



May 31, 2013

VIA E-MAIL

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

Electronic submittal: BBateman@baaqmd.gov

**Re: Proposed Petroleum Refining Emissions Tracking Rule
Regulation 12, Rule 15
Comments from Valero**

Dear Mr. Bateman:

The Valero Companies (“Valero”) appreciate this opportunity to provide comments regarding the Bay Area Air Quality Management District’s (“BAAQMD”) proposed regulation on the Petroleum Refinery Emissions Tracking Rule, as posted for comment in March of 2013. Valero owns and operates a refinery within the BAAQMD in Benicia, CA with a throughput capacity of over 170,000 barrels per day, providing transportation fuels and high quality employment opportunities to the Bay Area. The Benicia refinery will be significantly impacted by the proposal referenced above. We offer the following comments, insights and information to better inform the regulatory development process.

Though this regulation is titled “Petroleum Refining Emissions Tracking Rule”, it is, in actuality, a means to cap refinery emissions below the levels legally permitted through the District’s existing regulatory process.

Valero strongly urges the BAAQMD to significantly restructure and re-focus their regulatory development efforts to strictly managing conditions of “upset” emissions from refining operations and abandon the proposed overly-broad, redundant, and highly inefficient regulatory action presented in the workshop in March 2013. While we appreciate and support the District’s goals of managing accidental releases and the protection of neighboring communities, better air quality, and transparency in any regulatory process, Valero contends that the current proposal as written will fail to accomplish its stated goals and benefits neither the public nor the environment. Generally, we find this proposal to be 1) highly redundant with existing district and federal regulations, resulting in duplicative efforts and inefficiency, 2) highly restrictive on refining operations without firm scientific grounds on which to justify this regulatory action, and 3) ineffective in accomplishing its stated goals of tracking emissions, regulating refinery emissions, and preventing accidental releases to any degree greater than that already achieved by existing regulations.

Valero further supports the comments of the Western States Petroleum Association (WSPA) and incorporates their comments herein. We offer below further comments and discussion in support of our position on the current proposal.

1. The rule creates a cap on refinery emissions that circumvents the existing regulatory process.

The draft rule does not explain or clarify how permitted emissions increases that may go above the “trigger levels” established in the rule would be compared against the baseline, implying that these types of increases would never be acceptable. This would potentially prohibit expansions and production increases that may be necessary to meet the product demands. Since trigger levels listed in the draft rule for POC, NO_x, and SO₂ are more restrictive than NSR/PSD permitting threshold levels, the regulatory mechanisms that already exist to evaluate and permit emission increases become moot. The Bay Area is a marginal nonattainment area for ozone, and its design value for the current 24-hour PM_{2.5} standard is 36 µg/m³, just above the standard of 35 µg/m³. The Bay Area is in attainment for SO₂. Based on these classifications, the federal significance emission rates for POC, NO_x, and SO₂ would be 40 TPY. For comparison, the trigger levels for these same pollutants under this rule are 10 TPY. The BAAQMD has not demonstrated why the Bay Area needs such low trigger levels compared to other areas of the country with similar ambient pollutant concentrations.

The BAAQMD notes that GHGs are not directly associated with local or regional health risks which are what this rule is supposed to address. Therefore, we see no reason that GHGs should be included in such a rule. Finally, the proposed GHG trigger level is set to only 10 TPY. This is equivalent to an increase in firing rate of only about 0.02 MMBtu/h and is 7500 times more stringent than the federal GHG tailoring rule. Again, the BAAQMD has not demonstrated why such a tight trigger level has been selected. Once permitting is triggered under this rule, the emissions reduction plan will require that every source in the refinery be considered for emissions reductions. This amounts to a refinery wide “Best Available Control Technology” (BACT) requirement and is significantly more restrictive than current state and Federal permitting regulations.

2. Formation of an additional refinery air emissions baseline is unnecessary.

The BAAQMD has failed to demonstrate why a requirement to calculate a baseline for tracking refinery air emissions is necessary in light of existing state and federal obligations. Refineries currently prepare and submit annual emissions inventories that address criteria pollutants, toxic air contaminants, and greenhouse gases emitted by operations associated with our operations. Additionally, baseline emissions are documented for permitting purposes whenever modifications are made.

Permit holders routinely track emissions and calculate emission increases due to process changes and projects that increase throughput to ensure that all emissions are authorized. Emissions of regulated air pollutants are tracked and compared to potential emissions from projects and throughput increases to determine the type of permit review required to authorize the emissions. The “trigger levels” in the proposed rule are generally consistent with the most stringent levels established by EPA for federal permitting. The existing reporting requirements encompass emissions to all media and provide a sufficient level of detail to ensure that all significant emissions of criteria pollutants, toxic air contaminants and greenhouse gases are represented. Agencies and the public have access to the permit applications and emissions inventories. For all of the reasons listed above, we find the proposed rule to be duplicative and unnecessary. Unless the BAAQMD can demonstrate why the existing tools for tracking emissions are insufficient, the requirement to calculate an additional baseline should be deleted.

3. The BAAQMD has failed to adequately demonstrate the need for this action or statutory basis for this regulation.

The draft proposal workshop report and Q&A discuss consequences in terms of “possibilities” instead of citing solid evidence of the impacts of processing what the BAAQMD calls “lower quality crude”

Mr. Brian Bateman

May 31, 2013

and “dirty crude” on emissions. What the scientific record does indicate is that air quality continues to improve in the Bay Area despite increases in both refinery fuel production and a trend towards heavy feedstocks – a statement supported by the BAAQMD’s own records of emissions and air quality. Additionally, we disagree with the assertion that “high quality crudes are less available”. New oilfield discoveries such as the Bakken and Eagle Ford fields are creating an abundance of lighter crudes such that the U.S. is becoming less dependent on foreign crude, further discrediting the position that refiners will use increasingly heavier crudes from abroad as the only available feedstock. Lacking an objective and scientifically supportable basis, we contend that the BAAQMD has failed to demonstrate a justifiable need for this regulation.

Valero also contends that the BAAQMD has not demonstrated the proper statutory authority to form a sound legal basis on which to place this rulemaking effort. Given the cited regulatory redundancy and lack of demonstrative environmental goals and objectives, we strongly suggest that the BAAQMD consider the risks of proceeding with such a proposal when statute does not support such a program.

4. The rule will significantly impact operational flexibility that has already been addressed through existing permitting processes.

The proposed regulation contains provisions for establishing a facility-wide emissions baseline that effectively overrules existing Title V Major Facility Review Permits and Permits to Operate (PTOs). The Title V permits and PTOs contain operating limits that are based on thorough New Source Review (NSR) and Prevention of Significant Deterioration (PSD) permitting practices as delegated by EPA to the District. The baseline approach to capping emissions essentially de-rates the refineries by establishing an arbitrary site-wide limit well below currently permitted levels.

Unlike the current permitting rules, this rule limits the flexibility needed for day to day operations. Previously, a refinery could operate up to its permit allowable emission rates as long as no equipment was modified to operate at such rates. These emission rates were based on acceptable impacts and reasonable controls as established through formal, long established permitting procedures. The current proposal essentially invalidates the established current emission allowables and replaces them with an arbitrary baseline. The proposal also ignores modifications and is automatically triggered by day to day emission changes, making it possible for a refinery to trigger requirements under this rule annually because the trigger levels are so low. The entire refinery, not just modified sources and downstream affected sources, will always be potentially affected. Since an entire refinery typically has allowable emissions of several hundred tons for a given pollutant, it is possible that a small percentage increase in emissions may trigger permitting. We contend that currently permitted, day-to-day operational changes and the resulting changes in emissions should not result, under any circumstances, in an additional permit review when such review has already occurred under federal law.

5. There is no justification or specifics for a community air monitoring system.

The draft proposal workshop report and regulation do not specifically list a justification for a community air monitoring system other than express concern with ensuring that levels of toxic pollutants do not exceed published health effect criteria. The existing permitting process includes requirements for modeling to ensure that permitted levels of pollutants do not exceed levels that adversely impact public health. Refineries are currently subject to numerous reporting rules under state, local and federal programs in the event of a release of a toxic or potentially toxic substance above federal and state reporting levels. Investigations of these events are required by numerous

federal, state and local rules. Existing regulations require sites to implement measures to prevent reoccurrences or be subject to enforcement action for repeat issues.

Fence-line monitoring requirements in the proposed rule are not clear as to the compounds expected to be monitored, the type of equipment necessary, specific QA/QC requirements, etc. The regulation only defines fence-line monitoring system as “equipment that measures and records air pollutant concentrations along the boundary of a facility, and which may be useful for detecting and estimating the quantity of fugitive emissions, gas leaks, and other emissions from the facility”. This definition is vague, and does not adequately define the scope of what is required. The definition leaves open the potential for monitoring of greenhouse gases as part of the air monitoring system when a methodology for monitoring fence-line green house gas emissions is not currently technically feasible.

6. The rule creates competitive disadvantages and disincentives for refinery investments.

The proposed regulation provides refineries outside of California a competitive advantage since they would not be required to comply with the overly burdensome provisions of the regulation. The baseline monitoring, reporting, and record keeping requirements will require additional personnel to comply with the requirements as written. Valero estimates this could be 2-3 additional staff positions.

In addition, refineries will have no incentive to invest in their facilities since any increase in emissions above the trigger levels will result in the requirement for an emission reduction plan and additional controls to offset all emission increases, even though the refinery has permitted emission limits above baseline plus the trigger level. Given a choice, refiners with out of state facilities may elect to invest outside of California as a better strategic option.

7. The BAAQMD is severely underestimating the complexity and burden on agency and refinery staff.

Based on the definition of owner/operator in the draft regulation, emissions from sources not controlled or operated by the refinery would need to be tracked. This seems inappropriate at best, and creates an unnecessary record keeping and monitoring program burden. It would be difficult and inappropriate to certify to the accuracy of data provided by operations that are not under the control of the refinery. The proposed rule also states that as pollutants are added to the CA EPA list of TACs, then baseline numbers would need to be developed for these new compounds. The process would be “never ending” and retrospective to a point that determining these emissions would be potentially impossible. In effect, there are no de minimus emission sources or emission levels, making it necessary to track every molecule generated by the refinery. The BAAQMD is severely underestimating the complexity of an essentially new permitting process being created by this rule.

If the BAAQMD decides to proceed with adopting and implementing this rule, Valero maintains that the agency has created duplicative permitting regulations and programs. If adoption occurs, the BAAQMD should evaluate the necessity and practicality of maintaining and administering multiple permitting programs and regulations, and move to redact unnecessary regulations.

Valero strongly urges the BAAQMD to reconsider the objectives and need for the proposed rule. We contend that Bay Area refineries are already regulated in the manner foreseen by the proposed regulations and that such overlay regulations are ineffective and overly burdensome. We also recommend that BAAQMD re-examine the specific goals of this effort in the context of current regulatory requirements and goals and consider approaches that do not unnecessarily limit refinery operational flexibility. A sound, defensible scientific justification is critical. We look forward to working with the BAAQMD on

Mr. Brian Bateman
May 31, 2013

further concept development on approaches that are reasonable, technically feasible, and cost effective. Please contact me at (210) 345-2120 should you have any questions or need clarifications concerning our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Covert". The signature is written in a cursive style with a horizontal line extending from the end.

Patrick Covert
Executive Director Regional Environmental & Regulatory Affairs
Valero Companies
210-345-2120
pat.covert@valero.com