



Benicia Refinery • Valero Refining Company - California

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November 28, 2016

Comments on Proposed Amendments to
Regulation 2 Rule 5 - NSR of Toxic Air
Contaminants,
Rule 11-18 - Reduction of Risk from Air Toxic
Emissions at Existing Facilities, and
Rule 2 – NSR Permitting

Ms. Carol Allen
Supervising Air Quality Engineer
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105

Dear Ms. Allen:

Valero Refining Company – California ("Valero") appreciates this opportunity to provide comments concerning the District's proposed revisions to the provisions of Regulation 2 Rule 5 - New Source Review of Toxic Air Contaminants (Rule 2-5), and associated rules Rule 11-18 and Rules 2-1 and 2-2. Valero owns and operates a petroleum refinery in Benicia, California, which is subject to the requirements of BAAQMD regulations. Valero is in receipt of the District's latest draft proposed Rule 2-5 amendments dated September 2016. Based upon our experience in implementing air permitting requirements under the current regulatory regime, we offer these comments in regarding the proposed amendments to Rule 2-5 and associated rules and reports.

As always, the objectives of the District's rulemaking should be to promote environmental protection, clear and efficient permitting implementation, ensure the regulated community's ability to continue to meet changing demand for consumer products, and to provide the regulated community with a feasible plan for compliance with the continued changes in local, state, and federal regulatory requirements and emissions guidelines. These objectives must retain an efficient and fair regulatory path to encourage facilities to modernize, thereby reducing real emissions and potential health impacts. We encourage additional dialogue with the District and interested parties to understand the issues and to alleviate unintended consequences that may arise due to additions and changes in regulatory wording. It is important to the regulated community, to concerned citizens, and to the District to produce a permitting rule amendment that is fair and clear. This provides permitting requirement certainty for both the regulated

community and for the District Permit Engineers to implement. Regulatory certainty encourages investment in California facilities.

Valero has been working with WSPA and CCEEB and incorporates herein by reference their comments on the proposed rule presented in letters to the District in March and November 2016.

1. Rule 2-5 Amendment Schedule; Coordination with other Rules

Rule 2-5 was introduced in early 2016. There have been no public updates until proposed amendments were posted in mid-October 2016. The latest amendments include many changes and additions. Since the latest proposed amendment there has been no opportunity for Workshop dialogue to discuss the intent behind the latest changes, and to address more complex issues in detail that are more productively handled with two-way conversation.

In addition to the proposed amendments to Rule 2-5, the District will soon be in the process of amending two rules that have implications with Rule 2-5, and proposing a new rule that has similar implications. These include amendments to Rules 2-1 and Rule 2-2 - NSR Permitting, and proposed Rule 11-18 – Reduction of Risk from Air Toxic Emissions at Existing Facilities. Proposed Rule 11-18 was first posted by the District for comment in October 2016.

Importantly, because Rule 2-5 has complexities that interact with other companion rules, it is important to address all rules as a coordinated exercise to avoid any unintended consequences. Coordination of rule review will minimize the potential for rules that are difficult to implement or that do not achieve their stated or needed goals.

We believe the Staff Report should address how these rules will work together, promoting streamlined and cost effective implementation of rules addressing toxic risks to the communities, utilizing sound science, and avoiding unintended consequences caused by barriers to the goals, overreaching or convoluted compliance path.

Rule 2-5 does not require imminent adoption, therefore, we request that the adoption of Rule 2-5 be postponed in order to ensure coordination with the recently proposed Rule 11-18 and proposed amendments to Rules 2-1 & 2-2. Rules 2-1 and 2-2 are scheduled to be addressed in 2017 to incorporate EPA's requested changes.

2. Table 2-5-1

Because the values in Table 2-5-1 affect compliance, any changes to the data in this table should appropriately be amended through rulemaking. This allows the public and regulated community notice of the intended change and the ability to comment prior to adoption. For example, a change to a Trigger Level in Table 2-5-1 has the potential to impact permitting for future projects through Rules 2-1 and 2-2. Therefore, keeping this table in the rule is appropriate. Though the Staff Report did not explicitly state so, we understand that any future changes and additions to data in Table 2-5-1 will have full regulatory review prior to being amended. Please confirm.

3. Risk Action Levels and Significant Risk Threshold – Proposed Rule 11-18

In February 2016, the BAAQMD presented an update to the Stationary Source Committee regarding AB2588 Air Toxics 'Hot Spots'. The District's presentation showed the *primary* driver of Risk was Diesel Exhaust (86%), and the primary sources of this Risk (73%) coming from mobile sources which include on-road mobile (31%), construction equipment (29%), ships/commercial boats (7%), and farm equipment (3%), and trains (3%). All industrial/commercial equipment, which are stationary sources – including refineries - contributed a total of only (7%) to the Risk drivers.

The Stationary Source Committee presentation also included the BAAQMD proposal to revise the Risk Management Threshold from 100/million to 25/million for cancer risk and from 10/million to 2.5/million for non-cancer hazard index. However, in October 2016 when the proposed Rule 11-18 was published, the risk thresholds proposed in the rule were further reduced to 10/million for cancer risk and 1/million for non-cancer index. Proposed Rule 11-18 Draft Staff Report did not include sufficient explanation for this reduction.

Interestingly, the BAAQMD 2009 CEQA Thresholds of Significance draft report included a map showing 2008 BAAQMD modeled ambient background inhalation cancer risk in the San Francisco Bay Area air basin to between 200-400/million for most geographic areas using the previous OEHHA calculation methodology (see attached Figure 3). This includes areas within San Francisco Bay itself, as well as areas outside the Golden Gate. Some Bay Area communities, including a small portion of San Francisco showed background risk of approximately 1,200/million. Also, since 1990, Risk has decreased almost 7-fold, from approximately 4,100/million to around 700/million bay area average (Rule 2-5 Staff Report Figure 1). The important takeaway from this information is that background ambient Risk is substantially higher than the project-related risk thresholds and risk action levels that the District has already included in existing rules and is further proposing to lower in proposed rules. The District has not provided sufficient technical and scientific justification for the proposed reduction to risk thresholds/action levels.

OEHHA recently updated its Health Risk Assessment (HRA) calculation methodology. Therefore, based on OEHHA's recent calculation methodology amendment, a source that previously had a Risk of 10/million could now be assigned a Risk as high as 50/million with no change in actual toxic emissions. The OEHHA calculation change alone has the effect of tightening the Risk hurdle for new and modified sources of emissions based on current Rule 2-2 and Rule 2-5 criteria.

Based on the facts above – the vast majority of Risk being from mobile sources, rather than stationary sources, Bay Area ambient background risk is 200-400/million, OEHHA recently tightened calculations that assess risk which automatically tightens the Risk hurdles for BAAQMD rules involving risk assessment absent any additional changes – it makes no sense that the District has chosen to lower the risk threshold in proposed Rule 11-18 to 10/million.

Based on this information, and because the proposed risk thresholds have the ability to negatively impact projects that could reduce overall real emissions and risk, we ask that the District present the necessary factual information to establish why the proposed risk threshold is justified and cost-effective. We believe that additional justification in a Staff Report is needed prior to adopting stricter risk thresholds in BAAQMD proposed rules and proposed rule amendments.

4. Toxic Emission Calculation Procedures

With the proposed backstop provided in proposed Rule 11-18, we believe that where post-project actual emissions are projected to be lower than pre-project actual emissions, (for example when a source modifies its hardware to achieve a Toxic emission reduction, or TBARCT), that project should be exempt from Rule 2-5 TBACT requirements. The unintended consequence of NSR permitting emissions math (past actual emissions compared with future potential emissions) makes a TBARCT project per Rule 11-18 potentially inaccessible. For example, if proposed Rule 11-18 required a source to be retrofitted to comply with TBARCT, and the TBARCT solution triggered a 'modification' per Rule 2-1, not only would that source need to comply with TBACT (not TBARCT) per Rule 2-5, but additional emissions offsets would be required for the facility to retain its permitted limits per Rule 2-2. The TBARCT requirement per proposed Rule 11-18 would be inaccessible per Rules 2-1 and 2-5. We don't believe this is the intent of Rule 11-18. Proposed Rule 11-18 provides sufficient backstop to achieve reduced toxic emissions and needs a clear compliance path forward via Rules 2-1, 2-2, and 2-5.

5. Section 2-5-110, and 11-18-301, 2-2-604

As stated above and to further expand on this discussion, to implement proposed Risk Reduction Plan Requirements of Rule 11-18-301, it is possible that a source may be considered 'modified' based on calculation methodology in Rule 2-1 and 2-2. We do not believe the intent of Rule 11-18 is to trigger a new NSR Permit application per Rule 2-2. However, based on the calculation methodology in Rule 2-2-604, it is possible that a hardware change to a source required by Rule 11-18 could consider the source 'modified'. This is based on the requirement in Rule 2-2 to calculate project emissions based on the difference between 'historical actual emissions and future potential to emit'.

We believe that to promote expedient implementation of emissions reduction projects such as that prescribed by proposed Rule 11-18, associated rules Rule 2-2 and Rule 2-5 should include a calculation methodology that defines a project-related emissions effect to be the difference between 'historical actual emissions and future projected actual emissions', a methodology test that is supported and allowed by the EPA. This will streamline and clarify the permitting path for projects implemented to comply with Rule 11-18 Risk Reduction Plan. Additionally, it is suggested that Rule 2-5 include language addressing TBARCT rather than TBACT for compliance with proposed Rule 11-18. This affects multiple sections of Rule 2-5.

6. Appendix C – Proposed Revisions to Air District Health Risk Assessment Guidelines

Section 2.5.1 – Spatial Averaging – includes the following statement “Grid shape, size, and location are subject Air District Approval”. This assessment is very subjective. We request additional refinement to maximize impartiality.

We appreciate this opportunity to provide comments on the Proposed Rule 2-5 amendments and associated rules, and look forward to continued participation in the District's regulatory development process. Specifically, we request the District hold a stakeholder meeting to discuss the coordinated interactions between associated rules so that unintended consequences are avoided and a clear compliance path is established for the regulated community and the District's Permit Engineers.

Please contact feel free to contact me at 707-745-7011 should you have any questions about these comments.

Sincerely,



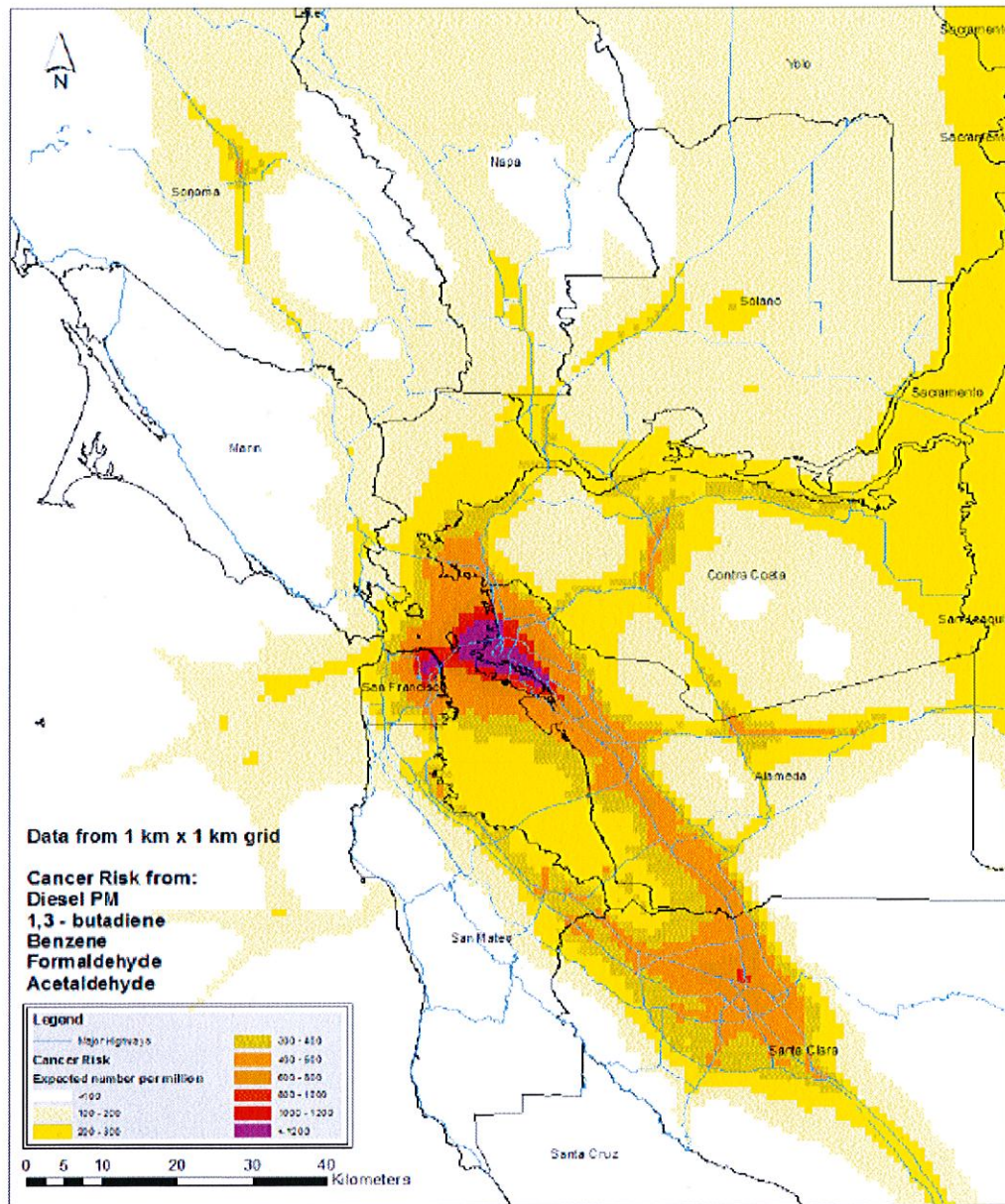
Susan K. Gustofson, P.E.
Staff Environmental Engineer

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Attachment – Figure 3

ecc:

Mr. Greg Nudd, Manager Rule Development, BAAQMD
Mr. Victor Douglas, Principal Air Quality Engineer, BAAQMD
Mr. Alexander Crockett, Assistant Counsel, BAAQMD
Mr. Jamie Williams, Director of Engineering, BAAQMD



Notes: PM = particulate matter.
Source: BAAQMD 2008.

Modeled Inhalation Cancer Risk in the San Francisco Bay Area Air Basin

Figure 3