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ESDR-364-16  
05-C-03-G

**VIA Email**

Mr. Victor Douglas ([VDouglas@baaqmd.gov](mailto:VDouglas@baaqmd.gov))  
Manager, Rule Development Section  
Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105

**RE: Phillips 66 Company: Comments on BAAQMD's Notice of Preparation for DEIR Draft Regulation 12, Rule 16 and Draft Regulation 11, Rule 18**

Mr. Douglas:

Phillips 66 Company (Phillips 66) is providing comments in this letter related to the Notice of Preparation (NOP) for two new Bay Area Air Quality Management District (District) rules currently being developed – Regulation 12, Rule 16: Petroleum Refining Facility-Wide Emission Limits (Reg. 12-16) and Regulation 11, Rule 18: Reduction of Risk from Air Toxic Emissions at Existing Facilities (Reg. 11-18).

In addition, Phillips 66 supports and adopts the comments of the Western States Petroleum Association (WSPA) and the California Council for Environmental and Economic Balance (CCEEB) on the above-referenced Regulations submitted on December 2, 2016.

Due to the complicated nature of the proposed Regulations referenced above, Phillips 66 requests that additional time be allowed to provide comments and work with District staff.

**Regulation 12, Rule 16**

The California Environmental Quality Act ("CEQA") requires that the District's Environmental Impact Report for the project consider the entire project. As you are aware, the CEQA Guidelines define a "project" to be the whole of an action, which in this case includes all regulations associated with Board Resolution 2014-07 targeting emissions reductions from refineries. .

Proposed Regulation 12, Rule 16 will likely curtail refinery production below levels already achievable in practice and currently permitted, which infringes on Phillips 66's vested rights. The proposed rule severely inhibits (or may altogether prevent) the ability of Bay Area refineries to build new equipment or process units that may be required to meet future Federal and/or California Air Resource Board (CARB) fuel standards or to respond to increases in demand. This may make one or more refineries obsolete and potentially force their closure.

The proposed rule is not necessary, and, in fact, District Staff itself recognizes the difficulty that the Board will have in making the finding of “necessity” required by California Health and Safety Code section 40727(a): “[a]t the very least, it would be difficult to legally justify the necessity for the [proposed rule]...” (*BAAQMD Draft Staff Report, Draft Regulation 12, Rule 16: Petroleum Refining Facility-Wide Emissions Limits* (October 2016), p. 17). Phillips 66 also believes that the Board will not be able to make the required finding of “consistency,” which is a view shared by District Staff in the *BAAQMD Draft Staff Report* (“Staff is concerned that a fixed numeric cap on refinery emissions may not be consistent with requirements of the Federal Clean Air Act (CAA) and the California Health and Safety Code (H&SC)”). Further, the proposed rule is arbitrary and capricious in that it imposes a specific regulatory regime on one particular sector of the regulated community – *i.e.*, refining – without any support whatsoever that such disparate treatment is either necessary or appropriate. Again, this view is echoed by District Staff at pages 17 and 18 of the *BAAQMD Draft Staff Report* (“Staff is also concerned that there is no support for imposing a particular regulatory approach on one sector of the regulated community without factual support for such selective treatment”).

Adoption of the proposed Regulation 12, Rule 16 would be beyond the Board’s legal authority. District Staff has arrived at this same conclusion (*BAAQMD Draft Staff Report*, pages 3, 19, and 20). If the Board adopted this proposed rule, it would be a transparent attempt to utilize legislative authority that the Board does not rightfully have, which will have been hijacked by the Board solely to impose the Board’s own purported policy choices on a discreet sector of the economy and regulated community.

The District needs to evaluate the environmental, socioeconomic and other factors associated with restricting refinery operations. The potential to affect fuel supply in the Bay Area must be thoroughly evaluated. For instance, the District must evaluate the GHG impacts of importing gasoline from outside the State or from foreign countries should a fuel shortage be caused or exacerbated by proposed Reg 12-16.

#### Regulation 11, Rule 18

The District must provide a thorough scientific justification for why a risk threshold of 10 in a million (10/M) was arbitrarily chosen. The District’s own Community Air Risk Evaluation (CARE) study estimated that average background air quality in the Bay Area is roughly 50 times greater than the proposed risk threshold of 10/M. The District must determine if the Rule is implemented whether or not all reducing risk from all facilities to below 10/M would even have a significant effect on the overall risk from background air quality.

District staff had previously reported a 25/M risk threshold to the Board, but this threshold has been removed and replaced with the 10/M threshold without any explanation. Phillips 66 requests that District staff provide an analysis of the number of facilities with a risk greater than 25/M compared to the estimate of over 1,100 facilities with a risk of greater than 10/M reported in the *BAAQMD Draft Staff Report*. This information must be presented as part of the project alternatives and the EIR and staff report must analyze any additional benefits and costs associated with reducing the risk threshold from 25/M to 10/M. The District must show that these thresholds are necessary and cost effective.

The *BAAQMD Draft 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, Phillips 66 requests that Rule 11-18 clarify that the emission inventory is based on actual emissions.

The BAAQMD should provide guidance and a more thorough review of proposed Regulation 11, Rule 18 (Reg 11-18) in relation to the changes proposed to Regulation 2-5 and the recent changes to Regulation 2 Rules 1 and 2 (Regs 2-1 & 2). These regulations will all potentially have effects on the other regulations and should be thoroughly reviewed to determine if there are any inconsistencies or other potential issues.

- For instance, potential risk reductions required by Reg 11-18 may require permits and review via Regs 2-1 & 2 and Reg 2-5. What are the effects if Reg 2-5 required TBACT on a project being conducted for Reg 11-18 compliance, when currently Reg 11-18 only requires TBARCT?
- What if a project is required by proposed Reg 11-18 risk reduction requirements but is not issued a permit pursuant to proposed Reg 2-5 because the potential to emit only for the project is included in the Reg 2-5 analysis? Is the facility then out of compliance with Reg 11-18?

TBARCT should be better defined as part of the Reg 11-18 rulemaking. Defining TBARCT is necessary to prepare the socioeconomic analysis and determine the range of probable costs, define the impact of the rule on regional employment and economy, determine the availability of cost-effective alternatives and quantify the emission or risk reduction potential of the rule. Moreover, this would help inform regulated businesses about what would be required and what compliance options are available, which in turn could prompt useful public participation and comments on the draft rule. The current definition of TBARCT in 11-18-204 does not adequately consider cost-effectiveness, as it requires installation of the most stringent retrofit emissions controls available.

As Sections 11-18-301 and 11-18-403.6 are currently written, they could be interpreted to mean that all sources of risk anywhere in the facility must be below the significant risk thresholds or have TBARCT. Based on conversations with District staff, Phillips 66 believes the intent of the Reg was to control only those sources of risk that affect the receptors with impacts above risk action levels in Section 11-18-214, not all sources at the facility. Accordingly, Phillips 66 suggests the following edits to clarify the proposed text in Sections 11-18-301.2 and 11-18-403.6.1:

- 11-18-301.2 “Demonstrate to the satisfaction of the APCO that all facility sources of risk ~~at the facility that impact any receptor where the health risk from the facility exceeds one or more of the risk action levels in Section 11-18-214~~ either:
  - 2.1 Are controlled with current TBARCT, or
  - 2.2 Do not pose a health risk that equals or exceeds of one or more of the significant risk thresholds set forth in Section 11-18-217.”
- 11-18-403.6.1 “A demonstration that all facility sources of risk ~~at the facility that impact any receptor where the health risk from the facility exceeds one or more of the risk action levels in Section 11-18-214~~ are either controlled with TBARCT, or do not pose a health risk in excess of the significant risk threshold, or”

Lastly, the District’s choice of facility prioritization for implementation of the proposed Rule appears arbitrary. Multiple times in the *BAAQMD Draft Staff Report*, CARE communities are noted as the areas with the highest risk; however, the District did not consider the CARE communities when determining the prioritization. Further, diesel PM is the largest contributor to Bay Area risk as illustrated in Figure 5 of the *BAAQMD Draft Staff Report*, however, the primary stationary source of diesel PM emissions,

diesel engines, are not proposed to be addressed by the rule until the third implementation phase, and reductions from these sources won't be implemented until 2024 at the earliest. The District should prioritize implementation of facilities that are located in CARE communities because they are the areas with the highest overall risk.

If you have any questions regarding these comments, please contact me at (510) 245-5825.

Sincerely,

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

Don Bristol  
Environmental Superintendent

Attachment

cc: Eric Stevenson, BAAQMD (via e-mail: [ESTevenson@baaqmd.gov](mailto:ESTevenson@baaqmd.gov))  
Greg Nudd, BAAQMD (via e-mail: [GNudd@baaqmd.gov](mailto:GNudd@baaqmd.gov))