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June 26, 2023

Michael Morris, Planning and Rules Manager
Planning, Rule Development and Implementation
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: Regulatory Flexibility Group Comments on Proposed Amended Rule (“PAR”) 1178

Dear Mr. Morris:

Thank you for the opportunity to provide comments regarding Proposed Amended Rule 1178 (“PAR 1178”). We appreciate the South Coast Air Quality Management District (the “District”) decision to bifurcate the rulemaking and its continued commitment to work with stakeholders on the further development of PAR 1178. We submit these comments on behalf of the Regulatory Flexibility Group (“RFG”), a coalition of Southern California businesses in the aerospace, automotive, energy and petrochemical sectors. The RFG is committed to supporting strategies for achieving state and national air quality standards that are cost-effective and fairly allocated among all sectors of the Southern California economy.

As set forth in this letter, we appreciate the dialogue and revisions reflected in the most recent rule language, but believe certain modest modifications to the current language of the PAR remain necessary. Further, to ensure a fully informed rulemaking, we also respectfully request the District to undertake the appropriate environmental, socioeconomic, and cost-effectiveness analysis in advance of bringing PAR 1178 to the Governing Board.

Proposed Amendments to PAR 1178

In Initial Draft Rule Language released June 13, 2023, District Staff proposes amendments to Rule 1178 based on a best available retrofit control technology (“BARCT”) assessment.¹ Proposed amendments include requirements that storage tanks at petroleum facilities install domed roofs and use optical gas imagining (“OGI”) devices for leak detection, as well as additional recordkeeping and reporting requirements.² We understand that, as soon as September 2023, District Staff intends to bring to the Governing Board proposed amendments. We appreciate that the District has continued to incorporate feedback from regulated entities in recent updates to PAR

¹ SCAQMD Draft Staff Report, Proposed Amended Rules 463 and 1178 (April 2023) at 3.

² *Id.*

1178 language. Specifically, we note the District has recognized that tanks storing organic liquids with a true vapor pressure equal to or less than 5 mm Hg (0.1 psi) and tanks that are out of service are not sources of significant VOC emissions and should remain exempt from the requirements of the rule. While we do appreciate these revisions, we respectfully request that District Staff make the modifications proposed herein to minimize economic and socioeconomic disruption while the regulated community and the District work towards shared air quality goals.

Flexibility in the Dome Installation Compliance Schedule

In the Initial Draft Rule Language, the District proposes to require that the “owner or operator of an External Floating Roof Tank shall install a Domed Roof on any External Floating Roof Tank used to store material with a True Vapor Pressure of 3 psia or greater”³ on the following timeline:

The owner or operator shall install a Domed Roof on any Storage Tanks under common ownership permitted to contain more than 97% by volume crude oil that become subject to the doming requirements of subparagraph (d)(1)(E) upon [Date of Adoption], in accordance with the following schedule:

- (i) No later than December 31, 2031, for at least 1/3 of the applicable Storage Tanks; and
- (ii) No later than December 31, 2033, for at least 1/2 of the applicable Storage Tanks; and
- (iii) No later than December 31, 2038, for all of the applicable Storage Tanks.⁴

Removing a storage tank from service in order to install a domed roof, or indeed for any reason, carries a risk of supply disruptions. The rigid timeline proposed by the District may require that some facilities take multiple tanks offline at the same time to comply with the doming requirement. Having multiple tanks offline simultaneously would exacerbate supply disruption and could fuel market speculation.

External factors (e.g., labor shortages, supply chain disruptions, etc.) could impact the ability to adhere perfectly to the proposed schedule. To address this risk, we propose to add new language to paragraph (d)(5)(B) and a new paragraph (d)(5)(E), shown below with accompanying definitions, providing for extensions to the compliance deadlines when a facility offers evidence satisfactory to the Executive Officer that the facility is unable to comply with the deadline, despite the facility’s best efforts to do so. The proposed revisions would also provide that facilities with 10 or greater tanks could submit an optional, alternative “Doming Schedule” with specific requirements as an alternative to the schedule set forth in (d)(5)(B). These proposed safeguards

³ SCAQMD PAR 1178 Initial Draft Rule Language (d)(1)(E) (released June 13, 2023).

⁴ *Id.* at paragraph (d)(5)(B).

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reduce the likelihood of unintended supply disruptions or market speculation due to multiple tanks going out of service at the same time.

Proposed Rule Language

New definitions:

BEST EFFORTS means the efforts that a petroleum facility desirous of achieving an identified doming schedule would use under reasonably foreseeable circumstances to facilitate such result.

DOMING SCHEDULE means an optional doming schedule for an owner or operator of a facility with ten or more tanks subject to this rule.

OUT OF SERVICE means a tank that has been or is in the process of being drained, degassed and cleaned pursuant to Rule 1149 and/or other regulatory requirements.

For addition to paragraph (d)(5)(B):

Upon demonstration that, despite Best Efforts, a Facility would be required to take more than one Storage Tank under common ownership Out of Service simultaneously in order to meet the deadlines specified in paragraphs (d)(5)(B)(i)-(iii), the Executive Office shall grant an extension to the specified deadline for the minimum duration necessary to avoid more than one Storage Tank being Out of Service simultaneously.

New paragraph (d)(5)(E):

As an alternative to complying with the schedule specified in paragraph (d)(5)(B), a Facility with ten or more Storage Tanks subject to the requirements of (d)(1)(E) may elect to implement a Doming Schedule. The Doming Schedule shall be submitted to the Executive Office for approval. The Doming Schedule must specify:

- (i) The Storage Tanks at the Facility subject to the rule and the proposed timing for the doming of each;
- (ii) The Best Efforts the Facility will undertake to install domes on the identified Storage Tanks consistent with the schedule proposed in the Doming Schedule, with due consideration for avoidance of multiple Storage Tanks being Out of Service simultaneously;
- (iii) The anticipated mass emissions reductions and timing of the same associated with the Doming Schedule.

A Facility electing to implement a Doming Schedule shall provide an annual update on progress and mass emissions reductions to the Executive Officer within 60 days after the end of each Emission Inventory Year.

CEQA Analysis

The proposed amendments to Rule 1178 stem from Control Measure FUG-01, which is included in both the 2016 Air Quality Management Plan (“AQMP”) and the 2022 AQMP and analyzed under the Program Environmental Impact Report (“PEIR”) for each.⁵ The District has stated that “the impacts of implementing this control measure [have] been evaluated in the Program EIR” for the 2022 AQMP.⁶ As you know, the scope of the proposed amendments has changed meaningfully from the project description of Control Measure FUG-01 contained and analyzed in the PEIRs — from only leak detection and repair with optical gas imaging to requiring domed roof installation on external floating roof tanks.⁷

We recognize that the CEQA analysis did evolve slightly from the 2016 AQMP PEIR, which concluded FUG-01 would have no expected significant impacts,⁸ to the 2022 AQMP PEIR, which concluded FUG-01 may cause air quality and greenhouse gas impacts due to construction.⁹ But notably, it appears the 2022 AQMP PEIR only evaluated FUG-01 to include implementation of advanced leak detection technologies and the associated minor construction, without any mention of doming requirements.¹⁰

Dome installation will require substantial construction activities for the 54 tanks that would be subject to the doming requirements of PAR 1178, as the tanks are all larger than 90 feet in diameter and can be as large as 260 feet.¹¹ Such construction activities should be analyzed prior to rule adoption, and we therefore encourage the District to undertake additional environmental analysis of PAR 1178 to ensure compliance with CEQA.

⁵ See SCAQMD Final Program Environmental Impact Report, 2016 Air Quality Management Plan (Jan. 2017) at 2-22 [*hereinafter*, 2016 AQMP PEIR]; and SCAQMD, Final Program Environmental Impact Report for Proposed 2022 Air Quality Management Plan (Nov. 2022) at 2-20 [*hereinafter*, 2022 AQMP PEIR].

⁶ 2022 AQMP PEIR at C-108.

⁷ See 2022 AQMP PEIR at 2-20 (“FUG-01: Improved Leak Detection and Repair: This proposed control measure seeks to reduce emissions of VOCs from fugitive leaks from process and storage equipment located at a variety of sources including, but not limited to, oil and gas production, petroleum refining, chemical products processing, storage and transfer, marine terminals, and other. Some of these facilities are subject to leak detection and repair (LDAR) requirements established by the South Coast AQMD and the U.S. EPA that include periodic VOC concentration measurements using an approved portable organic vapor analyzer (OVA) to identify leaks. This measure would implement the use of advanced leak detection technologies including optical gas imaging devices (OGI), open path detection devices, and gas sensors for earlier detection of VOC emissions from leaks.”)

⁸ 2016 AQMP PEIR at 4.0-3, Table 4.0-1.

⁹ See 2022 AQMP PEIR at A-7.

¹⁰ See 2022 AQMP PEIR at A-7. The District also evaluated Control Measure MCS-01, Application of All Feasible Control Measures, which involves updating BARCT in any rule when feasible. See *Id.* at 2-21 to 2-22. However, the analysis of that control measure, which arguably may be applicable to PAR 1178 doming requirements, is limited to the effects of associated construction.

¹¹ See SCAQMD Preliminary Draft Staff Report, Proposed Amended Rules 1178 and 463 (February 2023) at p. 2-4 [*hereinafter*, “PAR 1178 Preliminary Draft Staff Report”].

Further, the 2022 AQMP PEIR determined that “no significant aesthetic impacts are expected due to the implementation of the 2022 AQMP,”¹² in contrast to the PEIR prepared for the 2016 AQMP. The 2016 AQMP PEIR found that significant aesthetic impacts could result from control measures which could generate “glare impacts due to the solar reflectance from the use of cool roof technology”, and “[c]hange in visual character due to the use of bonnets on top of marine vessel stacks.”¹³ The domed roofs required by PAR 1178, which are often constructed of aluminum or other reflective alloys, may have similar solar reflectance and glare impacts compared to the “cool roof technology” analyzed in the 2016 AQMP PEIR. Further, installation of domed roofs on large storage tanks could change the visual character of the landscape in a similar way to bonnets placed on top of marine vessel stacks, particularly for tanks located near coastal sightlines. Accordingly, we encourage the District to analyze the potential aesthetic impacts of PAR 1178’s doming requirements in connection with this rulemaking.

Socioeconomic Impact Assessment

We appreciate that District Staff has indicated it intends to prepare a socioeconomic impact assessment prior to bringing PAR 1178 before the Governing Board.¹⁴ To meet the requirements of the Health & Safety Code, the assessment must, among other things, address “[t]he impact of the rule or regulation on employment and the economy in the south coast basin . . . [t]he range of probable costs, including costs to industry, of the rule or regulation . . . [and t]he availability and cost-effectiveness of alternatives to the rule or regulation.”¹⁵ In order to ensure a robust analysis, we note that the socioeconomic impact assessment should include, in addition to the costs on the individual facilities, considerations of supply chain disruptions, price spikes, and the potential effects of market speculation that may occur as facilities move tanks offline to comply with doming requirements. This analysis is particularly important given the new rule will require facilities to take tanks in crude oil service offline. The removal of these tanks from service naturally raises supply disruption concerns, and this should be fully analyzed in the context of the socioeconomic analysis.

Cost-Effectiveness Analysis

We also appreciate that Staff has continued to update its cost-effectiveness analysis throughout the rulemaking process. We trust that an updated analysis will consider the true costs of domed roof installation, as detailed further in our January 4, 2023 letter.¹⁶ Evaluating all costs are integral to a meaningful cost-effectiveness analysis. Finally, regarding the cost-effectiveness threshold, Staff indicated that it will utilize the consumer price index to inflate that threshold

¹² 2022 AQMP PEIR at 4.8-2.

¹³ 2016 AQMP PEIR at 4.8-2, Table 4.8-1.

¹⁴ See PAR 1178 Preliminary Draft Staff Report (February 2023) at 4-10.

¹⁵ Health & Safety Code § 40440.8.

¹⁶ See Letter from John C. Heintz, Latham & Watkins on behalf of RFG, to Michael Morris, SCAQMD (January 4, 2023) at p. 3 (discussing costs of dome installation, lost productivity, and the actual anticipated lifecycle of domes). We have attached this letter for your convenience as Attachment A.

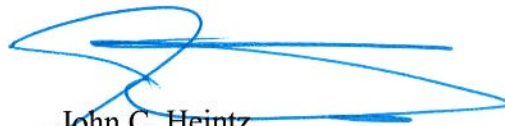
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annually.¹⁷ We note that, to the extent that an inflated threshold is used in PAR 1178 rulemaking, inflated labor and material costs must also be used in an updated cost-effectiveness analysis.

Conclusion

We greatly appreciate the opportunity to provide these comments on PAR 1178, and we are especially thankful that the District has recognized the need for further analysis of the proposed amendments by bifurcating the rulemaking. We would also appreciate a meeting to discuss the amendments we propose to address the remaining requests expressed in this letter. Please contact me at (213) 891-7395, or by email at john.heintz@lw.com with your availability to schedule a discussion.

Best regards,



John C. Heintz
of LATHAM & WATKINS LLP

Cc: Michael Krause, SCAQMD
RFG Members
Chris Norton, Latham & Watkins LLP
Nick Cox, Latham & Watkins LLP

¹⁷ PAR 1178 Preliminary Draft Staff Report, Appendix A: Response to Public Comments at Comment 2-4.

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January 4, 2023

Michael Morris, Planning and Rules Manager
Planning, Rule Development and Implementation
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21865 Copley Drive
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Re: Regulatory Flexibility Group Comments on Proposed Amended Rule
("PAR") 1178

Dear Mr. Morris,

Thank you for the opportunity to provide comments regarding Proposed Amended Rule 1178 ("PAR 1178"). We submit these comments on behalf of the Regulatory Flexibility Group ("RFG"), a coalition of Southern California businesses in the aerospace, automotive, energy and petrochemical sectors. The RFG is committed to supporting strategies for achieving state and national air quality standards that are cost-effective and fairly allocated among all sectors of the Southern California economy.

We appreciate the number of Working Group meetings the South Coast Air Quality Management District ("District") has held on PAR 1178. We are, however, concerned with the current cost-effectiveness analysis. The District's analysis and methodology to date raise a number of issues that cut across sectors and industries as the District moves forward with future rulemakings, particularly in light of the Governing Board's recent adoption of the 2022 Air Quality Management Plan ("AQMP") and its reliance on "extensive use of zero emission technologies across all stationary and mobile sources."¹ Accordingly, and as summarized in more detail below, we respectfully request the District fully consider the costs of the proposed rule and anticipated equipment life-cycle when establishing a cost-effectiveness threshold, and that the District undertake a tiered cost-effectiveness, incremental cost-effectiveness, and socioeconomic analysis prior to bringing the rule forward for a public hearing², as required by the AQMP.

¹ South Coast Air Quality Management District, 2022 Air Quality Management Plan, at Preamble to Executive Summary.

² Currently scheduled for April 2023. *See* South Coast Air Quality Management District, Presentation for Working Group Meeting 7 ("WGM 7 Presentation"), at 28 (presentation posted December 30, 2022).

The District Should Consider Additional Information to Ensure an Accurate Cost-Effectiveness Analysis

The Health & Safety Code requires the District to adopt rules which, among other things, “are efficient and cost-effective” (Health & Safety Code § 40440(c).) The Code states that:

In adopting any regulation, the district shall consider, pursuant to Section 40922 [cost-effectiveness assessment], and make available to the public, its findings related to the cost-effectiveness of a control measure. . . . A district shall make reasonable efforts, to the extent feasible within existing budget constraints, to make specific reference to the direct costs expected to be incurred by regulated parties, including businesses and individuals.

(Health & Safety Code § 40703.)

Health & Safety Code Section 40440.8 requires the District to examine “[t]he availability and cost-effectiveness of alternatives to the rule or regulation” by considering the socioeconomic impacts of proposed rules and regulations.

Further, Health & Safety Code Section 40920.6 requires the District to, among other things:

- 1) Review the information developed to assess the cost-effectiveness of the potential control option. For purposes of this paragraph, “cost-effectiveness” means the cost, in dollars, of the potential control option divided by emission reduction potential, in tons, of the potential control option.
- 2) Calculate the incremental cost-effectiveness for the potential control options To determine the incremental cost-effectiveness under this paragraph, the district shall calculate the difference in the dollar costs divided by the difference in the emission reduction potentials between each progressively more stringent potential control option as compared to the next less expensive control option.
- 3) [And consider t]he effectiveness of the proposed control option, . . . [t]he cost-effectiveness of each potential control option, . . . [and t]he incremental cost-effectiveness between the potential control options.

(Health & Safety Code § 40920.6.)

The requirements that the District create rules that are efficient and cost-effective and provide socioeconomic impact assessments reflect the legislature’s intent: that the District consider and seek to minimize socioeconomic impacts and have these considerations as objectives of its rulemaking authority.

However, at this point in the PAR 1178 process, the District has not fully taken into account the significant costs this rule will impose on the regulated community. Specifically, we respectfully request the District further consider the following:

- ***True Dome Installation Costs.*** When considering labor costs (particularly union labor), necessary tank cleaning and degassing prior to doming, required modifications to fire suppression systems, water treatment and disposal associated with the work and installation costs are significantly higher than the doming costs assumed by the District.
- ***Lost Productivity Costs.*** The contemplated doming could require refiners to take tanks offline for potentially months at time. This would result in productivity losses that could be orders of magnitude greater than the District's applied lost productivity number (0.50/barrel to tanks with diameters greater than 200 ft.) in the October 2022 Working Group Meeting presentation.³
- ***The Useful Life Expectation Must Consider Actual Anticipated Lifecycle of the Equipment.*** The District assumes, based on vendor and facility estimates, that the domes will have a 50-year life. However, this fails to recognize that state, regional, and local policies, rules and regulations will likely reduce the consumption of certain fuels produced by Basin refineries, and, accordingly, the likelihood that the domes required pursuant to this rule will actually be in place 50 years from now. Use of a 50-year assumption makes the control equipment appear more cost-effective by diluting the significant capital costs of required projects over a much longer time table than is likely to occur. The staff analysis should reflect a 25-year assumption, which is more consistent with the anticipated use of the domes. Considering actual anticipated life-cycle is also consistent with broader District commitments to consider equipment life on a case-by-case basis, attempt to avoid stranded assets, and in cases of stranded assets, include equipment replacement costs and salvage values in the analysis.⁴

The cost-effectiveness analysis called for throughout the Health & Safety Code is a critical element of the rulemaking process. The analysis is only as good as the assumptions made and the cost data used; use of incomplete and/or inaccurate data renders the entire process meaningless. While we appreciate that the rulemaking process has been underway for some time, it is clear that additional data is needed to support an appropriate cost-effectiveness determination.

And while we recognize the District has endeavored to consider some of the factors summarized above (and we appreciate the same), to date the analysis has not undergone the rigor necessary obtain meaningful cost-effectiveness numbers. We refer you to RFG member letters for additional detail on the anticipated costs of this rulemaking, and encourage you to work closely with the regulated community to get a more comprehensive understanding of the potential impacts of the rule.

³ South Coast Air Quality Management District, Working Group Meeting 6, at 28 n.2 (Oct. 27, 2022).

⁴ We acknowledge Staff's indication it is open to considering permit conditions to remove tanks from service upon a future date in lieu of doming. *See* WGM 7 Presentation, at 5. However, RFG still believes the Health & Safety Code-driven cost-effectiveness analysis must consider the anticipated use timeline of the domes, not just the technical "useful life."

The AQMP Requires the District to Engage in a “Tiered” Cost-Effectiveness, Incremental Cost-Effectiveness, and Socioeconomic Impact Analysis

As you know, proposed amendments to Rule 1178 stem from 2016 AQMP Control Measure FUG-01.⁵ The 2016 AQMP established cost-effectiveness thresholds for “tiered levels of analysis.” More specifically, the 2016 AQMP provides that the :

*2016 AQMP proposes **thresholds of \$30,000 per ton of VOC** and \$50,000 per ton of NOx for tiered levels of analysis. Note, however, with the new focus on incentives and public funding, not all of this cost will necessarily be borne by industry. Specifically, proposed rules with an average cost-effectiveness above these thresholds will trigger a more rigorous average cost-effectiveness, incremental cost-effectiveness, and socioeconomic impact analysis. A public review and decision-making process will be instituted to seek lower, more cost-effective alternatives. In addition, the SCAQMD staff, with input from stakeholders, will attempt to develop viable control alternatives within the industry source categories that a rule is intended to regulate. If it is determined that control alternatives within the industry source category are not feasible, staff will perform an evaluation of the control measure as described in the next paragraph. Viable alternatives will be reviewed by the SCAQMD Governing Board at a public meeting no less than 90 days prior to rule adoption and direction can be given to staff for further analysis. During this review process, incremental cost-effectiveness scenarios and methodology will be specified, and industry-specific affordability issues will be identified as well as possible alternative control measures.⁶*

The tiered analysis supports rigorous and careful consideration of the balance between air quality improvements and the economic concerns and impacts on the regulated community. As summarized above, we believe the current cost-effectiveness analysis vastly underestimates the actual costs. Notwithstanding, even the District’s revised \$32,400 per ton cost⁷ exceeds the 2016 AQMP’s established threshold for tiered review. Accordingly, we respectfully request the District undertake the more rigorous average cost-effectiveness, incremental cost-effectiveness, and socioeconomic impact analysis in connection with this rulemaking.

⁵ See South Coast Air Quality Management District, 2016 Air Quality Management Plan at 4-21.

⁶ *Id.* at 4-54 (emphasis added).

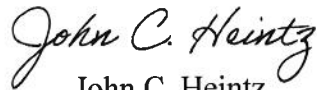
⁷ See South Coast Air Quality Management District, Presentation for Working Group Meeting 7, at 27 (presentation posted December 30, 2022).

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Conclusion

Thank you for considering these comments. We will reach out separately to you in order to request a meeting with District staff to discuss these comments in greater detail as the rulemaking advances.

Sincerely,



John C. Heintz
of LATHAM & WATKINS LLP

cc: Michael Krause, Assistant Deputy Executive Officer, SCAQMD
Michael Carroll
RFG Members