

March 8, 2019

SCAQMD
Wayne Nastri
Dr. Fine

Re: Rule 1410 – Please ensure the Governing Board Feb. 1st directive is followed in preparation for Refinery Committee – both a regulation & MOU must be prepared

Dear Mr. Nastri and Dr. Fine:

We are a coalition of environmental justice and environmental organizations with many thousands of members in the Los Angeles region. Our organizations include Ban Toxic MHF, CBE (Communities for a Better Environment), Coalition For a Safe Environment (CFASE), Community Dreams, EDF (the Environmental Defense Fund), NRDC (the Natural Resources Defense Council), and the Sierra Club. Both our members— and a broad region of LA— are at risk of death from exposure during a catastrophic release of Modified Hydrogen Fluoride (MHF) from two local oil refineries.

Many of the undersigned attended the February 13th meeting your staff held on Rule 1410. Unfortunately, the initial staff proposal was contrary to the clear direction the Board gave during the Feb. 1st board meeting. At the beginning of the Feb. 13th meeting and for some time thereafter, staff proposed a single path forward: developing an MOU with the refineries. If found unworkable, staff would then proceed to develop a regulation. It was stated that this was because a regulation and associated CEQA requirements could not be completed within 90 days, but an MOU could.

Several of us from different organizations argued that this was entirely contrary to the explicit direction the Board had given Feb. 1st, through its adoption of Dr Burke's resolution. On that date, the Board rejected the motion by a minority of Board members to proceed only to develop an MOU. The Board instead approved a substitute motion 9-4, giving staff direction to develop both a regulation and an MOU, with consultation from the public, regarding phaseout of MHF in Rule 1410.

Specifically, Chairman Burke stated: *“So the substitute motion is to give the staff direction to pursue both an MOU and a rule. When they have completed that work in 90 days, present it to the refinery committee, who will then move forward on that information.”*¹

We do appreciate that by the end of the Feb. 13th discussion, staff agreed a regulation would be developed in parallel with an MOU, although timing was not clear. We urge that the draft rule be developed during this 90-day window and presented equally to the Refinery Committee as was the direction from the Board's passing motion. A draft rule could be developed in a short time. During the February 13th meeting with AQMD staff, we also stated there is no need to complete rule adoption and CEQA analysis within the 90 days. Compiling draft rule language would be sufficient.

In addition to developing both a rule and an MOU for review by the refinery committee, we also believe that staff should draft a rule that includes an unconditional MHF ban. The Board made it clear in multiple statements on February 1st that it does not want to foreclose its options ahead of time.

¹ Feb. 1st 2019 SCAQMD Governing Board Hearing, Chairman Burke at approximately time: 4:48, webcast video available at: <https://www.youtube.com/watch?v=rdTEzgkTmU&feature=youtu.be>

At the February 1st meeting, multiple Board members concluded they did not see how a Performance Standard (for mitigating impacts of MHF) could protect against catastrophic releases. These included statements by Dr. Lyou, Mayor Mitchell, and Supervisor Hahn, with additional doubts cast by Dr. Parker.

As this was a Board hearing where staff had asked for direction about its draft rule concept, and as Board members expressed reservations about the possibility of mitigating an MHF release, we urge you to provide the Board with at least one simple rule option for direct phaseout of MHF in four years. This should not incorporate a performance standard. Your own excellent staff presentation clearly states it cannot determine if enhanced mitigation--which could be a pathway developed in a Performance Standard-- would protect the public from major releases (Feb 1st presentation to Board, Chart 33, "Uncertain that Enhanced Mitigation Can Protect the Community").

It is an industry truism that no engineered system is infallible or immune from accidents, human error, or explosions. Added complexity is a known source of failure and complacency. Furthermore, a complex system's performance cannot be accurately predicted or modeled -- there is no industry-wide data on the reliability and performance of mitigation systems in actual accidents.

For these reasons, we urge you to ensure that your staff carry out the Board direction, and that staff include in the options presented to the next Refinery Committee a draft of a regulation for unconditional phaseout of MHF within four years (with no Performance Standard allowing use of MHF).

Thank you for your assistance. We appreciate the hard work of your staff over the many years on this rule. We are happy to support drafting any rule language that would be helpful. It is our shared desire that the Board's intent and direction are preserved, in order to protect the public against this lethal hazard.

Sincerely,

Julia May, Communities for a Better Environment

Jesse Marquez, Coalition for a Safe Environment

Ricardo Pulido, Community Dreams

Sally Hayati, Ban Toxic MHF

Monica Embrey, Sierra Club

Timothy O'Connor, Environmental Defense Fund

David Petit, Natural Resources Defense Council

cc.

Susan Nakamura

Heather Farr