

## Victor Douglas

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**From:** Ryan Hanretty <hanretty@cioma.com>  
**Sent:** Friday, December 2, 2016 2:54 PM  
**To:** Victor Douglas  
**Cc:** Ryan Hanretty  
**Subject:** CIOMA Comments Regarding BAAQMD Proposed Rule 11-18

**Follow Up Flag:** Follow up  
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Good Afternoon,

Please find attached and below a copy of the comments submitted for consideration by the California Independent Oil Marketers Association.

CIOMA and its members thank you for the opportunity to comment and participate in your efforts surrounding Rule 11-18 and the BAAQMD's mission to monitor the air quality in the Bay Area. Should you have any questions, please do not hesitate to reach out to our team at the contact information below.

Sincerely,

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### **COMMENTS ON PROPOSED RULE 11-18 FROM THE BAAQMD**

On behalf of the members of the California Independent Oil Marketers Association (CIOMA) that own and operate sites within the jurisdiction of the Bay Area Air Quality Management District (BAAQMD), please find below the comments for your consideration regarding the negative impacts of proposed Rule 11-18.

Founded in 1952, the California Independent Oil Marketers Association (CIOMA) is the industry's statewide trade association representing the needs of independent wholesale and retail marketers of gasoline, diesel, lubricating oils and other petroleum products; transporters of those products; and retail convenience store operators. The majority of our members are and small business owners - with many of them minority and family-owned businesses passed down from one generation to the next. CIOMA represents a growing number of convenient stores and gas stations throughout California, including those impacted by Rule 11-18 within the boundaries of the BAAQMD.

The proposed Rule 11-18 will apply to numerous facilities that have never before been required to perform this type of Health Risk Assessment or retrofit the sort of control technology anticipated by the Rule, including gasoline stations, hospitals, colleges and universities, waste water treatment facilities, data centers, and several others. By the staff's own account at BAAQMD, the new Rule will impact 1,100 businesses in the Bay Area – 130 (over 10%) of which are gas stations.

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. Further, there is no explanation 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 percent.

#### 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.

Further, 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).

#### Need For BAAQMD Regulatory Consistency

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. CIOMA suggests that the District continue exempting sources from Rule 11-18 that were already subject to or listed as exempt from 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. CIOMA therefore suggests that the District consider exempting any facilities from draft Rule 11-18 that are already subject to requirements that reflect TBARCT.

It seems evident to CIOMA and its members that 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. Therefore, BAAQMD should exempt any facilities from Reg. 11-18 that are already subject to requirements that reflect TBARCT.

#### Rule 11-18 Vagueness and Necessary Clarification

At the broadest 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, CIOMA 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.

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.

Therefore, CIOMA requests that the District explicitly 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.

CIOMA also sees a need for the draft rule to 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.

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.

#### Risk Action Levels/Risk Reduction Plan and Remediation

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. CIOMA 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.

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 for Implementation and Compliance

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. This concept has a subjective and targeted methodology that strays from achieving cost-effective and more quickly achievable health benefits from sources at the expense of possible CIOMA members and their customers at high costs and short turnaround windows.

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. 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. At minimum, a sufficient response timeframe should be established and accepted – no less than 180 days. CIOMA members likely do not have the expertise, financial support, nor manpower to stop operations and acquire all of the intricate and technological advanced data for BAAQMD to review within the abrupt response window currently contained in Rule 11-18. This may also require a more reasonable deadline for submission and implementation of the draft Plan.

#### Attention to the Entire Comprehensive Suite of Regulations

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. Rule 11-18 is clearly a component of the Petroleum Refinery Emissions Reduction Strategy, notwithstanding that the rule applies to CIOMA members and 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 and gas stations and CIOMA members should be analyzed together with the suite of regulations that make up the Petroleum Refinery Emissions Reduction Strategy.

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.

Beyond the efforts that BAAQMD has pursued, all of the gas stations throughout California have been subject to strict emissions regulations and laws from the Legislature and the California Air Resources Board (CARB). All of the equipment used at a fueling station has been upgraded extensively and certified through numerous government agencies, especially CARB’s focus on Enhanced Vapor Recovery (EVR). CARB approved and certified nozzles were put in place to prevent and reduce emission from the fueling station’s equipment and property. For Rule 11-18 to assert that these costly and fairly recent upgrades are insufficient, or worse that CARB’s methods are incorrect in their pursuit of effective reducing health risks and emission presence, would seem counterproductive to the efforts that CIOMA members have undertaken over the years to improve their community and legally operate at the highest standards in the nation.

According to BAAQMD’s own staff report, this would be the third time that BAAQMD has gone after certain locations – see quoted text below. CIOMA members that will be negatively impacted have been well established for generations without being designated or proven to be harmful under any of the prior efforts by BAAQMD. However, if Rule 11-18 is implemented it will hurt local communities, jobs, and everyday Californians trying to get to and from work, school, children’s extracurricular activities through this broad sweeping proposal that lacks real focus on solutions and achievements already realized and pursued over decades within the BAAQMD jurisdiction.

*“...The Hot Spots Act focused on addressing risk from sources of TACs that existed in the late 1980's. The act required a round of inventories, assessment of risk, and, in the case of facilities that exceeded risk levels established by local air districts, risk reduction plans. The act then required inventory updates every four years and the payment of fees by facilities to support district and ARB inventory efforts. ...The Air District adopted its Air Toxics New Source Review program at about the same time it started its activities to assess existing facilities under the Hot Spots Act. As a result, sources that existed in the late 1980's have been reviewed under the Hot Sports program **and** sources that were constructed or modified after the late 1980s have been reviewed under the Toxics NSR program.*

*“Draft Rule 11-18 would revisit existing facilities using current knowledge and procedures. “*