



Benicia Refinery • Valero Refining Company - California  
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September 9, 2016

Draft Project Description for Draft Regulation  
12-16: Refining-Wide Emissions Limits &  
Draft Regulation 11-18: Reduction of Risk from  
Air Toxic Emissions at Existing Facilities

Mr. Gregg Nudd  
Manager, Rule Development Section  
Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105

Dear Mr. Nudd:

The Valero Refining Company – California (Valero) Benicia Refinery is located within the Bay Area Air Quality Management District (BAAQMD) jurisdiction and has a throughput capacity of over 165,000 barrels per day, providing transportation fuels and high quality employment opportunities in the Bay Area. The Benicia refinery will be significantly impacted by the draft project description issued by the District on August 18, 2016, referenced above. We appreciate the opportunity to comment on the Draft Project description for both Draft Regulations: 12-16 and 11-18.

Valero supports the comments of the Western States Petroleum Association (WSPA) and the California Council for Environmental and Economic Balance (CCEEB) and incorporates their comments herein.

Draft Project Description for Regulation 12-16

Valero has serious concerns about Regulation 12-16 because it appears that the District is contemplating adopting a “Refinery Caps Rule” based on a proposal from a non-governmental organization (NGO), instead of acting as an objective third party with technical expertise. We find this unprecedented move disturbing, given multiple comment letters Valero has written since this effort started in 2013. Valero objects to 12-16 for the reasons outlined below.

Establishing numeric limits on GHGs, PM, NOx and SO2 (to cap refinery emissions) would impede Valero’s ability to run permitted sources and should be eliminated from consideration. Current throughput levels were legally permitted through the District’s existing regulatory process. The requirement to reduce emissions below permitted levels is contrary to BAAQMD and Federal New Source Review (NSR) requirements, circumvents other District permitting and offset rules (Regulations 2-1, 2-2, and 2-5), renders the District’s air permitting program fundamentally

Mr. Greg Nudd, BAAQMD

Draft Project Description for Draft Regulation 12-16: Refining-Wide Emissions Limits &  
Draft Regulation 11-18: Reduction of Risk from Air Toxic Emissions at Existing Facilities  
September 9, 2016

Page 2

inconsistent with the Federal New Source Review program, and is not necessary to monitor and control emissions and public health impacts.

Draft Regulation 12-16 disregards all the health and environmental analyses that support the refinery's current permitted emission limits in favor of arbitrarily preventing increases above recent historical actual emissions. The District has failed to explain why the health and environmental analyses that support the refinery's current permitted emission limits are insufficient.

In the case of NO<sub>x</sub>, SO<sub>2</sub> and GHGs, the District is proposing emission limits for pollutants that either meet National Ambient Air Quality Standards (NAAQS) and State Ambient Air Quality Standards or a NAAQS is non-existent (GHGs). The NAAQS are standards established by the [USEPA](#) under the authority of the [Clean Air Act](#) (42 U.S.C. 7401 et seq.) that apply for outdoor air throughout the country. Primary standards are designed to protect human health, with an adequate margin of safety, including sensitive populations such as children, the elderly, and individuals suffering from respiratory diseases. Essentially the NAAQS defines the level at which a pollutant can be present without adversely affecting the community. These standards are established after an intensive rulemaking process that is supported by extensive research and data, including peer-reviewed studies and thorough technical justification. In this instance, the District is arbitrarily selecting new levels for these pollutants without any data or justification to support the necessity, appropriateness, or benefit of the new standards.

To the extent that Draft Regulation 12-16 is claiming to support public health by capping refinery emissions, it is duplicative of other District rules that address toxic emissions. The District currently regulates toxics pursuant to BAAQMD Regulation 2-5, "New Source Review of Toxic Air Contaminants", the Community Air Risk Evaluation (CARE) Program, Federal NESHAPs/MACT regulations, and California Air Resources Board's (CARB) Airborne Toxic Control Measures. The BAAQMD has not demonstrated why multiple, existing toxic control regulations are inadequate to protect the public.

Proposed Regulation 12-16 would deprive Valero and other refiners of the flexibility to operate within legally obtained and demonstrably protective emission limits established through previous permitting processes, many of which addressed the same concerns cited as the basis for this rulemaking by requiring installation of pollution control technology costing hundreds of millions of dollars. This unreasonable and arbitrary constraint of operational flexibility unfairly and arbitrarily reduces the return on previous investments in pollution control technology in defiance of California's vested rights doctrine. Going forward, this rule will disincentivize future investment in Bay Area refineries. The District has not adequately considered the potentially significant adverse impacts of this rule, nor has it shown that it has the underlying legal authority to establish a regulation that would have potentially far-reaching economic impacts in the absence of any demonstrated harm or threat to human health and the environment.

For example, Valero invested three quarters of a billion dollars in 2011 to build a flue gas scrubber and two new crude furnaces to abate the Coker and FCCU gases which reduced SO<sub>2</sub> emissions by thousands of tons per year. At the same time, increased crude capacity was permitted following the District's permitting regulations and the CEQA process. Numeric emissions limits below what was legally permitted would nullify this investment.

### Proposed Numeric Limits for Criteria Pollutants and GHGs

Proposed numeric limits for PM, NOx and SO2 reference District's permit to operate emissions inventories for 2012-2015 (Table 1, footnote (b) "Facility's annual emission inventory"), the very numbers that were claimed to be inaccurate and insufficient, and which justified adoption of Reg 12-15 in April of 2016. As you know, the District and Valero staff have been working on the Emissions Inventory Guidelines which are part of Reg 12-15, and which will determine how future emissions are to be calculated. How can these numeric limits be complied with given they are inconsistent with future emissions inventories?

Proposed GHG Caps will simply shift production to jurisdictions outside the Bay Area, and will result in corresponding increases in GHGs in other parts of California or out of State. Since refineries are already subject to CARB's Cap and Trade program, it is not clear what benefits the District is aiming for by capping refinery GHGs in its air basin.

### Draft Project Description for Regulation 11-18

AB 2588 requires stationary sources to report the types and quantities of certain substances routinely released into the air every 4 years with the goal of identifying facilities having localized impacts, ascertaining health risks, notifying nearby residents of significant risks, and reducing those significant risks to acceptable levels.

SB 1731 requires facility operators to conduct a risk reduction audit of their facility and to develop a risk reduction plan if a district has identified the facility as having a significant or unreasonable risk.

These two bills were adopted well over 20 years ago and provide the authority to regulate air toxics and require facilities to address the reduction of significant risks. Since the District has standards in place and the authority to address health risks posed by facility emissions, it is unclear why Regulation 11-18 is needed.

A Health Risk Assessment using the Office of Environmental Health Hazard Assessment's (OEHHA) Air Toxic Hot Spots Risk Assessment Guidelines released in 2015 will overstate risk because the 2015 guidance utilized a new methodology for estimating the health risk from air toxics. For this reason, Valero disagrees with the risk thresholds proposed by Reg 11-18. The OEHAA guidance states that the risk assessment process has a great deal of uncertainty and is designed to err on the conservative side. As a result, calculated refinery risks will be significantly higher (by a factor of three or more) compared to previous HRAs, even though there has not been an actual increase in refinery emissions.

As part of the regulatory development process to inform the U.S. Environmental Protection Agency's (EPA) Risk and Technology Rule, the EPA modeled air toxic emissions from refineries in the United States and found no unacceptable risks. The District has not shown why the EPA modeling and resultant findings are not scientifically sound and why the District therefore must deploy this proposed rule.

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Draft Project Description for Draft Regulation 12-16: Refining-Wide Emissions Limits &  
Draft Regulation 11-18: Reduction of Risk from Air Toxic Emissions at Existing Facilities  
September 9, 2016

Page 4

1. Cancer Risk

The District has failed to provide a scientific basis for reducing the significance threshold from 100-in-1 million to 10-in-1 million.

2. Insufficient Timing for Compliance

The proposed rule requires that facilities with a cancer risk over 25-in-1 million reduce risk to 10-in-1 million by either submitting a plan to reduce risk or by installing TBARCT within three years of the rule becoming final. Given permitting and project planning, funding and execution requirements, three years is insufficient by any measure and the timeline should be extended.

In conclusion, for all the reasons discussed above, we urge you to reject draft Reg 12-16 (Refinery caps), and maintain the current significant risk threshold in Reg 11-18.

Please contact me at (707) 745-7900 or donald.cuffel@valero.com if you have any questions.

Sincerely,



Donald W. Cuffel, Director  
Environmental, Health, Safety &  
Community/Government Affairs

IS/tac

ecc: BAAQMD Board Members

Jack Broadbent  
Jean Roggenkamp  
Eric Stevenson