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Submitted Via Email

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TESORO

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SUBJECT: Regulations 2-1, 2-2 and 2-6 Comment Letter

Greg,

The Tesoro Refining & Marketing Company, LLC Martinez Refinery (Tesoro) appreciates this opportunity to provide comments on proposed changes to BAAQMD regulations 2-1, 2-2 and 2-6. Tesoro is a member of the Western States Petroleum Association (WSPA), California Council for Economic and Environmental Benefit (CCEEB) and the American Fuel and Petrochemical Manufacturers Association (AFPM). Tesoro supports the comments submitted by these 3 organizations.

The proposed rule is fatally flawed in its proposal to change the definition of an alteration to include a significant crude slate change. California law requires air district regulatory changes to resolve an actual air quality issue. In its Workshop report for these rule changes, BAAQMD have not articulated what air quality issue they are seeking to resolve. In numerous past staff reports and board presentations, BAAQMD has routinely noted that emissions from refineries have steeply and consistently declined over time. This rule seems to be based on a concern that refinery crude slates may change over time. See the following excerpts from the workshop report:

- The crude slates being refined by Bay Area refineries...are **expected** (emphasis added) to continue to change.
- Concerns have been raised that refineries **may** (emphasis added) be making changes associated with moving to new crude slates that are subject to NSR permitting requirements.
- This situation presents a compliance and enforcement concern, as refineries **could** (emphasis added) make modifications related to modifications to their processes associated with crude slate changes without complying with applicable NSR requirements.

BAAQMD promulgated 12-15 in 2016. A stated goal of 12-15 is to determine if there is a correlation between refinery crude slate and refinery emissions. The submittal deadline for the refinery 12-15 emission inventory is June 30. Without this data, BAAQMD does not have sufficient data to correlate crude slate properties. Tesoro would further argue that in order to truly do a correlation, BAAQMD would need multiple years of data on both crude slate and emissions in order to truly see if a sufficient

correlation exists. Now instead of actually seeing if a correlation exists, BAAQMD is rushing to put a rule in place in case one does exist.

Tesoro is aware of significant projects that have been permitted in approximately the last decade by Valero and Chevron to allow their Bay Area refineries to significantly alter their crude slates. These are good examples that refineries will be required under the current regulatory system to permit projects that significantly alter the crude slate of the refinery.

To summarize, it appears that the justification that this rule is necessary is:

1. Refinery crude slates might be changing,
2. Refineries might not permit those changes (despite evidence to the contrary), and
3. Those changes that might not be permitted may cause refinery emissions to change.

While we understand the desire of the staff and board to do things that are groundbreaking and satisfy NGO groups that have stated a desire to see the refineries shut down, those desires do not constitute the needed test of necessity required to make this rule change.

Tesoro also questions the legal authority of BAAQMD to create a 25,000 tons trigger of CO2 emissions equivalent that would require a BACT determination when compared to the federal standard of 75,000 tons.

- In Section V.A of the Workshop Report, the District indicates that it “has the legal authority to adopt these revisions under Health & Safety Code Sections 40001, 40702, and 40910 *et seq.* (among other authority).” None of these sections, however, provide independent authority for the District to require BACT review for GHG emission sources beyond that required under the federal Clean Air Act and EPA regulations.
 - Section 40001 provides local air districts with the authority to adopt rules and regulations to achieve and maintain state and federal ambient air quality standards, and to prevent and abate air pollution episodes. Greenhouse gases are not subject to either state or federal ambient air quality standards, and do not result in air pollution episodes.
 - Section 40702 provides local air districts with the authority to adopt rules and regulations “to execute the powers and duties granted to, and imposed upon, the district” by Health and Safety Code Division 26 (Air Resources). This section does not provide districts with specific authority to require BACT review for GHG emission sources beyond that required under the federal Clean Air Act and EPA regulations.

- Section 40910 provides local air districts with the responsibility to “to achieve and maintain state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide by the earliest practicable date.” Section 40910 assigns no responsibility to local air districts related to GHGs.

Beyond the lack of necessity for the change in the definition of what constitutes an alteration and the lack of authority to set a different level of GHG increase requiring a BACT analysis, the rule as proposed has significant deficiencies.

The rule proposes that refineries compare monthly crude and non-crude slate data and compare it to a baseline of 2013 to 2016. With the promulgation of 12-15 refineries were only required to gather data on the five properties (API gravity, sulfur, RVP, BTEX and metals) starting in 2017. Much of the data that is the basis for the baseline simply does not exist. Refineries are required to report to the US Department of Energy on sulfur and API gravity crude data meaning that data is available during the baseline period. Tesoro believes parameters other than API gravity and sulfur should be deleted from the definition of a significant crude slate change; if not deleted then their baseline period should be defined as the period of 2017 to 2020 with the permitting rules for those properties starting in 2021. To set a baseline based on data that had no underlying requirement to gather that information is nonsensical.

The rule defines a significant crude slate change as a change in any one month outside of the defined crude window. That would be considered an alteration that would require an application to be submitted. Surely that application would have a request for emissions data. The emission inventory for 12-15 is an annual inventory without requirement to break down emissions on a month-to-month basis. Without monthly emissions data there can be no meaningful analysis associated with the application which would be a waste of both district and refinery staff time. The comparison of whether a significant change in crude slate should be done on a calendar year basis.

The rule has no de minimus cut off for non-crude feedstocks. Frequently non-crude feedstocks are purchased and run due to short-term considerations such as a turnaround or a refinery operational issue. At Tesoro those purchases are generally a mixture of an opportunity where another refinery is in a turnaround or has an operational issue that makes a non-crude feedstock in addition to a turnaround or operational issue at Tesoro. Those purchases are therefore not systematic and regular. Purchasing a few cargoes during a turnaround should not imperil the refinery to be required to submit an alteration application. The rule is intended to require permitting for long-term crude slate changes not a short term change. The rule should insert a de minimus volume criteria where the non-crude feedstock would be expressly not a significant crude slate change.

Finally, Tesoro is concerned that BAAQMD is proposing changes to the definition of alteration and setting a new trigger level for GHG BACT reviews in the same rulemaking as attempting to address

changes that must be implemented by February 2018 to address the EPA's partial disapproval of the changes to the permitting rule. Coupling these non-mandatory changes with mandatory changes runs the risk of creating a false sense of urgency to complete the non-mandatory portion of the proposed changes. Already with these proposed changes we have seen deviations from BAAQMD's rulemaking process as posted on the BAAQMD webpage. With any non-mandatory rulemaking, the district should place far greater emphasis on developing a quality rule that is easily understood. Potentially rushing to complete the non-mandatory section places the goal of quality in jeopardy. Tesoro recommends that the district separate the mandatory and non-mandatory portions of these proposed changes into two separate efforts.

Thank you for your consideration of our comments. Feel free to contact me at matthew.w.buell@tsocorp.com if you would like to discuss further.

Sincerely,

A handwritten signature in black ink that reads "Matthew Buell". The signature is written in a cursive, flowing style.

Matthew Buell
Manager, Environmental

MWB/kds