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BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

**District 12**

**Robert LaVenture**  
District Director

**Chris Youngmark**  
Assistant to the Director

Comments of United Steelworkers (USW) District 12  
on the  
Draft Regulation 12, Rule 16: Petroleum Refining Facility-  
Wide Emissions Limits  
AND  
Draft Regulation 11, Rule 18: Reduction of Risk from Air  
Toxic Emissions at Existing Facilities

January 29, 2017

The United Steelworkers (USW) District 12 appreciates the opportunity to offer our initial comments on Drafts Regulations 12-16 and 11-18, which are currently under consideration by the Bay Area Air Quality Management District (BAAQMD).

USW is the largest manufacturing union in North America, representing 850,000 members in the United States and Canada. USW District 12 represents the 11 western-most U.S. states, including California. For several decades, the USW has played a key role in helping to improve worker safety and health, environmental justice and climate protection. From our original efforts in helping to launch the Clean Air Act, we have worked hard to advance policies that protect the safety and economic security of workers, reduce carbon emissions, and open new opportunities for good jobs in a clean economy.

Since 2012, following the Richmond, Chevron fire, we have worked with a diverse alliance of labor, environmental and community partners in advising the California Department of Industrial Relations (Cal/OSHA) and California EPA regarding the state's new Process Safety Management (PSM) and Accidental Release (ARP) regulations, which apply to oil refineries. We have based our recommendations on our understanding of "best engineering practices" in the refinery industry and on the day-to-day experiences of our members in the plants. We believe both the PSM and ARP proposals will be more effective as a result. When they are adopted, we believe these regulations will provide important new protections for refinery workers and for residents who live in the vicinity of the state's refineries.

We are applying this same constructive approach in our efforts to provide input to the BAAQMD on Draft Regulations 12-16 and 11-18. To this end, among other actions, our members, local leaders and staff of the BlueGreen Alliance -- of which we are a founding partner -- have:

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United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

• 695 Jerry Street, Suite 208, Castle Rock, CO 80104 • 720-307-4096 • 720-538-0941 • [www.usw.org](http://www.usw.org)

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- Attended many of the BAAQMD meetings and hearings;
- Spoken with BAAQMD staff;
- Studied both the June 15, 2016 presentation of the Advisory Council and the October 19, 2016 presentation of Mr. Gordon Schremp of the California Energy Commission; and
- Read the October 2016 Draft Staff Report.

We are continuing to analyze the rules and do not yet have an official position. However, we would like to provide the following comments:

#### **A. Rule 12-16: Petroleum Refining Facility-Wide Emissions Limits**

The draft rule would establish emissions limits for greenhouse gases (GHG's), nitrogen oxides (NOx), sulfur dioxide (SO<sub>2</sub>), and particulate matter 10 microns and smaller (PM<sub>10</sub>) and particulate matter 2.5 microns and smaller (PM<sub>2.5</sub>).

For each of these pollutants, the Rule establishes emission limits, or "caps," for each refinery that are seven percent higher than the highest emission rates that occurred during the years 2010, 2011, 2012, 2013 and 2014. If inventory emissions of any pollutant (after certain exclusions) exceed this seven percent limit, the facility would be considered out of compliance for that year and would be liable for a violation for each pollutant limit exceeded for each day of the calendar year.

Our understanding is that this is intended to discourage refineries in the Bay Area from potentially increasing their emissions of these pollutants in response to changes that they might experience in the type and quality of the crude slate entering a refinery. For clarification, in our understanding from Mr. Schremp, 2015 crude oil inputs to Bay Area refineries came from foreign countries (55 percent by marine transport); the San Joaquin Valley (35 percent by pipeline); Alaska (12 percent by marine transport) and neighboring states (0.3 percent by rail and truck). Of foreign sources, Canadian crude made up 43 percent of imports to the U.S. but only 4 percent of imports to CA, where it declined significantly from Jan 2014 to Jan 2106. The Advisory Council indicates that in 2014, only about 0.5 percent of inputs were from North Dakota crude.

While in general we support efforts to reduce GHGs and criteria pollutants, we have a number of concerns with the approach proposed under this Rule:

##### **1) Worker and Community Safety**

The Rule does not address Toxic Air Contaminants (TACs), which are important for both worker and community health. For refineries, these include diesel particulate matter from diesel-fired equipment, benzene from process leaks, 1,3-butadiene and others. We believe an emissions rule should include TACs.

##### **2) Co-benefits**

USW members and the communities around our workplaces share the same air and water and we are a longstanding supporter of actions that simultaneously protect refinery workers and refinery

communities. However, it is not clear to us that placing caps on GHGs and criteria pollutants would have the co-benefit of also reducing TACs. The pollution control technologies to capture particulate matter, for example, differ from those that are designed to capture volatile organic compounds (VOCs), such as 1,3-butadiene and others. It is also not clear to us that BAAQMD could regulate emissions based on the theory that doing so would provide indirect co-benefits to health.

Furthermore, the BAAQMD's own October 2016 staff report (page 20) raised significant questions about the efficacy of co-benefits when applied to specific Bay Area refineries:

*"Co-benefits" are a theoretical interest only until such co-benefits are documented. The Air District is not aware of any data on which such documentation could be based. As noted above, the impacts of the criteria pollutants are primarily regional in nature. The criteria pollutant with the greatest likelihood of impacting the health of local communities is PM<sub>2.5</sub>. As Figure 2 shows, the Air District's current monitoring network provides no evidence of disproportionate impact on refinery communities from this pollutant. The Air District's evaluation of risk from toxic air contaminants indicates that the majority of the toxic risk from refineries is from benzene from leaks and particulate matter from diesel-fired engines (diesel PM). The proposed cap would have no effect on the risk from these toxic air contaminants."*

### 3) Legal Rationale

It appears to us that the Rule may open at least one important legal question. As we understand it, BAAQMD monitoring stations show that air quality in refinery areas is comparable to that of other urbanized Bay Area locations for PM<sub>2.5</sub>, NO<sub>x</sub> and SO<sub>2</sub>. Regardless of the merits of the District's sampling strategy, our understanding is that the District relies on these monitoring data as the basis for regulatory action. Doesn't this fact raise the possibility of the Rule being challenged on the basis that it is arbitrary and capricious – and unfair to refinery operations when compared to other industrial operations? Shouldn't this question be resolved before proceeding with this Rule? We do not see the wisdom in pursuing a course of action that might possibly involve the District in a potentially costly legal challenge from the beginning, particularly if the health benefits are uncertain.

### 4) GHGs and Cap-and-Trade

It is not clear to us how capping GHGs from individual sources can be consistent with both the theory and operation of the state's cap-and-trade policies under Health and Safety Code §40727. Shouldn't this also be resolved before proceeding with this Rule?

### 5) Surge Capacity

Would the cap proposed under Rule 12-16 conflict with the occasional need of refineries to increase capacity due to a failure in the system? This is a unique requirement in California because the state is isolated by time and distance from other sources of gasoline and is therefore nearly self-sufficient in gasoline production. Imports make up only between three and six percent of total statewide

demand for the 15 billion gallons of gasoline consumed each year. Demand rose 3.9 percent between 2013-2015.

California is able to shift production capacity when needed. Following the February 2015 Exxon Mobil explosion, which took that refinery off line, Bay Area refineries went from supplying about 45 percent of the state's gasoline to supplying about 60 percent, an increase of 33 percent. This required an increase in output from two million barrels per week to about 3.2 million barrels per week. The capacity of the Bay Area's refineries to expand was an important factor in mitigating the negative economic impact of the Exxon incident, which a 2015 RAND analysis concluded caused a \$6.9 billion contraction in the state's economy.

Would Rule 12-16 trigger a violation if a refinery elected to increase capacity in response to a supply failure? We believe this question should be considered and investigated before proceeding with this rule.

#### 6) GHG leakage

In the wake of the Exxon explosion, imported gasoline from foreign sources rose from about three percent of total statewide demand to about eight percent of demand, or from about 140,000 barrel per week to 420,000 barrels per day. This represented an increase of 42 percent in total imported gasoline statewide.

In light of the 3.9 percent growth in statewide gasoline demand between 2013-15, as well as the potential for system failures, could Rule 12-16 potentially lead to an increase in imported gasoline, both continuously and episodically? Would this imported gasoline come with a larger GHG footprint for refining and transportation, thereby defeating the purpose of Rule 12-16 to reduce GHGs? We believe the possibility of "GHG leakage," whereby carbon and other GHGs are simply moved from one regulated location (in this case Contra Costa County) to a less regulated location, should be investigated as a potential unintended consequence of this rule before it is subject to further actions by the Board.

#### **B) Draft Regulation 11, Rule 18: Reduction of Risk from Air Toxic Emissions at Existing Facilities**

Rule 11-18 is proposed by BAAQMD staff and is intended to reduce health risks posed by stationary facilities, including refineries, by requiring implementation of technically and economically feasible measures to reduce emissions of Toxic Air Contaminants (TACs). The draft rule could affect hundreds of facilities in the Bay Area that emit compounds such as diesel particulate matter (DPM), benzene, polycyclic aromatic hydrocarbons (PAHs), and 1,3-butadiene. It would rely on Cal/EPA's updated 2015 Health Risk Assessment Guidelines that focus on children's health protection.

We have a smaller number of concerns with the approach proposed under this Rule:

#### 1) Transparency

We believe that all aspects of the risk assessments conducted under this Rule need to be thoroughly transparent and easily accessible on the web to interested parties. We are well aware of risk

assessments that apply numeric and other assumptions to reach conclusions that are beneficial to polluting companies; these details are often unavailable for scrutiny. The District should take steps to ensure transparency and accessibility as a central part of this proposed Rule.

2) Feasibility

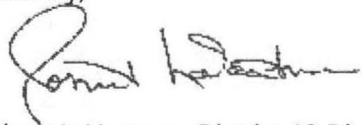
It is not clear to us how "technical and economic feasibility" is defined or would be applied under the Rule. We would gladly participate in discussions with the District to clarify this question.

3) PM 2.5

It is not clear to us whether this Rule would capture emissions of PM 2.5, which increased from refineries between 2000 and 2015, according to the Advisory Council. These particles have both regional and local health implications. Is the District investigating how it might include PM 2.5 under the requirements of Rule 11-18?

We have a number of other questions about both 12-16 and 11-18 but will defer those to a discussion with District staff. Overall, we appreciate the District's efforts to improve air quality in our communities, and to respond to our comments and those of other stakeholders, and we look forward to discussing these and other questions with you.

Sincerely,



Robert LaVenture, District 12 Director  
United Steelworkers (USW), District 12



Chris Youngmark, Assistant to the District Director

cc. Ron Espinoza, USW District 12 Sub-District Director  
Mike Miller, President, USW Local 326  
Jim Payne, Secretary-Treasurer, USW Local 5  
Catherine Houston, USW District 12 Rapid Response Coordinator  
Kim Nibarger, Chair, USW National Oil Bargaining  
Roxanne Brown, USW Assistant Legislative Director  
Jim Frederick, Assistant Director, USW Dept. of Health, Safety and Environment  
Jim Young, Principal, The Labor Institute  
Mike Wilson, Director, Occupational and Environmental Health, BlueGreen Alliance