Western States Petroleum Association
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Catherine Reheis-Boyd
President

December 4, 2016

Mr. Victor Douglas via email (vdouglas@baaqmd.gov)
Principal Air Quality Specialist
Bay Area Air Quality Management District (BAAQMD)
939 Ellis Street
San Francisco, CA 94109

Re: WSPA Comments on Draft Proposed Rules for Regulation 11, Rule 18 and Regulation 12, Rule 16

Dear Mr. Douglas:

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

WSPA has significant concerns with regard to the District's proposed Regulation 11, Rule 18 (Rule 11-18) and Regulation 12, Rule 16 (Rule 12-16), as described more fully in Attachments A and B. In addition, it is unclear whether the District intends to develop and propose both draft Rules to the Board for consideration, such that both Rules could presumably be adopted by the District, or whether the District intends to propose Rules 11-18 and Rules 12-16 as alternative suggestions for reducing emissions from petroleum refineries, such that only one of the two Rules would be adopted. To the extent that both rules may be adopted by the Board, the District needs to assess the impacts, feasibility, and costs of complying with both sets of requirements before proposing the draft Rules to the Board for adoption. In addition, WSPA requests that more time be allowed to provide comments on these proposals due to their complex nature and wide scope.

WSPA appreciates the BAAQMD's consideration of our comments and we look forward to your responses. If you have any questions, please contact me at this office, or Bob Brown of my staff at (925) 708-8679 or email bbrown@wspa.org.

Sincerely,

Attachments:

Attachment A: WSPA Comments on Proposed Regulation 11, Rule 18
Attachment B: WSPA Comments on Proposed Regulation 12, Rule 16

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Attachment A
WSPA Comments on Proposed Regulation 11, Rule 18

CALIFORNIA HEALTH & SAFETY CODE REQUIREMENTS

The California Health & Safety Code requires the District to make six statutory findings before amending a rule: necessity; authority; clarity; consistency; nonduplication; and reference Cal. Health & Safety Code § 40727. As Rule 11-18 is currently drafted and structured, the District will not be able to meet these statutory requirements, particularly with respect to the elements of necessity, consistency, and clarity.

The Stringency of Draft Rule 11-18 is Not Necessary

Draft Rule 11-18 will require all facilities, including non-refinery entities, with a calculated risk level of 10 per million (10/M) to develop a Risk Reduction Plan to implement controls that will reduce the facility's risk level. The stated purpose of draft Rule 11-18 is to "ensure that facilities that emit toxic air contaminants do not pose an unacceptable health risk to nearby residents, workers, or students." § 11-18-101. However, the District has not explained why a risk of 10/M is the appropriate threshold for acceptable versus unacceptable risk. The District recognizes that Rule 11-18 is "more stringent than most" other air programs being implemented in California to address toxic emissions from existing facilities, but fails to explain the basis for regulating so much more stringently.

The District must provide a more reasoned and scientific explanation for its proposal to decrease the risk level of 10/M from the current risk level of 100/M for existing facilities. While Cal. Health & Safety Code §§ 39002 and 39013 provide the District with authority to control air pollution from stationary sources, the District must nevertheless balance that authority with the necessity of a rule. The District's Staff Report states that the risk action levels in § 11-18-214, which are based on the OEHHA's 2015 Health Risk Guidelines, "reflect the most health protective levels achievable and correspond to the health risk levels that the Air District uses for the existing 'Hot Spots' program." At the outset, the OEHHA itself has identified the risk levels proposed in the 2015 Health Risk Assessments Guidelines as conservatively *high* estimates of risk (because they take the most sensitive populations into consideration).[1]

More to the point, this reasoning does not explain why such conservative risk thresholds are necessary in light of the Bay Area's air quality, which the District itself has acknowledged has improved dramatically. As the Staff Report notes, over the last few decades TAC emissions from stationary sources in the Bay Area have decreased by 87%, and the average Bay Area risk from exposure to TACs has been reduced by 83%. Staff Report, at 25-26. Furthermore, these figures do not account for the additional reductions that will occur as WSPA's members implement the additional controls imposed over the past year through the District's Refinery Strategy, which the District has calculated will further reduce refinery emissions by 15%.

The District proposes to calculate a facility's health risk in accordance with OEHHA's 2015 Health Risk Assessment (HRA) Guidelines, which lower the risk screen trigger levels for carcinogenic TACs as compared to OEHHA's prior guidelines, and thereby result in higher risk calculations for the same level

[1] OEHHA's Guidance Manual for Preparation of HRAs identifies that "...there is a great deal of uncertainty associated with the process of risk assessment....The assumptions used in these guidelines are designed to err on the side of health protection in order to avoid underestimation of risk to the public....Risk estimates generated by an HRA should not be interpreted as the expected rates of disease in the exposed population but rather as estimate of potential for disease, based on current knowledge and a number of assumptions...."

of TAC emissions from regulated sources. At the same time, as discussed above, actual health risks associated with TAC emissions are lower than they have ever been within the District. Staff Report, at 25-26. This significant progress calls for a balanced approach to regulation. Indeed, other air districts with worse air quality (e.g., more criteria pollutants in non-attainment), including the South Coast and San Joaquin Valley Air Districts, have determined that a higher risk threshold is protective of human health given the recent changes in the OEHHA guidelines. The District should avoid inciting unnecessary confusion and fear among the public based on dramatically overstated risks or require installation of unnecessary controls for operations that do not pose actual significant risks to the public,, or if the added controls do not make a perceivable improvement in the overall risk of the area around the source. Analysis should also be completed on the effects of all the regulated facilities dropping to a risk less than <10/M to determine if these estimated reductions at stationary sources make any perceivable difference to the receptors.

WSPA believes that it is especially appropriate to reconsider the risk threshold in § 11-18-214.1, because, unlike the hazard indices which are based upon conservative estimates of the level of air pollution concentrations that might cause a health effect, the risk limit does not have a scientific basis. Past risk thresholds (including the District's existing 100/M threshold under AB2588) have been based on what regulators believed was possible for facilities to achieve. Along the same lines, the District claims that the 10/M level was chosen because it reflects "the most health protective levels achievable" (Staff Report page 30). However, the Staff Report does not provide any data or analysis to support this claim. Rather, the District here seems to simply assume that a 10/M will be "achievable" by existing facilities.

The District assumes too much. The achievability of reducing an existing facility's TAC emissions to below the 10/M risk level will depend on several factors, such as the District's definition of "source," its emission calculation methods, its dispersion models, its risk calculation models, and changes in acute and chronic reference exposure levels. If the District chooses to adopt hazard indices and risk thresholds that were derived based on what levels are "achievable," it must provide a thorough assessment documenting that those levels are in fact scientifically, technologically, and economically achievable under the proposed rule as written.

WSPA suggests that the District consider a risk reduction threshold for risk of 25/M. This value was reported to the Board initially on July 20, 2016 and later removed from consideration without any written analysis or justification. The District should further assess the feasibility and cost-effectiveness of a 25/M threshold, along with the incremental costs and benefits of going from 25/M to 10/M.

Draft Rule 11-18 is Not Consistent with the Proposed Amendments to Rule 2-5

WSPA requests revisions to Rule 11-18 for consistency with the proposed amendments to Regulation 2, Rule 5 (Rule 2-5). Rule 2-5 exempts new and modified internal combustion engines smaller than 50 hp and treats retail gasoline facilities differently; however these same sources either by themselves or in conjunction with other sources at the same facility could trigger the need for a Risk Reduction Plan under Rule 11-18. WSPA suggests that the District consider exempting sources from Rule 11-18 that were already subject to or listed as exempt from Rule 2-5. WSPA also requests revision to Rule 11-18 to allow similar treatment of gasoline dispensing facilities as under the proposed amendments to Rule 2-5.

In addition, draft Rule 11-18 is unlikely to provide any emissions reductions for certain existing source types that are already implementing analogous TBARCT controls for toxics. These source types would include retail gasoline dispensing facilities subject to BAAQMD Rule 8-7, and gasoline bulk terminals subject to BAAQMD Rules 8-5, 8-18, and 8-33. WSPA therefore suggests that the District consider exempting any facilities from draft Rule 11-18 that are already subject to requirements that reflect TBARCT.

Draft Rule 11-18 is Not Sufficiently Clear

Several of the provisions of proposed Rule 11-18 are not sufficiently clear to be understood, as required by Cal. Health & Safety Code § 40727(a) and (b)(3).

Applicability. The applicability of draft Rule 11-18 depends entirely on the District's calculation of a facility's health risk. With the exception of the requirement in § 11-18-401 for facilities to submit "any information necessary to complete an HRA of the facility" at the District's request, the draft rule does not describe the procedures, or limits, to the District's determination of applicability. The Staff Report explains that the District will use emissions inventory data to screen for facilities with a priority score of ten or greater or a non-cancer priority score of one or greater, and then conduct health risk assessments (HRAs) for those facilities in accordance with the most recent versions of OEHHA's HRA Guidelines, CARB AB2588, and the CARB/CAPCOA Risk Management Guidelines. In addition, the Staff Report suggests that facilities will be consulted to validate the HRA model and site-specific factors. None of this is apparent from the language of the draft rule. WSPA therefore requests that the District incorporate provisions in proposed Rule 11-18 that address the District's responsibilities and procedures for determining rule applicability. This would include clarifying that (i) the HRAs to be prepared by the District will be done consistently with the OEHHA 2015 Health Risk Assessment Guidelines, and (ii) facilities will be provided with an opportunity to review and comment on both the inputs to and results of HRAs prior to being required to submit Risk Reduction Plans. WSPA also requests that data in Table 2-5-1 of Rule 2-5 be referenced in Rule 11-18.

In addition, WSPA requests that the draft rule incorporate an HRA review process that provides sufficient time for source testing and ambient air testing, and that a Hearing Board appeal process be added to the rule's provisions, much like with permit determinations.

Absent input from facilities, the District may incorrectly characterize facility emissions and/or health risk, which could lead to the District requiring facilities to install control equipment on sources that testing may show do not pose a health risk.

Cargo Carrier Emissions. The District should clarify that emissions from cargo carriers (e.g., ships and trains) are excluded from draft Rule 11-18. As discussed in prior WSPA comments on the District's Refinery Strategy rules, most cargo carriers are owned and operated by other companies. Attempting to require facilities to incorporate emissions from cargo carriers into nearby refinery emissions inventories will likely produce inaccurate data. Furthermore, as currently drafted, § 11-18-204 specifically exempts cargo carriers from TBARCT requirements. As a result, including cargo carrier emissions in the emissions inventories of adjacent facilities may potentially trigger HRA and TBARCT requirements for the adjacent facility. and even though those sources themselves are in fact exempt from the control requirements. If the District is concerned about diesel particulate emissions from cargo carriers, please take into consideration that CARB is in the process of writing an ATCM that will reduce diesel particulate matter from cargo carriers.

Toxic Emissions Inventories. The Staff Report explains that the District will use the annual toxic emissions inventories reported to the District to conduct site-specific HRAs for sources that emit toxic compounds. Section 11-18-403.3, in turn, requires the Risk Reduction Plan to include a source characterization that includes "*summary data from the applicable APCO-approved air toxic emission inventory.*" However, proposed Rule 11-18 provides no further clarity with respect to the emissions inventory component. To help ensure consistency in emission inventory and health risk assessment methods across facilities, WSPA requests that Rule 11-18 state explicitly that the HRA will be completed with the most recent available facility reported actual site stationary source emission inventory. WSPA

requests clarification that for refineries, the emission inventories will be done consistently with the District's refinery emission inventory guidelines, and that the same methods will be used across industries where applicable, such as emergency diesel engines.

Risk Action Levels/Risk Reduction Plan. During Rule 11-18 workshops, District Staff indicated that facilities would not be required to install TBARCT on all sources if controls could be installed to reduce health risks below the risk action levels in § 11-18-214. WSPA requests clarification that the Risk Reduction Plan may explain how a facility will reduce risk below the risk action level, rather than install TBARCT on all sources above the significant risk threshold.

Significant Risk Thresholds. The significant risk thresholds in § 11-18-217 are far below the risk action levels in § 11-18-214. As a result, it is likely that a source with risk above the § 11-18-217 thresholds nevertheless may not contribute to risk at a receptor above the § 11-18-214 facility-wide action level. WSPA requests clarification that TBARCT would only be required on sources that contribute risk greater than the thresholds in § 11-18-217 at receptors having risk above the action levels in Section 11-18-214.

WSPA's understanding of the language in §§ 11-18-301.2 and 11-18-403.6.1 is that the District's intent was that "*each permitted source at the facility that contributes to the risk at any receptors where the facility wide risk is above the risk action levels, is either controlled with TBARCT or does not pose a health risk in excess of any of the significant risk thresholds.*" As the draft rule is currently written, however, sources which have risk impacts below the significance thresholds in § 11-18-217 at the receptors with facility-wide risks above the risk action levels would require some type of emission control, even if they do not meet the significant risk thresholds. WSPA requests that the District modify the language of the draft Rule to clarify that TBARCT is not required on a source if the health risk from the source remains below the significant risk thresholds.

Summary Data. WSPA suggests removing from 11-18-403.3.2 the requirement to include summary data for data from the HRA in the Risk Reduction Plan. As the HRA is to be prepared by the District, a facility would need to request the information from the District (the source of the HRA), and then submit the information back to the District in the Plan.

Risk Reduction Plan v. TBARCT. Section 11-18-403.6 has subsections that are confusing and should be clarified. Sections 11-18-403.6.1 and -403.6.2 are linked with an "or" conjunction, however subsections -403.6.2 and -403.6.3 are linked with an "and" conjunction. It is unclear whether TBARCT is required by the due date of the Risk Reduction Plan or by three years from the date of Plan submittal if health risk cannot be reduced below the risk action levels; and if the District intends the former, it is very likely not possible to install TBARCT on all sources by the date of Plan submittal. Also, it is unclear how a facility would "*develop risk reduction measures…to comply by the specified date*" in § 11-18-403.6.3 when a facility demonstrates that compliance is technically infeasible or would result in an unreasonable economic burden. *See* § 11-18- 403.6.2. WSPA requests the District modify these subsections of the Rule to clarify its intent.

Definitions. The definitions in Rule 11-18 reference sources in other rules. If a definition changes in a source rule, it is unclear whether the definition in Rule 11-18 would change automatically. A source rule could potentially change without thorough consideration of effects on Rule 11-18. Thus, WSPA requests that the definitions in Rule 11-18 stand alone and the source citations be deleted from Rule 11-18.

TBARCT. WSPA requests that the District revise the definition of TBARCT to ensure that costs, non-air-quality impacts, and energy requirements are considered. As currently written, the definition of TBARCT outlines four methods by which TBARCT may be determined. One option (§ 204.3) expressly requires the consideration of costs, non-air-quality health and environmental impacts, and energy

requirements. The other three do not. Thus, for example, § 204.1 would require use of the most effective technology that has ever been used successfully on that type of equipment, even if site-specific considerations make that technology economically infeasible, and even if the technology would have potentially damaging non-air impacts in an ecologically sensitive area. The District should revise the definition of TBARCT to ensure that all appropriate factors are considered in making the determination.

Section 11-18-204.4 should also be revised to clarify that the District is referring to the controls identified in a MACT standard or an ATCM are those for existing sources, not new sources. EPA's MACT standards for new and existing sources are based on entirely different data sets and impose different levels of control; the fact that EPA has concluded that a specific emissions limit is achievable for a new source that is designed to use a specific technology does not prove that an existing source can be retrofitted to achieve that same level of control (indeed, the persistence of less-stringent MACT limits for existing sources demonstrates that such retrofits are typically *not* possible).

At a broader level, the breadth and vagueness of the definition of TBARCT, and the lack of clarity regarding the District's ability to consider costs in this determination, makes it nearly impossible for the District to properly evaluate the costs associated with Rule 11-18, as currently drafted. Further, there is no indication of what the District may consider to be "technically infeasible" or pose an "unreasonable economic burden." Without much more clear explanation of the parameters of the proposed requirements, WSPA and its members will not be provided a reasonable opportunity to submit data and analysis supporting or opposing the economic and technical feasibility of the draft rule.

Exemptions. The proposed regulation is unlikely to provide any emissions reductions for certain existing source types that are already implementing analogous TBARCT controls for toxics. These source types would include retail gasoline dispensing facilities subject to BAAQMD Rule 8-7, gasoline bulk terminals subject to BAAQMD Rules 8-5, 8-18, and 8-33. WSPA therefore suggests that BAAQMD consider exempting any facilities from Reg. 11-18 that are already subject to requirements that reflect TBARCT.

Prioritization. The District's choice of priorities appears arbitrary. For example, the District specifically notes that diesel particulate matter is the largest contributor to risks in the Bay Area, as illustrated in Figure 5. However, diesel engines are not addressed by the rule until the third implementation phase, and reductions from these sources will not be implemented until 2024, at the earliest.

Section 11-18-405. Section 11-18-405 requires that Risk Reduction Plans be updated if "*health risk posed by a facility...would significantly impact health risks to exposed persons.*" It is unclear whether "*significantly impact*" is a subjective term, or whether the District is referring to the "significant risk thresholds" that are 10-20% of the risk action levels in § 11-18-214. The District should revise this language to clarify that the obligation to update the Risk Reduction plan is triggered only if new information (i) causes a facility to exceed the threshold for preparing such a plan for the first time, or (ii) increases the risk associated with the site by more than the significant risk threshold. The District should also consider in its cost-effectiveness calculations the costs to update these plans and implement new emission reduction technologies pursuant to this requirement.

TIMING ISSUES

Draft Rule 11-18 Should Provide Longer Compliance Timeframes

Several of the provisions proposed in Rule 11-18 require compliance with very tight compliance windows that do not appear to be achievable. The Rule 11-18 Staff Report Table 5 also indicates that the compliance plan implementation due dates will depend upon the industry type or prioritization score. WSPA requests the same plan implementation due date for all Bay Area facilities. A large, complex

facility needs more time to plan and install control equipment than a facility that operates one diesel engine. Yet the District plans to require some of the most complex facilities to achieve plan implementation by the year 2019 while a facility that may pose the same health risk to a nearby receptor operating a single diesel engine will not reduce health risk until the year 2027.

Section 11-18-401 requires facilities to submit to the District "*any information necessary to complete an HRA of the facility*" within 30 days of a request. This is an overly ambitious time schedule, given the level of effort needed to obtain the latest emissions information, building dimensions, and other similar information. Facilities may also need to conduct source tests or ambient air sampling to provide accurate data to feed into the HRA. WSPA requests that this timeframe be extended to 180 days. At a minimum, this provision should be amended to allow additional time for extensive requests. Additionally, this requirement is unbound, providing no maximum frequency or criteria for the APCO to request information from a facility to conduct an HRA. This can lead to inequitable or unwarranted regulation of a facility.

Section 11-18-402 sets a deadline to submit a draft Risk Reduction Plan within 180 days of notification from the District that a plan is required. This compliance window does not provide facilities with sufficient time to review the accuracy of the District's HRA, or sufficient time to prepare a Risk Reduction Plan meeting the requirements of § 11-18-403. The time needed to evaluate all potential risk reduction measures for a large, complex facility, including the need to re-run HRAs, analyze impacts, and conduct feasibility analyses for engineering requirements, will require considerably more time than 180 days. WSPA is requesting that this timeframe be extended to three years.

Section 11-18-402 requires implementation of a Risk Reduction Plan "*as soon as feasible*, but by no later than three years" from the date the *draft* Plan was submitted for review. The deadline for implementation should be tied to the date the plan is approved by the District, not the date the draft plan was submitted to the District. Given the extremely tight deadlines imposed by the draft Rule, facilities will need to act quickly to design, order, install, and otherwise implement the required control measures. If the District does not give notice that it disagrees with the facility's Risk Reduction Plan or determination of TBARCT until several months after the Plan is submitted, the facility will likely have already made irreversible financial commitments (*e.g.*, ordering new controls) for equipment that the District has rejected. If regulated facilities are to be able to comply with these requirements effectively and in a timely manner, they require certainty of the requirements that will apply and sufficient time to plan, order, and install equipment. Additionally, multiple process unit shutdowns may be needed to install control devices. Indeed, given the scope of the review and planning required (conducting the necessary engineering studies, evaluating various installation scenarios, obtaining permits, getting CEQA approval, procurement, turnaround planning, construction, start-up optimization, and other requirements), WSPA requests that the three-year timeframe be extended to at least five years from when the Plan is approved, and no earlier than the implementation due date of less complex facilities with only diesel engines.

In addition, the baseline requirement of § 11-18-402 is to implement the Risk Reduction Plan "as soon as feasible" but in no event later than three years from the date of the draft Plan's submittal. However, § 11-18-402.2provides the District with the discretion to "shorten the time period proposed by the facility owner/operator for Plan implementation" to less than three years if the District considers that a shorter timeframe is technically feasible or economically practicable or, alternatively, if the facility impacts a CARE designated area. This provision is unnecessary. Facilities will already be under an obligation to prepare Risk Reduction Plans geared to reducing the facility health risk in as short a timetable as possible, which will require an assessment of the technical and economic feasibility of reducing health risk as quickly as possible. The District will have ample opportunity to discuss questions or suggestions District staff may have with respect to the Plan during the review and comment process. The requirement to implement the Risk Reduction Plan "*as soon as feasible*" renders the provision in § 11-18-402.2.1

allowing the District to require implementation of the Plan "*more quickly*" nonsensical. WSPA suggests that § 11-18-402.2 be removed. Again, WSPA is concerned the Section 402.2 language gives the District unilateral authority to reject the plans of facility project teams in the case of a disagreement.

Assuming § 11-18-402.2 is removed, the definition of "Community Air Risk Evaluation (CARE) Designated Area" in § 11-18-208 should also be removed as the term only applies to § 11-18-402.2.2. If the District chooses to reject WSPA's requests, § 11-18-208 should be revised to be more specific. The first sentence of the definition is ambiguous due to the phrases "*other areas*" and "*may*."

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*. Rule 11-18 is being considered for review in an EIR that will also review Rule 12-16, which is 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.

CEQA prohibits "segmenting" projects to create the appearance of a lesser degree of impact. The District however consistently limits its analyses to individual rules, excluding consideration of the rules it has recently adopted as part of this "strategy" (Rules 6-5, 8-18, 11-10, 12-15 and 9-14) and the future rules that it is currently developing pursuant to this same strategy. In fact, the District's October 14, 2016 Notice of Preparation does not even mention that Rule 12-16 is part of the suite of regulations that make up the Refinery Project. Rule 11-18 is clearly a component of the Petroleum Refinery Emissions Reduction Strategy, notwithstanding that the rule applies to other stationary sources. The Rule's origin is rooted in the District Board's 2014 resolution to reduce emissions from refineries by 20%, and it is being advanced as an alternative suggestion to draft Rule 12-16, which is squarely directed at refineries. Therefore, the impacts of Rule 11-18 on refineries should be analyzed together with the suite of regulations that make up the Petroleum Refinery Emissions Reduction Strategy. 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 regulated industry.

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 actions is identified and analyzed.

ADMINISTRATIVE COMMENT

Section 11-18-402 refers to "risk action levels set forth in Section 11-18-213." The reference should be to Section 11-18-214, not -213. WSPA would ask the District to review this for amendment.

Attachment B
WSPA Comments on Proposed Regulation 12, Rule 16

As the District is aware, WSPA submitted comments on the District's Project Description for Rule 12-16 on September 9, 2016. The draft Rule language now being workshopped does not address the many issues that WSPA raised in our September comment letter. WSPA continues to have significant concerns with the conceptual goal of draft Rule 12-16 and with the practical implementation of the rule's provisions. WSPA hereby incorporates by reference the various comments it has previously made to the District on the conceptual basis of draft Rule 12-16.

While WSPA has a number of specific concerns with the District's analysis (discussed in more below), WSPA strongly supports the concerns voiced in the Staff Report that the proposed rule conflicts with the District's authority under the federal Clean Air Act ("CAA") and the California Health & Safety Code ("H&SC"), will interfere with the State's cap and trade program for GHGs, is not necessary, and will not provide significant real benefits. Staff Report at 17-20, 38-40.

LEGALITY

WSPA's concerns over the legality of emissions caps have already been transmitted to the District separately. WPSA incorporates by reference the comments it submitted in July 2016 and September 2016.[2]

In general, WSPA agrees with District Staff's assessment that draft Rule 12-16 would not withstand judicial scrutiny. As the District acknowledges in the Staff Report, draft Rule 12-16 is inconsistent with existing federal and state air programs, selectively targets petroleum refineries without a showing of necessity, would not be in harmony with the state cap and trade program for greenhouse gas emissions, arbitrarily limits specific refinery emissions to levels that are not necessary to protect local communities, and is beyond the District's statutory authority.

The Staff Report suggests that the District is continuing to develop draft Rule 12-16 with the goal of proposing the rule to the Board for adoption. It is unclear why draft Rule 12-16 is continuing to be developed when District Staff believe that the rule "would likely be found to be beyond the Air District's authority and/or arbitrary and capricious by a Court." Staff Report, at page 3. The structure of the draft rule and its underlying policy objectives are unquestionably unjustified, for the reasons set forth in WSPA's prior comment letters and the District's own Staff Report. Given the significant concerns District staff and the Bay Area refineries have expressed over the legality of the draft rule's provisions, the District should not continue planning to propose Rule 12-16 to the Board for adoption. To the extent that the District must report to the Board on the development of CBE's idea, District staff should simply prepare a report describing the rulemaking, staff's analysis of the draft language that was developed, staff's conclusion that the rule would be illegal if adopted, and an explanation why the draft Rule is not being proposed to the Board.

[2] 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; Kevin Buchan (WSPA), letter to Mr. Gregory Nudd, "Subject: WSPA Comments on BAAQMD's Draft Project Description for Regulation 12, Rule 16 and Regulation 11, Rule 18," September 9, 2016.

GHG Caps are Ineffective and Counterproductive

Greenhouse gas emissions are a global issue, not a local community-based issue. Local greenhouse gas (GHG) caps for refineries in the Bay Area Air Quality District are likely to simply shift GHG emissions elsewhere. This has been recognized by District staff, the District's Advisory Council, the California Air Resources Board (ARB), and the Intergovernmental Panel on Climate Change (IPCC). WSPA summarized comments by District Staff, the District Advisory Council, ARB and the IPCC previously.[3] The October 2016 Staff Report for Rule 12-16 provides additional support that caps may result in increased GHG emissions from shipping imported fuels to California.[4]

Moreover, Bay Area refineries are very energy efficient. ARB published a summary report in mid-2013 showing that the 5 Bay Area refineries subject to ARB's "*Regulation for Energy Efficiency and Co-Benefits Assessment of Large Industrial Facilities*" have implemented hundreds of projects to reduce GHG emissions. The ARB report states that approximately 78% of the estimated 2.8 million metric tonnes per year of GHG reductions associated with these projects have already been achieved.[5] A third party review by San Francisco State University concluded that the refinery project reports demonstrated "*a thorough effort*."[6] The results of ARB's refinery energy efficiency audits strongly suggest that opportunities for significant energy efficiency gains in this sector are limited at best.
To the extent that the District wants to set caps that curtail fuel production at Bay Area refineries, this will simply result in more fuels being produced at other refineries. For refineries outside the state, there is a very real possibility those refineries may be less energy efficient; this would be counterproductive to the District's objective.

Additionally, the application of the localized GHG caps under the jurisdiction of the BAAQMD would result in severely disadvantaging the local refineries relative to refineries located elsewhere in the event new CARB or EPA fuel standards are enacted that would require new process units. EPA and CARB periodically update the motor fuel specifications to ensure that the cleanest fuels possible are available. The application of a facility GHG Cap at historic levels may lead to the shutdown of one or more of the regional refineries because Reg. 12-16 will not allow any increases in GHG emissions regardless of any net environmental benefit. The EIR for this rule should carefully consider this aspect of the rule and estimate the global GHG emission impacts.

Caps Based on Historical Emissions are Technically Problematic

Not only are the proposed emissions caps in §§ 12-16-301 to -305 duplicative of existing federal and state programs targeted at reducing toxic emissions, they are also technically problematic and could potentially require refineries to cut production altogether or risk non-compliance.

As WSPA has previously described, facilities purchase capital equipment today based on what may happen in the future. The District, and every other air permitting jurisdiction in the United States, issues air permits based on the impacts of a facility's *potential* emissions. In California, refineries pay to offset the *potential* emissions at the time the equipment is permitted. For the District to now propose capping emissions based on actual emissions levels from 2010-2014 raises significant Takings concerns and

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[3] *See* WSPA Comment Letter, September 9, 2016.
[4] Draft Regulation 12, Rule 16: Petroleum Refining Facility-Wide Emissions Limits AND Draft Regulation 11, Rule 18: Reduction of Risk from Air Toxic Emissions at Existing Facilities, Draft Staff Report, October 2016, p.23.
[5] Energy Efficiency and Co-Benefits Assessment of Large Industrial Sources; Refinery Sector Public Report; California Air Resources Board Stationary Source Division; June 6, 2013: http://www.arb.ca.gov/cc/energyaudits/eeareports/refinery.pdf
[6] Air Resources Board staff presentation, Energy Efficiency and Co-Benefits Assessment Public Reports Workshop, June 30, 2015, slide 30: https://www.arb.ca.gov/cc/energyaudits/meetings/063015/presentation.pdf.

conflicts with these other District regulatory programs (which continue to exist). Further, the proposed emissions caps in §§ 12-16-301 to -305 would be inconsistent with refineries' existing permit limits, which in most cases were specifically designed (and paid for) by the refineries to ensure necessary operational flexibility.

The specific historical emissions baselines chosen are similarly problematic. First, refineries have found that the values in the proposed regulation that are supposedly based in reported emissions do not match the official records of reported emissions. Second, as the District's own Staff Report makes clear, the selected baseline period encompasses a period of artificially low demand, coming out of the last Recession. Staff Report at page 21, Figure 3. As a result, Rule 12-16, as currently drafted, would "lock in" this temporary drop in demand as a permanent, facility-wide cap. At a minimum, the District's economic analysis must evaluate the significant impacts of imposing the cap at such an artificially low level that does not reflect current or anticipated future demand.

The methodology by which this cap is calculated and revised also raises significant concerns. As currently drafted, Rule 12-16 would require ongoing revisions to these caps (each of which would require Board approval) whenever the methods used to calculate emissions changed. Yet the proposed baselines in §§ 12-16-301 to -305 are themselves based on annual emissions calculations from years 2010-2014 that were developed using different emissions calculation methodologies than are being used today. In other words, the current rule is comparing apples and oranges: the District calculated historic actual emissions (the values that the proposed caps are based on) differently than it currently requires actual emissions to be calculated, and differently than it will require the caps be recalculated in the future when the methodologies change once again; yet these changes are never evaluated for consistency against the original methodology that was used to calculate the initial cap. As a result, the caps under which the Refineries will be required to operate will routinely fluctuate based solely on methodology changes, which may not accurately reflect the "real" emissions that the caps purportedly reflect. For most sources, the District's current emissions inventory guidelines (Guidelines) significantly deviate from the methods that the District has used in previous years. The Guidelines require reporting emission sources, including cargo carriers, road dust, and equipment maintenance emissions, which the District has not included in previous emission inventories. The Guidelines specify emission factors that may not have been used in previous emission inventories. Similarly, in the case of California's GHG reporting rule, there have been changes with respect to which sources are reported and how they had to go through a regulatory approval process.

The nature of the Guidelines themselves further exacerbates this concern. The District's current Guidelines are not yet finalized, meaning that WSPA and its members cannot fully and fairly evaluate how the final Guidelines may change the calculation methodologies as compared to the prior reported emissions inventories on which the caps are based. Furthermore, these Guidelines can be changed at any point in the future without a public Board action – and frequently, as the District's own practice has made clear, without involving or informing stakeholders. Thus, the refineries may not have sufficient time to respond or even be informed of changes to the Guidelines that affect compliance with the limits. Board approval of changes to the limits that incorporate changes to the Guidelines may never occur, or may occur at a date too late for refineries to comply with the annual limit.

Similarly, the "*Determination of Compliance Procedure*" in § 12-16-601 refers to an as-yet unwritten part of the District's Manual Of Procedures. If the compliance procedure is not finalized by rule adoption, it may not be possible for the refineries to comply. Sufficient time is needed to implement compliance.

Finally, the January 1, 2018 compliance deadline does not provide enough time for refineries to comply with Rule 12-16. The refinery emissions estimates using the Guidelines may not even be finalized by January 1, 2018 due to the iterative review, corrective action, APCO Action and public inspection process

provided in § 12-15-402. Once the emission calculation methods and estimates are finalized, baseline emissions would need to be updated in order to obtain Board approval of changes to the limits. The emission estimation method must be finalized for a refinery to implement a compliance program. The refineries cannot reasonably plan to comply with Rule 12-16 by January 1, 2018, when the actual emissions limits – or, indeed, even the methodology by which those limits will be determined – may well be unknown as of that date.

California Environmental Quality Act

The California Environmental Quality Act ("CEQA") requires the District to consider the whole of a Project; 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. Rule 12-16 is 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.

CEQA prohibits "segmenting" projects to create the appearance of a lesser degree of impact. However, the District consistently limits its analyses to individual rules, excluding consideration of rules it has recently adopted as part of the Petroleum Refinery Emissions Reduction Strategy (Rules 6-5, 8-18, 11-10, 12-15 and 9-14) and the future rules that it is currently developing pursuant to this same strategy. In fact, the District's October 14, 2016 Notice of Preparation does not even mention that Rule 12-16 has been part of the suite of regulations that make up the Refinery Project since the initial inception of that Project. Without a comprehensive analysis of the whole project, it is impossible to quantify and understand the magnitude of the impact the adopted and proposed rules will have on the regulated industry.

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 actions is identified and analyzed.