



December 1, 2016

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Martinez Refinery
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Eric Stevenson
Bay Area Air Quality Management District
939 Ellis Street
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**SUBJECT: Tesoro Refining & Marketing Company LLC
 Martinez Refinery
 Comments to BAAQMD Proposed Rule 12-16**

Eric,

The Martinez Refinery of Tesoro Refining & Marketing Company LLC (Tesoro) offers the following comments regarding proposed Bay Area Air Quality Management District (BAAQMD or District) Regulation 12 MISCELLANEOUS STANDARDS OF PERFORMANCE Rule 16 PETROLEUM REFINING FACILITY-WIDE EMISSIONS LIMITS (Rule 12-16).

Tesoro shares in the concerns highlighted in the BAAQMD Draft Staff Report (October 2016), Section E, "Staff Assessment of Draft Rule", pages 17 through 20. In particular, we agree with the following concerns that are highlighted in or can be inferred from this draft report:

- The rule is arbitrary and capricious;
- District permits already limit refinery criteria pollutants to safe levels; and,
- Local Greenhouse Gas (GHG) caps will not have any measurable benefit on global climate change.

In addition to what was pointed out in the BAAQMD Draft Staff Report, Tesoro is also concerned with the following in regards to this rule:

- BAAQMD has not shown a sound scientific reason why the rule is necessary;
- Caps will reduce currently available refinery production capacity further restricting transportation fuel supplies;
- BAAQMD has not completed a thorough socio-economic analysis addressing the impact of lower fuel supplies and therefore higher prices on the lower income population;
- The definition of emissions inventory (EI) in the rule includes cargo carriers, and yet the standards proposed fail to include baseline numbers for cargo carriers;
- The baseline values do not appear to match what was actually reported.

Finally, we have comments related to specific sections of the proposed rule. We document those concerns at the end of this letter.

The Rule Is Arbitrary and Capricious

The rule is arbitrary and capricious by imposing emission rate caps on only one group of stationary sources (i.e. Petroleum Refineries). As the BAAQMD staff point out on pages 17 and 18 in their draft 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. Setting a fixed cap on PM, NOX and SO2 emissions for refineries as proposed by Citizens for a Better Environment (CBE) means that these particular facilities would be required to offset any emission increases above the cap by reductions within their individual fence-lines. In addition, the proposed cap may prevent the construction and operation of new equipment already permitted by the BAAQMD. That means a different set of permitting rules would apply to refineries and support facilities than to other sources in the Bay Area. The rule would address pollutants of primarily regional concern by limiting those pollutants from one Bay Area industrial sector through a mechanism unique to that industry and unlike the mechanism for all other industrials sectors, which relies on standards for the equipment operated by the industry and measures compliance through scientifically tested methods rather than inventory approximations. This would likely be viewed by a court as arbitrary and capricious. This is particularly so, given that, as explained below, the Air District’s current air quality monitoring data shows that the concentrations of the criteria pollutants covered under the cap in Rule 12-16 are roughly the same in refinery communities as in other urbanized areas of the region.”

BAAQMD staff recognized that this approach may be beyond the agency’s statutory authority as noted in the BAAQMD staff report as stated above. The BAAQMD staff also point out above that ambient air concentrations around petroleum refineries are not measurably different than other parts of the Bay Area.

District Permits Already Limit Refinery Criteria Pollutants to Safe Levels

The District’s staff concluded that (page 20): “Staff’s analysis also indicates that the proposed rule is unlikely to improve air quality in refinery communities”.

Current District air permits and New Source Review rules already prevent emissions from increasing to unsafe levels. The implication of the proposed rule 12-16 is that the District’s traditional regulatory approach does not adequately protect public health despite the fact that the District’s plans have resulted in substantive decreases in air emissions and improvements in air quality over the past decades. The District’s permitting rules have also been repeatedly reviewed and approved by the U.S. Environmental Protection Agency (US EPA) as part of the State Implementation Plan (SIP) process for ensuring the national ambient air quality standards (NAAQS) are obtained.

Local GHG Caps Are Not Expected to Benefit Global Climate Change

From the District's Draft Staff Report (October, 2016), page 19:

"In addition to the concerns about criteria pollutant limitations (PM, NOX and SO₂), there are also legal concerns with the proposal to cap greenhouse gas emissions at individual refineries. The California Health and Safety Code requires the Air District to explain how a rule proposed for adoption is consistent and in harmony with existing state or federal requirements (H&SC §40727). There is a fundamental inconsistency between a "cap and trade" program that by its nature contemplates changeable caps versus one that fixes caps at one level, in that the latter has the potential to frustrate the efficiency goals of the former. For example, a Bay Area refinery would have no incentive to purchase allowances from a more easily controlled source under cap and trade if the refinery would still be capped by the Air District rule. Even if the Health & Safety Code allowed the Air District to justify a certain degree of conflict based on local needs (and it is not at all clear that it does), it would be very difficult for the Air District to explain why such a benefit exists here because greenhouse gas emissions are not a localized health concern."

We generally agree with the District staff in the following points other than likely or will should be substituted for each instance where may is used:

- Not a Local Problem: The principal GHG is carbon dioxide (CO₂), which is not a local health concern.
- Efficiency: May not ensure most efficient GHG emission reductions.
- Production Shift: May shift business activity to outside of air basin.
- Emission Leakage: May result in increases of GHG emissions in other part of the State or beyond.
- Overall: May not affect overall global level of GHG emissions.

BAAQMD Has Not Shown a Sound Scientific Reason Why the Rule Is Necessary

The few air quality exceedances measured by the Bay Area are not associated with emission from any of the refineries. The majority of the measured ambient ozone exceedances are related to emissions from motor vehicles operating on congested highways with PM exceedances occurring at locations far from any refinery.

The BAAQMD's Community Air Risk Evaluation (CARE) program clearly demonstrates that the refineries emissions are a small contributor to health risk. In fact, only one refinery exists inside a designated CARE community. BAAQMD risk analysis indicates that diesel particulate matter is responsible for most of the risk and refineries are not a significant source of diesel particulate matter.

Local Caps Reduce Refinery Production Capacity

Caps will reduce currently available refinery production capacity further restricting transportation fuel supplies. By restricting local supply of transportation fuels, prices would be expected to increase either because of higher costs for shipping fuels into the Bay area or because of demand for a smaller supply.

BAAQMD has not completed a thorough socio-economic analysis addressing the impact of lower fuel supplies and therefore higher prices that disproportionately impact the lower income population.

Setting a local cap would prohibit a refinery from making modifications that, in some cases, increases the refinery's potential-to-emit (PTE). However, there are several reasons that a refinery might need to make modifications that increase its PTE. These include but are not limited to the need to install new equipment to comply with future Federal or State fuel regulations. Fuel regulations are typically for the purpose of reducing air emissions on a much larger scale than reductions achieved at a given stationary source. In the event CBE achieves its publicly stated goal of shutting down a refinery in the Bay area, the remaining refineries may need to increase capacity to ensure reliable gasoline and diesel fuel supply for California. The draft rule 12-16 includes no consideration of these types of changes.

The Definition of Emissions Inventory (EI) in the Rule Includes Cargo Carriers, and Yet the Standards Proposed Fail to Include Baseline Numbers for Cargo Carriers

The definition of emissions inventory (EI) in draft section 12-16-206 includes cargo carriers, and yet the standards for PM10, PM2.5, NOx, SO2 and GHGs proposed for all refinery facilities failed to include baseline numbers for these constituents from cargo carriers. This may also be outside the authority of the BAAQMD to regulate as part of the refinery. The cargo carriers are generally not owned or operated by the refineries and therefore the refineries do not have any specific control over the operation of the cargo carriers.

The Baseline Values Do Not Appear to Match What Was Actually Reported

The basis for the baseline values in the proposed rule are not documented sufficiently. Our records indicate an apparently different baseline than the one proposed given the stated baseline calculation methodology. We do not know why there are differences because the BAAQMD has not released the details of how it arrived at the baseline values. This also interferes with our ability to provide comments on the proposed values.

Section by Section Comments

While Tesoro recommends that BAAQMD not adopt the proposed Rule 12-16, if the District proceeds, we are providing some additional specific comments on particular sections of the proposed rule:

- 12-16-302. BAAQMD needs to specify the units of measure in the column heading of each table of emission limits. Furthermore, the number of significant digits in this table is beyond the accuracy of most emission estimating techniques. The limits should be expressed to the nearest 10,000 tons per year (e.g. "2,620,000" instead of "2,615,047" tons per year of GHG emissions).
- 12-16-601. The Manual of Procedures is not available yet for review and comment. We can't reasonably comment on the potential impacts if we don't have access to this document.

Please contact me at 925.370.3275 or Matthew.W.Buell@tsocorp.com if you would like to discuss these issues further.

Sincerely,



Matthew Buell

Manager, Environmental

MWB/kds