Western States Petroleum Association
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Bob Brown
Director, Bay Area Region

June 26, 2017

Mr. Greg Stone
Supervising Air Quality Engineer
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105

via email at: **newrules@baaqmd.gov**

Re: Western States Petroleum Association Comments on the Workshop Draft Amendments to Regulation 2, Rule 1 and Regulation 2, Rule 2

Dear Mr. Stone:

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).

In the attachments that follow, WSPA describes its legal and technical concerns with the proposed amendments to Regulation 2, Rules 1 and 2. WPSA also hereby incorporates by reference the written comments of the American Fuels and Petrochemical Manufacturers on this workshop draft of Regulations 2, Rules 1 and 2. We appreciate your consideration of WSPA's comments, and look forward to your responses.

Sincerely,

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Attachment A:
WSPA Legal Comments on Draft Amendments to Rules 2-1 and 2-2

RULE 2-1

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; nonduplication; and reference. Cal. Health & Safety Code § 40727. As currently drafted, the proposed amendments to Rule 2-1 will not meet certain of these criteria.

Necessity

The District has not explained why the proposed amendments to the District's new source review (NSR) program targeting crude slate changes at petroleum refineries are necessary.[1] The Workshop Draft vaguely explains that "[c]oncerns have arisen that refineries may be making changes associated with moving to new crude slates that constitute 'modifications' under Regulation 2-1-234, but doing so without going through the NSR process." Workshop Draft, at 10. The District does not elaborate on the basis for the District's "concerns" that refineries are either ignoring or overlooking NSR permitting requirements when they change the crude oil blends they process, except to say that because "[r]efineries are large, complex operations, … any modifications associated with crude slate changes may be relatively subtle and not immediately obvious." Workshop Draft, at 10. These unsupported "concerns" and observations do not justify the proposed amendments to the NSR rules regulating "significant crude slate changes." In any case, there does not appear to be support for the proposed regulation of crude slate changes under the NSR program.

To begin with, the District has not provided any justification that changes in the crude slate processed by a refinery increase refinery emissions, such that regulation is warranted. In fact, the District is currently investigating that very premise with the data it is collecting under Rule 12-15's crude slate reporting requirements. The final Staff Report to Rule 12-15 explained that the requirement for refineries to provide the District with crude slate and non-crude feedstock information would "enable the Air District to determine whether there is a correlation between changes in crude slate and feedstock changes and increases in emissions" and that "determination of a correlation (or lack thereof) will help the Air District decide whether such changes should be addressed in future regulations." Final Staff Report for Rule 12-15 (April 2016), at 17. In other words, the District intended to use the data collected under Rule 12-15 to determine whether a need exists to regulate changes in the crude blends processed by a refinery. But the District has only just initiated this investigation (as Rule 12-15 was only adopted two months ago), and so it could not yet have collected any meaningful data to establish a correlation between crude slate changes

[1] WSPA and its members have repeatedly raised their concerns with the District's lack of justification and authority for targeting the regulation of crude slate changes. WSPA incorporates those comments by reference here. *See* WSPA Comment Letter on Proposed Reg. 6-5, 8-18, 9-14, 11-10, 12-15, and 12-16 (Nov. 23, 2015); 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); WSPA Comment Letter on Proposed Reg. 12-16 and Draft EIR for Rules 12-16 and 11-18 (May 8, 2017); 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); WSPA Comment Letter on Proposed Reg. 12-16 and Draft EIR for Rules 12-16 and 11-18 (May 8, 2017) and the amended Rule 12-16 (June 12, 2017).

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and emissions. The District's proposed amendments are therefore premature. The District must first complete its study of the Rule 12-15 crude slate data, review and assess whether a correlation exists.

In other words, either Rule 12-15 was not necessary or the current proposed changes to Rules 2-1 and 2-2 are not. If in fact the District already has sufficient data to demonstrate the necessity of regulating crude slate changes, then Rule 12-15 was not necessary when it was finalized on April 20, 2017. Alternatively, if the District has not yet gathered such data, then the proposed amendments to Rule 2-1 are not necessary to address that concern.

Furthermore, the District has repeatedly failed to consider that existing crude oil supplies on the market already provide a high degree of variability in crude slate composition, and the availability of "new" crude sources is not a new phenomenon in the context of the crude oil market. Refineries have for years been blending "traditional" and "new" crude oil sources to meet their design parameters. And yet, the District's emissions inventory continues to decline. The District has itself acknowledged on a number of occasions that existing ambient monitoring data and emissions inventories demonstrate that refinery emissions have consistently decreased over time and that air quality in the Bay Area has improved. *See, e.g.*, Staff Report to Rules 12-16 and 11-18 (April 2017 Version), at 14. Accordingly, any changes refineries are currently making to the crude slates that they process do not appear to be correlated to increases in refinery emissions, which in turn demonstrates that refineries are not making modifications (as defined in the NSR rules) when they change their crude slate blends within the ranges that they are designed to process.

In addition, the District's stated "concern" that refineries are modifying their sources without undergoing NSR permit reviews does not support the proposed amendments. To the extent that crude slate changes are significant enough to qualify as "alterations" or "modifications," they are already expressly regulated under the District's current NSR rules. The only basis for revising the definition of "alter" in Section 2-1-233 is therefore to capture crude slate changes that are *not* already regulated, *i.e.*, that do not involve "any physical change, change in method of operation, or other similar change at an existing source" that may affect air emissions. Section 2-1-233 (defining "alter"). However, the District has not presented any data whatsoever suggesting that it is necessary to broaden the scope of NSR to include "a significant crude slate change." To the extent that a crude slate change is significant enough to potentially affect air emissions, it would already be regulated as a "modification" or "alteration." Accordingly, the only reason it would be necessary to specifically include crude slate changes would be to regulate those changes that do *not* involve a physical change or change in the method of operation, and that do *not* affect or have the potential to affect emissions. The District has offered no evidence to date suggesting that it is necessary or appropriate to broaden the scope of NSR to these other types of changes.

Lastly, it is not clear from the discussion in the Workshop Draft what air quality benefit(s) will result from permitting a "significant crude slate change" under the NSR program, particularly where the change will not increase emissions. The District must justify the imposition of a crude slate window on refinery operations with some identifiable air quality benefit. Otherwise, the District would effectively be regulating refineries' choice of feedstocks, rather than emissions, which would constitute the regulation of interstate commerce and would be outside the District's authority. Further, absent a clear legal and technical basis, the District's targeting of a single industry to address a hypothesis that changes in the crude slate processed by refineries may impact air quality would be arbitrary and capricious.

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Authority

Under California law, the District has the authority to regulate air pollution, *i.e.*, emissions of air pollutants. Cal. Health & Safety Code § 40000. The District therefore does not have the authority to regulate the specific types or attributes of crude oil blends that refineries process, except as they may relate to air emissions. Under the proposed "alteration" provision of Rule 2-1, however, where the attributes of a new crude oil blend processed by a facility is above a certain threshold but the change will not increase emissions, the District is proposing "to specify an approved window for continued operation going forward." Workshop Draft, at 14. Thus, the District is seeking to regulate the characteristics of a refinery's crude oil inputs, even where it determines that the requested change will not impact emissions.

Despite the fact that the District has yet to identify a causal relationship between the crude slate parameters it seeks to regulate and air emissions, it is nevertheless seeking to require refineries to process crude oil blends that meet specific values for the attributes the District has apparently deemed relevant to emissions. The result of the District's proposed prevention of significant deterioration (PSD)/new source review (NSR) permitting process for "significant crude slate changes" will therefore be to require refineries to process crude oil from only certain sources. However, under the federal Clean Air Act, the EPA and states cannot impose or even consider "controls" that would "redefine the source" when evaluating Best Available Control Technology (BACT) during the PSD/NSR permitting process. For example, courts have consistently rejected attempts to change power plants' fuel mixes through the NSR process (*i.e.*, by requiring more or less biomass, or a different kind of coal). *See, e.g., Helping Hand Tools v. U.S. Environmental Protection Agency*, 848 F.3d 1185 (9th Cir. 2016) (; *Sierra Club v. EPA*, 499 F.3d 653, 655 (7th Cir. 2007) (requiring plant to accommodate shipments of low-sulfur coal from a more distant source would amount to requiring a redesign of the plant). As part of their basic design, refineries are designed to handle a specific range of crude blends, with the purpose of being able to produce certain end products through the facility's refining processes. Because the crude range is such an integral characteristic of a refinery's basic design and the products it makes, any attempt to impose a specific crude slate on a refinery would amount to a redefinition of the source—an outcome that is not allowed by the PSD/NSR program, EPA, or the courts.

Just as the District cannot compel a power plant to use a particular input (*i.e.*, a fuel source), the District cannot compel a refinery to process a particular crude blend or "crude slate." And just as the District cannot impose this through the BACT process, the District cannot use crude slate changes as the basis for evaluating whether PSD/NSR is triggered in the first place. Because refineries are designed to process a certain range of crude slate, and because the District's proposed amendments would have the effect of requiring it to process something different or more narrow, the District has run afoul of the prohibition on "redefining" a source under the PSD program. The District does not have this authority under the Clean Air Act or California law.

Nonduplication & Consistency

In addition to the proposed amendments in Rule 2-1, the District has recently adopted and proposed several other regulations to address "concerns" about crude slate changes, including Rules 12-16, 13-1, and 11-18. These four regulations have all been proposed in response to community concerns about the speculated impact to the Bay Area's air quality from changes in crude slates processed by refineries, and, in this way, are essentially alternative vehicles for addressing the same need. Even assuming that

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"concerns" about crude slate changes constitute an air quality problem in need of regulation – a premise which WSPA and its members challenge, as described above – the District still needs to explain how Rule 2-1 addresses the "concerns" over crude slate changes in a way the other recently adopted or proposed regulations do not. As currently drafted and described, the proposed amendments to Rule 2-1 appear to be duplicative of the District's rulemaking efforts for Rules 12-16, 11-8, and 13-1.

Clarity

The proposed amendments to Rule 2-1 are not clearly written, as required by the California Health & Safety Code, particularly with respect to the procedure for requesting a "significant crude slate change" as an "alteration." The Workshop Draft explains that a refinery would need to obtain the District's approval before it processes a crude oil blend or other feedstock blend that will differ from the refinery's 2013-2016 historical baseline period by more than 3 standard deviations from the mean. Where a refinery expects a "significant crude slate change" to occur, the refinery "will be able to provide the expected range of values of each of the five attributes that it anticipates from its new crude slate and ask the Air District to review and approve that range", and the District will then specify the approved range in an authority to construct or permit to operate. Workshop Draft, at 14. Although the Workshop Draft states that the proposed definition of "significant crude slate change" provides for this scenario, the District should more clearly articulate this process directly in the rule language. In addition, the proposed amendments do not identify a timeline for the District's review and approval of requests for "significant crude slate change" as "alterations." The District should be required to review any such request and determine whether a full NSR review is necessary within 5 days or less of receiving a refinery's application, and thereby provide refineries with the approval to run the crude slate in short order.

Furthermore, the District needs to clarify whether the District's review of an application for a Significant Change in Crude Slate would be exempt from review under the California Environmental Quality Act (CEQA). To the extent that such applications and permit approval are not exempt from CEQA review, it is unlikely that the District would be able to complete its review and analysis in a manner that would provide a quick turnaround and response to a refinery.

Please see the Technical Comments section in Attachment B for additional examples discussing the technical feasibility of the proposed amendments to Rule 2-1 and the need for more clarity.

RULE 2-2

Necessity

The District has not demonstrated the necessity for lowering the GHG BACT permitting threshold to 25,000 CO_2e, or for applying this threshold to all sources, regardless of whether they meet the definition of a "major facility". The District must justify these decisions based on a balanced analysis of the air quality benefits and regulatory costs of requiring BACT for GHGs. Notably, the EPA criticized a 30,000 tpy CO_2e permitting thresholds as too stringent for the federal NSR program, but the District nevertheless concludes that it "would be appropriate to go further, to 25,000 tpy." Workshop Draft, at 18. The District appear to justify this on the low administrative burden the District anticipates would accompany the lowering of the permitting threshold relative to the number of sources that would be affected. However, the Workshop Report acknowledges that "[t]he lower the threshold is set, the more it will cover small

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sources with relatively minor GHG emissions, which are much more numerous, and for which it is harder to achieve meaningful emission reductions." Workshop Draft, at 18. The District has offered no evidence that lowering the emission thresholds and extending the GHG BACT requirement to all sources will indeed achieve a meaningful reduction in emissions from sources in the 25,000 – 75,000 range. The proposed change will likely only generate additional paperwork and justification for fee increases, but without significant GHG reductions.

Clarity

Certain of the proposed amendments to Rule 2-2 need to be clarified. Please see the examples below and in the technical comments in Attachment B.

Emissions Offsets

The District should not remove the language in the current version of Section 2-2-412 providing that the District will make up any shortfall in emission reduction credits by providing credits from the Small Facility Banking Account or by obtaining the credits itself. The District is legally obligated to review and approve the required offsets obtained for any new or modified source at the time of permitting. The District is further required to submit by March 1 of every year a demonstration that those credits are valid and sufficient. If the District fails to submit such a demonstration, that failure falls on the District, not on the individual facilities that obtained the required offsets, submitted them, obtained the District's approval, and have been operating in good faith based on that approval. The District is a public agency; to the extent it does not appropriately implement its regulatory responsibilities by submitting a timely, complete, and accurate accounting that meets EPA requirements, it is appropriate that the public bear any additional costs associated with that failure.

Further, it is unclear how the District proposes to implement the adjustment process proposed in Section 2-2-412. The proposed rule states that if there is an offsets shortfall situation for a pollutant, the District will "adjust the offsets submitted for that pollutant in connection with any subsequent permitting of a new 'major stationary source' as defined in 40 C.F.R. section 51.165(a)(1)(iv) or 'major modification' as defined in 40 C.F.R. section 51.165(a)(1)(v) to the extent that any of the developments listed in subsections 412.1 through 412.3 have occurred between the time the offset credit was generated and the time the offset credit is used." This would suggest that the District intends to require extra offsets from the next source that is permitted. However, the Workshop Draft explains that "if there is a shortfall situation, then the APCO will apply a surplus adjustment at the time any offsets are used, until such time as the shortfall is remedied[,]" which implies that the adjustment will relate back to the original offsets submitted by the originally permitted source. Workshop Draft, at 31. The District needs to clarify how it expects for this process to be implemented.

PSD Project

The District should clarify the relationship between Section 2-2-224 and Section 2-2-304. The definition of "PSD Project" in Section 2-2-224 includes an asterisked note stating, "GHG emissions are Regulated NSR Pollutants if there is (i) an emissions increase of a Regulated NSR Pollutant other than GHGs, and (ii) an <u>increase in emissions of GHGs of 75,000 tons</u> per year CO2e or more" (emphasis added). Section 2-2-304, on the other hand, refers to a 25,000 tpy threshold; furthermore, the District proposes to delete

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the term "PSD Project" (the defined term in Section 2-2-224) from this section and limit it to those projects addressed in Section 2-2-304.1. The District should clarify to what extent the asterisked note in Section 2-2-224 applies under Section 2-2-304.2, and what the triggering GHG threshold is.

Authority

As WSPA and its members have discussed in prior comment letters, the District does not have the authority to regulate emissions from cargo carriers. *See, e.g.*, WSPA Comment Letter on Proposed Reg. 6-5, 8-18, 9-14, 11-10, 12-15, and 12-16 (Nov. 23, 2015). By requiring emissions from cargo carriers to be included in the facility emissions calculation procedures under Section 2-2-610, the District is holding stationary sources responsible for emissions from other entities that are beyond the stationary sources' control and beyond the District's regulatory jurisdiction. The District should remove all references to emissions from cargo carriers from the provisions of Rule 2-2.

TIMING OF PROPOSED AMENDMENTS TO RULE 2-1 AND RULE 2-2

The current draft rules address two separate sets of issues: (i) minor, administrative changes to the NSR rules to address objections made by EPA; and (ii) significant substantive changes to directly regulate crude slates and decrease GHG permitting thresholds. WSPA and its members understand that the District needs to act quickly to comply with EPA's findings on the administrative changes. However, the District is under no such deadline to make the proposed changes to the crude slate and GHG provisions.

With respect to Rule 2-1, as described above, among other deficiencies, the proposed amendments are premature; the District has not yet demonstrated that a need exists for regulating changes in crude oil blends processed by refineries. With respect to Rule 2-2, the District is proposing a significantly more stringent GHG threshold for BACT, which would more than double the number of new and modified sources estimated to be permitted each year. This change is unlike the minor administrative changes otherwise being proposed by the District. The District should therefore move forward with the minor, administrative changes to the NSR rules as a separate rulemaking from the substantive changes the District is proposing with respect to GHG BACT thresholds and crude slate changes.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act ("CEQA") requires the District to consider the whole of the action; 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.* Rules 2-1 and 2-2 are being considered for environmental review. The District should prepare an EIR that will also review and compare the cumulative impacts of these rules with the recently adopted and planned rules which are part of a suite of regulations identified by the District as the Petroleum Refinery Emissions Reduction 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.

As discussed above, pursuant to Rule 12-15's crude slate reporting requirements, the District is currently investigating whether changes in the crude slate processed by refineries increase emissions. The final Staff Report to Rule 12-15 explained that the District will analyze the data collected on crude slate

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attributes to determine whether there is a correlation between changes in crude slate and feedstock changes and increases in emissions. The results of the analysis will then inform the District's decision-making with respect to deciding whether crude slate changes need to be regulated. Rule 12-15 is therefore linked to the changes proposed in Rule 2-1 (although WSPA maintains that the proposed changes are premature, as discussed above). Meanwhile, Rule 12-15 is also clearly linked to the District's rulemaking efforts for Rules 12-16, 11-18 and 13-1, all of which are in some way connected to the "concerns" that the District has expressed with respect to crude slate changes. In fact, Rules 12-15 and 12-16 were originally reviewed together in an EIR that was abandoned by the District. It is clear that all of these rules are designed to be implemented together toward the same 20% reduction goal and, therefore, should be analyzed together to assess individual and cumulative environmental impacts.

CEQA prohibits "segmenting" projects to create the appearance of a lesser degree of impact. 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 12-16, 13-1, Reg. 2-1, Reg. 2-2) pursuant to this same strategy. WSPA has previously commented upon these segmenting and piecemeal issues, and WSPA incorporates those comments by reference here.[2] The District cannot piecemeal the analysis of environmental impacts from the Refinery Strategy project that are clearly derived to work toward the common goal of a 20% emissions reduction target. Without a true analysis of the whole project, it is impossible to quantify and understand the magnitude of the impact the adopted and proposed changes will have on the environment.

The District cannot piecemeal the analysis of environmental impacts from the Petroleum Refinery Emissions Reduction project that are clearly derived to work toward the common goal of a 20% reduction target. Furthermore, the District must ensure that its analysis and findings are based upon creditable 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. Lastly, the District must ensure that the definitions for terms presented in Rules 12-15, 12-16, 13-1, 2-1 and 2-2 are consistent. If a definition is in fact modified, then the District needs to explain why the modification is necessary and why that modification does not apply in other refinery related rules.

[2] *See* 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); WSPA Comment Letter on Proposed Reg. 12-16 and Draft EIR for Rules 12-16 and 11-18 (May 8, 2017); 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); WSPA Comment Letter on Proposed Reg. 12-16 and Draft EIR for Rules 12-16 and 11-18 (May 8, 2017) and the amended Rule 12-16 (June 12, 2017).

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Attachment B:
WSPA Technical Comments on Draft Amendments to Rule 2-1 and Rule 2-2

I. TECHNICAL COMMENTS ON PROPOSED AMENDMENTS TO RULE 2-1

Implementation

The District's proposed definition of "Significant Crude Slate Change" (2-1-243) is ambiguous. As WSPA has explained to the District on numerous occasions, a refinery obtains crude from a variety of confidential sources. The refinery may have purchased a chemical analysis for a given crude oil from a particular origin. In some cases however an analysis may not be available prior to the refinery having to make a decision whether or not to purchase a shipment, and such decisions often need to be made rapidly. If an analysis has been purchased, it will typically list some of the properties listed in proposed sections 243.1 through 243.5, but typically will not have the properties listed in 243.4 and 243.5 especially for material that is pre-processed rather than crude. It is not clear how the District intends to make the implementation of this rule feasible.

In addition, the District fails to outline how staff will review crude changes that would meet the definition of "Significant Crude Slate Change". Nothing has been provided in sections 243.1 through 243.5 that would allow a demonstration of a change in emissions, and to what extent, that would necessitate a permit review. During the workshop for this rule, District staff identified that some of the crude reviews for applicability determinations would be "very quick", rather than full review of a permit application. However, as written, the regulation has no provisions for such determinations. If the District's intent is to apply the criteria to individual crudes—as could be interpreted from the current wording of 2-1-243—rather than monthly averages of crude blends, the District should add language which requires District staff to make an evaluation of whether or not the crude can be purchased within five days or receiving the available information regarding the crude properties.

Lastly, given that the District's focus is on wholesale changes in crude slate, and that information can be incomplete prior to purchase, there need to be provisions for when there are outlying data that can only be determined after the crude has been purchased.

The District has not demonstrated a nexus to air emissions

The proposed rule modifications fail to demonstrate any benefit to air quality. Although storage tank emissions are a known function of vapor pressure, and the extent of BTEX in those emissions is dependent on the BTEX content of the liquid, the District has not identified any relationship between any of the other parameters and any emissions. While it might be assumed that denser materials require more processing than lighter materials, this doesn't take into account any crude blending that occurs prior to material being fed into the crude unit, or that the distribution of products may be different. While it could be assumed that refinery emissions of SO2 and/or H2S might depend on the sulfur content of the crudes, this doesn't take into account the various sulfur recovery systems and emissions control systems that refineries use or that the fraction of the sulfur in the crude that is emitted into the air is minute. Lastly, iron is not even listed in Regulation 2-5 as a toxic air contaminant.

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The method used to define a "Significant Crude Slate Change" is unreasonable

The method to define a significant change is comprised of two parts: the monthly average compared against a baseline mean plus three standard deviations. The monthly average is unreasonable because (except for toxic air contaminants) new source review modification tests assess emissions on an annual basis. Additionally, the "concerns" about crude slate changes are understood to be long-term or permanent changes. Due to natural variations in crude oil compositions and market conditions, a refinery may easily process a crude slate which may be an outlier, having a single monthly average characteristic that exceeds the mean plus three standard deviations, when the remaining 11 months are within the mean plus three standard deviations.

The mean plus three standard deviation threshold is unreasonable because it inexplicably excludes the minimums and maximums. If the refinery has processed a crude blend that is at the 0^{th} or 100^{th} percentile in the past, the refinery should be allowed to process it without any District review. This problem is exacerbated by the baseline period for reasons described below.

The current language would require permit review if a refinery wanted to process crude or preprocessed material with sulfur, vapor pressure, or chemical concentrations that are lower than the average plus three standard deviations. The District has not provided any rationale or justification for "*three standard deviations from the mean of the average monthly values*" over three years.

The calendar years baseline used to define a "Significant Crude Slate Change" is too narrow

The calendar years used to define a Significant Crude Slate Change is too narrow to represent the full range of crude reasonably expected to occur using existing equipment. In the District's staff report, the District fails to provide any technical basis for why the baseline of crude slate that a refinery can process is reasonably represented by a recent four year period, 2013-2016. There is no reason why the baseline period should have a lower bound at all. The District's proposal of using a mean plus three standard deviations presupposes that any changes associated with a crude slate change only serves to increase the range of crude characteristics that a refinery can process. This is also consistent with comments from community stakeholders that crude slates are getting "heavier". It stands to reason then that expanding the baseline period to be without a lower bound will only add in time periods when changes have not yet occurred to enable processing a wider range of crude oils. Adding any lower bound to the baseline period only serves to artificially constrain the range of crude slate characteristics to those which may have been simply more economical during the proposed period, but which were not in any way constrained by the physical equipment/limitations of the refinery at the time.

For the upper bound year period of 2016, the District has failed to consider projects which enable refineries to process crude slates of a wider range of characteristics that have been permitted through Regulation 2, but have not yet started operation. The proposed upper bound would subject such projects to a second round of new source review. Refineries have already permitted projects to enable processing a wider range crude oil characteristics through Regulation 2. However, some of these projects are not expected to become operational until well after 2016.

The added definition of a facility needs further clarification

For a definition of a facility, Section 2-1-213.2 was added, which addresses portable sources of emissions and when they should be included in the definition of a facility. The criteria for the source not being a part

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of a facility is that "it remains at the facility for less than 12 months (or, in the case of multiple temporary sources that are used in succession for the same purpose at the facility, the total time period that all such sources remain at the facility is less than 12 months)".

The term "at the facility" needs to be clarified. For example, would a contractor's on-site storage yard be considered "at the facility"? As written, section 2-1-213.2 provides a driver for removing contractor staging areas from our property, which would increase emissions due to the increased transportation of engines to and from off-site locations.

The District needs to clarify if "12 months" are consecutive months or any 12 months over all time. The latter can result in all temporary, but intermittently used sources to ultimately become a part of the facility.

Lastly, the District needs to clarify the term "for the same purpose". Consider two scenarios: a pump is used on a storage tank at one time and then used on a different storage tank at another time, a pump is used on a storage tank at one time and then used at an oil-water separator.

II. TECHNICAL COMMENTS ON PROPOSED AMENDMENTS TO RULE 2-2

The Emission Reduction Credit Calculation Procedures should be consistent with other District rules and procedures

The District has been identifying substantive revisions to its past emissions calculation procedures in the draft Petroleum Refinery Emissions Inventory Guidelines that are being developed for Regulation 12 Rule 15; there needs to be consistency with regard to the Emission Reduction Credit Calculation Procedures in Section 2-2-605.

WSPA requests that a section 2-2-605.3 be added with the following language,

> *"Calculations of emissions credits should be based on the same emission calculation procedures that the District has used to assess fees to the source. For refineries, calculations of emissions credits are also allowed to be based on the same emission calculation procedures that were used for the most recent emissions inventory submittal approved by the District under Regulation 12 Rule 15, Section 12-15-404.4.*"

For offset refunds required by EPA, the proposed changes to 2-2-411.1 identify that the deadline for a request is "*within 2 years of issuance of the authority to construct or within 6 months of issuance of the permit to operate*". In some cases, the permit to operate might be granted prior to (or shortly after) commencement of operation, and operating time is needed to determine the extent to which credits may be warranted.

WSPA requests that this deadline be changed from "or within 6 months of issuance of the permit to operate" to "within 18 months of the issuance of the permit to operate or 18 months of the commencement of operation."

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