



Western States Petroleum Association
Credible Solutions • Responsive Service • Since 1907

Guy Bjerke
Manager, Bay Area Region & State Safety Issues

VIA ELECTRONIC MAIL

May 31, 2013

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

RE: Comments on Proposed Regulation 12-15 – aka the Petroleum Refining Emissions Tracking Rule or the Refinery Emissions Tracking Rule

Dear Mr. Bateman:

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, Washington and Hawaii. Our members in the Bay Area have operations and facilities regulated by the Bay Area Air Quality Management District (BAAQMD or District). WSPA appreciates the opportunity to provide these comments on the proposed Regulation 12-15 – Refinery Emissions Tracking Rule.

Lack of Scientific Basis

The District has proposed Regulation 12-15 without a sound scientific basis for the rule. In the FAQ document published by the District as part of this rulemaking process the first question is “Why is the Air District developing this new rule?”

“As high quality crude oil becomes less available..., petroleum refineries **may** (emphasis added) increase their use of lower quality crude oil...refining lower quality crude oil **could** (emphasis added) increase air emissions...a longer refining process uses more energy, which **may** (emphasis added) cause more air emissions...those impurities **could** (emphasis added) be emitted into the air...more impurities in the oil **could** (emphasis added) mean more corrosion...”

The District, in its own words, is making it clear this is a rule that is being developed to address something the District believes may occur; this is not a sound scientific basis for imposing a rule that will be burdensome for the District to administer and for the refineries to interpret and follow without any clear benefits for Bay Area residents through improved air quality.

Further the District is seeking to create this new rule despite decreasing air emissions and ambient levels of ozone and particulate matter throughout the Bay Area. This same data shows that petroleum refinery direct emissions have decreased over time and are a small percentage of the total inventory. This data is found in slides 5 through 7 presented by District staff at the recent public workshops on this proposed rule. [Attachment A] Note that much of this data was presented by the District in its October 19, 2009 presentation, *Bay Area Emission Trends*, which shows that refineries account for a small percentage of annual average emissions for key emissions tracked by the District. [Attachment B]

District data further shows that reductions from mobile source emissions are the biggest factor in improving air quality. Petroleum refineries play a key role in this improvement. The cleaner fuels produced by the refineries have enabled improvements in engine technology that have driven down mobile source emissions and will continue to drive down emissions as engines continue to be replaced with those that have the latest engine technology. In order to manufacture these cleaner fuels, refineries have added new and expanded existing process units. These additions and expansions have added new emission points, but the District data clearly shows decreasing emissions from refineries. This lack of relation between changing crude slates and process reconfiguration is discussed in greater detail later. [See Attachment C]

In short, the District is seeking to create a burdensome (to both BAAQMD and the refineries) and costly rule that is not based on sound science and will not do anything to improve air quality. The District is proposing a rule to solve a problem that does not exist. It is the view of WSPA that the limited resources available would be better applied to addressing other identified air quality issues; i.e. see the District's limited progress in addressing the 55 control measures identified in the 2010 Clean Air Plan.

Emission Inventory Data Already Exists

The District has stated that it is seeking a single repository for an air emissions inventory to include criteria pollutants, toxic air contaminants and greenhouse gases. Existing publicly available inventories prepared for local, state and Federal agencies thoroughly document these emissions with friendly search tools to retrieve data by region, specific industry, specific permit holder, and specific chemical compound. [See Attachment D] WSPA asserts that if the District is seeking to consolidate these tools into a single website, that outcome can be achieved without a new regulation. Public awareness may be better served by demonstrating how to evaluate existing data and put such emissions in context.

Concerns about Baselines

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

As part of the NSR/PSD permitting process, facilities have surrendered Emissions Reduction Credits (ERCs) to obtain necessary operating flexibility in terms of throughput and fired duty. ERCs have significant economic value, and surrendering them is an investment in the facilities' permitted operating scenarios. This investment is nullified by overlaying the proposed rule's baseline. Furthermore, as drafted, the proposed rule would prohibit the use of off-site generated and on-site non-contemporaneously generated ERCs for future permitting as currently allowed by recently revised District Regulation 2 Rule 2 and 4. Depending on the source and age of the ERCs held by a refinery, this could render the refinery ERC banks essentially worthless.

Permitting Uncertainty

The proposed rule introduces significant uncertainty in the permitting process on top of the recent Regulation 2 modifications. To the extent that the BAAQMD continues to increase uncertainty for permitting new projects, corporations will be incentivized to invest elsewhere. When the permitting process cannot be relied upon to produce permit limits that are reliable, the unintended consequences include less modernization of existing facilities within the District's jurisdiction which may actually slow the trend of air quality improvement noted above.

Differences between Proposed Rule and Reg 12-12

In various public statements, including the workshop report for this rule, BAAQMD has drawn parallels between this rule and the refinery flare minimization rule (Reg 12-12). WSPA sees several critical differences between this proposed rule and Reg 12-12.

1. The District actually followed its long established rule making process when it developed Reg12-12.
 - a. The first step, published on the BAAQMD website, was to have an internal scoping meeting which is to discuss an **identified** (emphasis added) air pollution problem. As is discussed above the proposed rule is not addressing a known validated issue; it is addressing a potential concern and may actually slow progress.
 - b. The second step was to develop a Technical Assessment Memo which should include an assessment of whether a rule is needed. At the Martinez public workshop, BAAQMD staff acknowledged that the inventory portion of the proposed rule could be accomplished without a new burdensome regulation.
 - c. The third step was Stakeholders meetings. In this step the District should conduct meetings with affected businesses, affected communities and other interested parties. The District managed to meet with affected communities and interested parties prior to developing an initial draft of the proposed rule. BAAQMD staff did not meet with the refineries and in fact did not respond to repeated requests to meet and discuss this rule. No meeting with the refineries has been scheduled or occurred to date. The flare minimization rule had numerous meetings including all stakeholders (estimated at around 20) and the District to finalize the minimization rule and agree to a template for the flare minimization plans.

2. To determine if a flare minimization rule was necessary and if so, to determine reporting triggers based on sound science, there was a rule that preceded the flare minimization rule. That rule, Reg 12-11 (flare monitoring at petroleum refineries), resulted in refineries gathering detailed data on the amount and composition of gases directed to flares. This data showed that there were emission reductions which would be achieved by the implementation of the flare minimization rule. Since the adoption of Reg 12-12 District staff have monitored and reported on flare minimization efforts which have shown emission reductions from flares. Reg 12-12 now effectively regulates flare emissions from extraordinary events at refineries while the proposed rule intends to regulate emissions from the normal, already permitted operations at refineries – two very different concepts.

Meaningful Air Monitoring

Ambient air monitoring, proposed as fence-line and community monitoring in the proposed rule, cannot determine the source of the emissions. For example, freeway particulates may be detected, but a refinery is not the source of these emissions. Atmospheric conditions play a controlling role in how emissions from stationary sources travel. There is no certainty that routine emissions or those from emergency events will be measured by fence-line or community monitors in a meaningful way, if at all. Specifically, how do the air monitoring provisions relate to the proposed rule's other components?

Detailed Comments

These comments are based on; The Workshop Report, Preliminary Draft and the proposed rule.

The Workshop Report states that the rule is needed for four reasons;

1. *Establish existing baseline air emissions from each refinery (i.e., the quantities of various air pollutants that are emitted)*

Comment: Refineries already provide sufficient data to address this concern. Refineries currently prepare and submit annual emissions inventories that address criteria pollutants, toxic air contaminants, and greenhouse gases emitted by processes associated with our operations. Additionally, baseline emissions are continuously documented for permitting purposes. Permit holders routinely track emissions and increases due to process changes and projects that increase throughput to ensure that all emissions are authorized. Emissions of these regulated air pollutants are tracked on an actual basis and are required to be compared to potential emissions from projects and throughput increases to determine the type of permit review process that will be required to authorize the emissions. Emissions increases associated with new refinery projects are included in this tracking process.

The “trigger levels” in the proposed rule are consistent with the levels established by EPA for NSR/PSD and require the most stringent permitting requirements. Proposed emission increases at or above these levels are already required to go through the permitting process, making this proposed rule redundant and unnecessary. Further, agencies and the public have access to the permit applications and emissions inventories. There is no de minimus trigger levels proposed for toxics. Any increase over baseline will require a health risk calculation using an air dispersion model and a cumulative impacts analysis including emissions from sources

outside the refinery (12-15-228.2). Small increases in calculated toxic emissions could occur due to the accuracy of current measurement techniques and would trigger these extensive and burdensome analyses. As written, the rule could trigger emissions reductions at a refinery without any real emission increase at the refinery because a nearby hospital or grocery store installs a diesel generator resulting in a cumulative emissions increase.

The proposed rule does not explain or clarify how permitted emissions increases that may go above the “trigger levels” established in the rule would be compared against the baseline implying that these types of increases would never be acceptable. This would potentially prohibit expansions and production increases that may be necessary to meet the product demands. Requiring refineries to choose one year in the past ten to represent “baseline” emissions for all pollutants assumes that there is one year with the highest emissions for each pollutant. Because of cyclical maintenance needs, most refineries shut down their process units during different years. Different process units emit different pollutants and this will make it impossible to choose one baseline year representing all pollutants at their highest *actual* emissions, much less to allow use up to permitted levels.

2. *Track the quantity of air emission from each refinery in the future on an on-going basis*

Comment: Refinery emissions are tracked on an on-going basis and emissions of some parameters are monitored on a continuous basis. Each refinery is required to submit annual emissions inventories, Superfund Amendments and Reauthorization Act / Toxic Release Inventory reports, and greenhouse gas (GHG) emission reports along with numerous other reports that indicate routine and upset emissions. These existing reporting requirements encompass emissions to all media and provide a sufficient level of detail to ensure that all significant emissions of criteria pollutants, toxic air contaminants and greenhouse gases are presented.

The proposed rule also states that as pollutants are added to the California EPA list of Toxic Air Contaminants (TACs), then baseline numbers would need to be developed for these new compounds. The process would be never ending and retrospective to a point that determining these emissions would be potentially impossible.

The rule proposes to track emissions from numerous compounds that are not associated with petroleum refining and will require unnecessary regulatory record keeping and potentially create a monitoring program burden.

The proposed rule requires quantification of pollutants from associated processes that are not owned or operated by the refinery. It would be difficult and inappropriate to certify to the accuracy of data provided by operations that are not under the control of the refinery.

The proposed rule discusses preparing the inventory following the District’s published guidelines. These guidelines should be available for public comment along with the proposed rule to ensure that the methodology is consistent with accepted practices and standards. Additionally, is there or are there plans to establish methodologies for every parameter to be included in the emissions tracking process? The proposed rule requires the first submittal by December 31, 2014. Is there an expectation that annual emissions from 2013 would be included in this submittal?

3. *Should air emissions from a refinery increase above baseline levels (in an amount that exceeds specified trigger-levels), require that the cause of the emission increase be identified and a plan prepared and implemented to reduce emissions*

Comment: Refineries are currently subject to numerous reporting rules under state, local and federal programs in the event of a release of a toxic or potentially toxic substance above federal and state reporting levels. Investigations of these events are required by numerous rules, including the EPA's Risk Management Plans, California Emergency Management Agency's Accidental Release Prevention Program and Occupational Safety and Health Administration's process safety management (PSM), as well as each refinery's own corporate policies aimed at continuous improvement. Sites must implement measures to prevent reoccurrences or be subject to enforcement action.

4. *Establish fence-line and community air monitoring systems*

Comment: The workshop report expresses concern with ensuring that levels of toxic pollutants do not exceed published health effect criteria. The District's existing permitting process includes requirements for modeling to ensure that permitted levels of pollutants do not exceed levels that adversely impact public health.

Fence-line monitoring requirements in the proposed rule are not clear as to the compounds expected to be monitored. Does the rule anticipate that monitoring for greenhouse gases would be included? The methodology for monitoring fence-line greenhouse gas emissions is not currently technically feasible.

Conclusion

WSPA does not agree with the need for the proposed rule. It is unnecessary since existing regulations address each of the basic elements described by the District as being the reason for the proposed rule's development.

WSPA is also disappointed the District has chosen to pursue this rulemaking in an orchestrated fashion rather than work collaboratively with the petroleum industry and other stakeholders to streamline emissions inventories and improve meaningful air monitoring. We will participate cooperatively with the District's planned Technical Workgroup and provide input into the District's Expert Panel on Air Monitoring.

The District has made tremendous strides in improving the Bay Area's air quality by targeting cost-effective emission reductions in its rulemaking and project permitting. We believe much of what the District hopes to achieve in establishing better inventories and more useful air monitoring can be accomplished within the District's existing regulations – which are already demonstrably improving the Bay Area's air quality.

We appreciate your consideration of these comments. If you have any questions, please contact me at (925) 826-5354 or (925) 681-8206 (mobile).

Sincerely,

A handwritten signature in black ink, appearing to read "Guy Bjerke". The signature is fluid and cursive, with the first name "Guy" and last name "Bjerke" clearly distinguishable.

Guy Bjerke
Manager, Bay Area Region & State Safety Issues

Attachments

- A – Draft Petroleum Refining Emission Tracking Rule Workshop PowerPoint – April 22, 2013
- B – Bay Area Emissions Trends PowerPoint – October 19, 2009
- C – Crude Composition Does Not Impact Refinery Combustion Emissions – May 31, 2013
- D – Existing Emission Inventories – May 31, 2013