compliance with the universe of applicable air requirements. The Draft Rule would upend the approach for issuance of Title V Permits for a small subset of permitted sources, denying them the same procedural certainty afforded to all other major sources and voiding their rights to rely upon their existing permits to assure compliance with applicable requirements.

C. The Draft Rule Is Redundant And Unnecessary

As discussed above, there is already a comprehensive system for regulating air pollution from stationary sources, which is leading to better air quality in the Bay Area.[20] Moreover, RETR is unnecessarily duplicative of existing State-wide measures that serve the same function and could, in fact, frustrate implementation of these other measures.[21]

Further, pursuant to AB 32, CARB has promulgated the Energy and Co-Benefits Assessment of Large Industrial Facilities Regulation. This regulation (the "Energy and Co-Benefits Assessment Regulation") applies to all five Bay Area refineries and requires the refineries to "conduct an energy consumption and emissions analysis that identifies the facility's processes and equipment types used in the processes, and provides facility energy consumption and resulting greenhouse gas, criteria air pollutant, and toxic air contaminant emissions." 17 Cal. Code Reg. §§ 95601(a)(2), 95604(a). The AB 32 Scoping Plan emphasizes that this measure is designed to "determine the potential reduction opportunities, including criteria air pollutants and toxic air contaminants [in addition to GHGs]."[22] Pursuant to the Energy and Co-Benefits Assessment Regulation, the refineries must conduct an analysis of the energy efficiency improvement opportunities that exist at each facility, including the identification of potential improvement projects for equipment, processes, or systems that cumulatively account for at least 95 percent of the facility's total GHG emissions. *Id.* §95604(b)(1).

The Draft Rule would require essentially the same type of analysis and pursuit of the same reduction opportunities if and when an increase is identified that cannot be reduced to less than the trigger levels within the required two-year timeframe. Accordingly, the Draft Rule is duplicative of CARB's efforts. Although CARB is the lead agency with respect to

[20] *See* note 10 and accompanying text *supra*.

[21] As suggested above, the District cannot make the required "nonduplication" and "consistency" determinations required by California law due to the Draft Rule's inconsistency with these existing legal requirements. *See* note 14 and accompanying text *supra*.

[22] CARB, Climate Change Scoping Plan: A Framework for Change, at 54 (Dec. 2008).

implementation of AB 32 generally and the Energy and Co-Benefits Assessment Regulation in particular, the local air districts have a supporting role to play in AB 32 implementation. .

Additionally, as the District itself acknowledges, CARB's Cap-and-Trade Program Regulation establishes a price on GHG emissions and is intended to incentivize reductions in refinery GHG emissions.[23] As the District further acknowledges, measures resulting in reductions in GHG emissions "typically result in co-benefits in terms of reducing criteria pollutant and TAC emissions." [RETR Workshop Report, at page 3]. However, the Draft Rule would mute the price signal that the Cap-and-Trade Program is intended to create and could act as a bar to making the type of process or feedstock changes that might be needed to produce lower carbon intensity fuels in accordance with the LCFS. It could also bar efficiency improvements under a number of conceivable scenarios, frustrating refineries' ability to produce their products more efficiently. Therefore, not only is the Draft Rule unnecessary and duplicative of existing measures implemented by CARB under AB 32, but it might possibly undermine achievement of these other measures' goals.

D. The Trigger-Levels Are Inappropriate And Baseless

BAAQMD proposes low trigger-levels in the Draft Rule for a complex operation such as a petroleum refinery. The Draft Rule defines "Trigger-Levels" as "[a]n increase in air emissions from a petroleum refinery relative to the baseline period that, if exceeded, initiates requirements under this rule to prepare or update an emission reduction plan." Trigger-levels are, *inter alia*, "10 tons per year of GHGs." RETR 12-15-228.3. We understand that this is a typographical error and that the proposed trigger-level is supposed to be consistent with the District's "Revised Draft Options and Justification Report: California Environmental Quality Act Thresholds of Significance" (*see* RETR Workshop Report, at 8), which sets a stationary source threshold of 10,000 metric tpy CO_2e.[24] While the Draft Rule's 10 tpy threshold for GHGs is obviously in error, a threshold of 10,000 metric tpy CO_2e is low and could result in triggering RETR's emission reduction requirements for even the most minor increase in production to meet growth in demand, absent any change in a refinery's crude slate or equipment or any other project that might otherwise trigger the District's NSR requirements or CEQA review. Such an increase could occur if, for example, a hydrogen plant operated by a third party, but included within the

[23] *See* RETR Workshop Report, App. B, at 3 (noting that "[e]nergy efficiency measures are already being implemented at refineries in response to the need to upgrade equipment to meet changing market conditions (in California, these now include market conditions resulting from the Cap-and-Trade program to reduce GHG emissions)").

[24] BAAQMD Revised Draft Options and Justification Report California Environmental Quality Act Thresholds of Significance, at 4 (Oct. 2009), *available at*: http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/Revised%20Draft%20CEQA%20Thresholds%20%20Justification%20Report%20Oct%202009.ashx?la=en.

definition of the "Petroleum Refinery" subject to RETR,[25] should increase its production of hydrogen for use as a transportation fuel.

Further, the ambient concentration-based, or health risk-based, trigger levels for $PM_{2.5}$, CO, and TACs would be extremely challenging to manage. For instance, the trigger-level for $PM_{2.5}$ is "10 tons per year of $PM_{2.5}$, or a lesser amount that would increase $PM_{2.5}$ air concentrations at a sensitive receptor by more than 0.3 micrograms per cubic meter (annual average) or that, when considered cumulatively with all sources of $PM_{2.5}$ at the refinery and all other sources located within 1000 feet of the refinery's property line, would result in $PM_{2.5}$ air concentrations at a sensitive receptor of more than 0.8 micrograms per cubic meter (annual average)." RETR 12-15-228.1. The problem with this trigger-level is that there is no *de minimis* threshold, below which a refinery's $PM_{2.5}$ emissions are not considered cumulatively with all sources of $PM_{2.5}$ located within 1000 feet of the refinery's property. As a consequence, if a refinery is located in an area occupied by other sources of $PM_{2.5}$, then even the slightest increase in $PM_{2.5}$ emissions from the refinery could be deemed to contribute to cumulative $PM_{2.5}$ air concentrations at a sensitive receptor of more than 0.8 $\mu g/m^3$ and thereby trigger the Draft Rule's emission reduction requirements. This trigger-level is made all the more challenging by the fact that the projected $PM_{2.5}$ impacts are based on an air dispersion modeling analysis, which is complex in the $PM_{2.5}$ context. *Id.* 12-15-407.1. The same cumulative impacts and modeling problems arise with respect to the CO and TACs trigger levels as well.

E. The Refinery Definition Is Problematic

The Draft Rule defines "Petroleum Refinery (Refinery)" as "[a]n establishment that processes crude oil to produce more usable products such as gasoline, diesel fuel, aviation fuel, lubricating oils, asphalt or petrochemical feedstocks. Petroleum refinery processes include separation processes[], petroleum conversion processes [], petroleum treating processes [], feedstock and product handling [], and auxiliary facilities (e.g., boilers, waste water treatment, hydrogen production, sulfur recovery plant, cooling towers, blowdown systems, compressor engines, and power plants)." *Id.* 12-15-219. In turn, "[t]he refinery owner/operator is responsible for submittal of reports and plans required by this rule that cover the entire petroleum refinery, including any refinery processes or auxiliary facilities that may be separately owned or operated." *Id.* 12-15-224.

Tesoro owns and operates the GER and owns the aspects of the refinery that pertain to separation processes, petroleum conversion processes, petroleum treating processes, feedstock and product handling, and *some* auxiliary facilities. However, Air Products and Chemicals, Inc. owns and operates a hydrogen plant and Foster Wheeler AG owns and operates the cogeneration power plant co-located with GER; each of these facilities supply services to the refinery. Despite the fact that Tesoro has no ownership or operational control over these auxiliary facilities, if GER were to experience an increase above the trigger levels, RETR would require that GER submit an

[25] *See* section II.E *infra* for discussion of the problem associated with the Draft Rule's definition of "Petroleum Refinery".

emission reduction plan that contemplates emissions reductions at the *entire* refinery, including the hydrogen plant and the cogeneration facility. Tesoro cannot dictate emissions reductions at third party facilities.[26]

Further, the requirement to include existing hydrogen plants within the definition may run contrary to existing CARB policies designed to increase the use of hydrogen as a transportation fuel. CARB has estimated that use of hydrogen in fuel cell vehicles could amount to 9.2 percent (%) of statewide supply, triggering the need for increased production of hydrogen.[27] If any of this were to result in increased utilization of existing hydrogen plants, the "Refinery" could experience an increase in its emissions and thereby be subject to the requirements of RETR, even though it may have no control over the source of the emission increase or of reductions at the hydrogen plant. Accordingly, the District should reconsider this broad definition of "Refinery".

F. The Draft Rule's Monitoring Requirements Are Undefined

The proposed rule lacks sufficient definition of what will be required of refineries under the fence-line and community monitoring provisions of the rule. *See id.* 12-15-501, 12-15-502. Experience has shown that existing fence line monitoring systems operated by refineries (e.g., ground level monitors for hydrogen sulfide) frequently indicate exceedances of standards and/or elevated concentrations as a result of non-refinery operations. Similarly, without any specification in the Draft Rule for the constituents that must be monitored or the standards for siting and operation of community air monitoring systems, the Draft Rule could result in a petroleum refinery being required to report elevated concentrations of pollutants due solely to sources other than the refinery.

Finally, the Draft Rule delegates publication of air monitoring guidelines to the Air Pollution Control Officer, i.e., to District staff. *See id.* 12-15-411. By failing to articulate any standards for the required fence line and community monitoring programs, the Draft Rule creates a real risk that the required programs will produce data bearing no relation to a refinery's actual operations or contributions to regional air quality. At the very least, the District should publish the guidelines required by RETR as part of this rule development process, so that representatives of the refineries can offer their technical advice and assistance to be sure that the data generated through implementation of the required monitoring programs accurately characterize refineries' impacts upon air quality.

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[26] This problem is highlighted by the fact that, in the case of GER and the co-located cogeneration plant, Foster Wheeler AG sells electricity to Pacific Gas & Electric. It is entirely unclear how the District would allocate the emissions for such a third-party auxiliary facility that is not solely dedicated to servicing a refinery. Likewise, it would be patently unreasonable to require Tesoro to reduce emissions throughout the refinery for emissions that are associated with increased deliveries of electricity to the grid.

[27] *See* CARB, Draft Environmental Analysis for the Advanced Clean Cars Program, App. B, at 134-35 (Dec. 7, 2011), *available at*: http://www.arb.ca.gov/regact/2012/cfo2012/cfoappb.pdf.

III. CONCLUSION

Tesoro is concerned about the proposed RETR as is noted above.

Tesoro does believe that certain provisions of the rule would be beneficial to the Bay Area, the District and the refineries. These are the provisions of the rule that would have refineries submitting emissions inventories. The submittal of emissions inventory data will provide data that will help determine if some of the problematic elements of this rule are necessary to ensure continuing improvements in air quality in the Bay Area. Emissions inventory data would also be instructive as the monitoring provisions of the rule are developed.

Tesoro suggests a meeting between the District and technical representatives of the area refineries to discuss this area of common ground.

Feel free to contact me by phone at 925.370.3275 or by email at matthew.w.buell@tsocorp.com if you would like to discuss these comments further.

Best regards,

Matthew Buell
Manager, Environmental

MWB/kds