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Senior Manager, Southern California Region

November 02, 2023

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Via e-mail at: hfarr@aqmd.gov

**Re: SCAQMD Proposed Amended Rule 1180, Fenceline and Community Air Monitoring for Petroleum Refineries and Related Operations, and SCAQMD Proposed Rule 1180.1, Other Refinery Fenceline and Community Air Monitoring
WSPA Comments on Preliminary Draft Rule Language**

Dear Ms. Farr,

Western States Petroleum Association (WSPA) appreciates the opportunity to participate in South Coast Air Quality Management District (SCAQMD or District) Proposed Amended Rule 1180, Fenceline and Community Air Monitoring for Petroleum Refineries and Related Operations (PAR1180), and SCAQMD Proposed Rule 1180.1, Other Refinery Fenceline and Community Air Monitoring (PR1180.1) Preliminary Draft Rule Language. The purpose of this rulemaking is to remove exemptions so that all petroleum refineries identified under SIC 2911 will be subject to the rule and expand applicability to include operations related to refineries that are contiguous to the property of the refinery. SCAQMD is also proposing to expand the Rule 1180 list of monitored compounds to include those chemicals included in the California Office of Environmental Health Hazard Assessment (OEHHA) priority list.¹

WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport, and market petroleum, petroleum products, natural gas, renewable fuels, and other energy supplies in five western states including California. WSPA has been an active participant in air quality planning issues for over 30 years. WSPA member companies operate petroleum refineries and other facilities in the South Coast Air Basin that are within the purview of the SCAQMD and thus will be impacted by PAR1180 and PR1180.1.

¹ OEHHA Analysis of Refinery Chemical Emissions and Health Effects. March 2019. Available at: <https://oehha.ca.gov/media/downloads/faqs/refinerychemicalsreport032019.pdf>.

SCAQMD published the Preliminary Draft Staff Report and Preliminary Draft Refinery Fenceline Air Monitoring Plan Guidelines on August 18, 2023 and revised preliminary draft rule language for PAR1180 and PR1180.1 on October 6, 2023.^{2,3,4,5} WSPA understands that this rulemaking was initially undertaken in response to a lawsuit filed by East Yard Communities for Environmental Justice (EYCEJ) that claimed that the District failed to install a community air monitoring system and require fenceline monitoring at refineries with <40,000 barrel per day production capacity.^{6,7} As the rulemaking proceeded, SCAQMD added potential requirements that were being considered as part of a piece of proposed legislation, Senate Bill 674 (SB674).⁸ SB674 would have expanded the definition of refineries to include certain non-crude oil feedstock refineries and auxiliary facilities, and require refineries to improve public notification processes, reporting, data accessibility, and to conduct third-party audits and root cause analyses of any threshold exceedances. But on September 14, 2023, SB674 was moved to the “inactive” file for the 2023 legislative session and as such will not become State law this year.⁶ Given the number of outstanding issues proposed in the draft rule language related to these SB674 concepts, and the fact that SB674 is still a legislative proposal, WSPA recommends that Rule 1180 be bifurcated such that the concerns of the EYCEJ lawsuit are addressed separately by the required deadline. All other proposals which do not pertain to the EYCEJ lawsuit would be addressed after all refineries and auxiliary facilities have fully approved Fenceline Air Monitoring Plans (FAMPs)/ Quality Assurance Project Plans (QAPPs) and have conducted the first system audit under such approvals.

Under the bifurcation as indicated above, WSPA offers the following additional comments.

- 1. PAR1180 would require facilities with existing FAMPs to submit a revised FAMP within 6 months of the date of rule adoption. PAR1180 and PAR1180.1 would also require that facilities submit a revised FAMP within 60 days after notification that real time monitoring of polycyclic aromatic hydrocarbons (PAHs) is feasible. WSPA requests that these timelines be updated such that facilities would have one year to submit a revised FAMP.**

² PAR1180 Revised Preliminary Draft Rule Language. October 6, 2023. Available at: <http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/rule-1180-and-1180.1/revised-preliminary-draft-par-1180---october-2023.pdf?sfvrsn=14>.

³ PR1180.1 Revised Preliminary Draft Rule Language. October 6, 2023. Available at: <http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/rule-1180-and-1180.1/revised-preliminary-draft-pr-1180-1---october-2023.pdf?sfvrsn=14>.

⁴ PAR1180 and PR1180.1 Preliminary Draft Staff Report. August 18, 2023. Available at: <http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/rule-1180-and-1180.1/preliminary-draft-staff-report-for-par-1180-and-1180-1---august-2023.pdf?sfvrsn=6>.

⁵ Preliminary Draft Refinery Fenceline Air Monitoring Plan Guidelines. August 18, 2023. Available at: <http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/rule-1180-and-1180.1/preliminary-draft-1180-and-1180-1-guidelines---august-2023.pdf?sfvrsn=6>.

⁶ SCAQMD PAR1180 and PR1180.1 Working Group Meeting #5, October 12, 2023. Available at: <http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/rule-1180-and-1180.1/par-1180-and-pr-1180-1-wgm5-october-2023.pdf?sfvrsn=14>.

⁷ East Yard Communities for Environmental Justice v. South Coast Air Quality Management District. Los Angeles County Superior Court, Case No. 22STCP04938. Available at: https://legal-planet.org/wp-content/uploads/2022/12/2022-1219_1_Verified-Petition.pdf.

⁸ Senate Bill 674. Available at: <https://legiscan.com/CA/bill/SB674/2023>.

Under the current draft language, PAR1180(d)(2) would require that an owner or operator of a Refinery with an existing Fenceline Air Monitoring Plan (FAMP) submit a revised FAMP no later than six months after date of rule adoption. Further, PAR1180(d)(5)(G) and PR1180.1(d)(4)(G) would require that a revised FAMP be submitted 60 days after a future notification that real time monitoring of PAHs is feasible.

The addition of new equipment may require new locations and/or new infrastructure. Such projects take time to design, and the proposed timelines may not be feasible since at this time, it is unknown what the new equipment would be or what ancillary equipment would be necessary to support such equipment. WSPA suggests that PAR1180(d)(5)(G) and PR1180.1(d)(4)(G) be amended to allow 1 year for submittal of a revised FAMP. Further, FAMP development is based on the requirements in the Refinery Fenceline Air Monitoring Plan Guidelines. The timeline for a revised FAMP for PAH monitoring should therefore be tied to the issuance of revised Refinery Fenceline Air Monitoring Plan Guidelines rather than a notification by the Executive Officer.

2. WSPA recommends that two years be allowed for all installation of monitoring equipment and start of operation resulting from a revised FAMP. Additionally, installation of monitoring equipment should only be required once all FAMPs have been fully approved by the District.

PAR1180(e) sets forth the compliance schedule for completion of installation and start of operation in accordance with an approved or partially approved FAMP, stating:

(1) The owner or operator of a Facility shall complete installation and begin operation of a Real-Time Fenceline Air Monitoring System or modify the operation of the Fenceline Air Monitoring System in accordance with the approved or partially approved FAMP:

(A) Beginning no later than one year after a FAMP submitted pursuant to paragraph (d)(1) and, subparagraphs (d)(2)(B) and (d)(2)(C) is approved, or partially approved, by the Executive Officer;

(B) Beginning no later than 18 months after a FAMP submitted pursuant to subparagraph (d)(2)(A) and paragraph (d)(3) is approved, or partially approved, by the Executive Officer;

(C) No later than six months after the Executive Officer approves, or partially approves, a revised FAMP required pursuant to paragraph (d)(5); and

(D) Prior to commencing operations at a new Facility.

PAR1180 should not include different compliance timelines for installation of equipment resulting from revised plans versus new plans. The constraints on installation timelines are associated with system and structural design, permitting, and construction, and are the same regardless of whether a plan is new or revised. Additionally, it might not be possible for vendors to provide and build the volume of new analyzers required if SCAQMD approves multiple plans in a short time period. WSPA recommends that two years be allowed for all installation and start of operation under both new and revised plans.

Additionally, timelines in PAR1180 and PR1180.1 for the installation of new monitoring systems should specify that installation should only commence following full approval of all facility FAMPs. A requirement to construct and install monitoring systems which may only have partial District approval would place unreasonable risk on facilities should the District make changes later to the FAMP requirements. Also, WSPA believes SCAQMD needs to focus on fully approving the existing FAMPs before requiring facilities to modify them. Full approvals may end up staggered over a lengthy time period depending on the FAMP. With this, there may be the possibility that the District makes changes to the FAMP requirements as individual facility FAMPs are approved. This could result in an unequal application of the FAMP requirements across the various impacted facilities. Therefore, facilities should not be required to install their new systems until all FAMPs under rule have been fully approved.

3. While we appreciate the District's interest in making data collected under PAR1180 and PR1108.1 available to the public, facilities must be allowed sufficient time to ensure data is quality controlled before it is made available for public download.

PAR1180(d)(4)(H) and PR1180.1(d)(3)(H) require that facilities include in the FAMP methods to make real time and historical data available for public download. PAR1180 states:

(H) Methods for making Real-Time Data and historical data collected by the equipment specified in subparagraphs (d)(4)(A) and (d)(4)(C) available for public download in an easily downloadable, accessible, and interoperable electronic format that is approved by the Executive Officer;

Additionally, PAR1180(g)(1)(B) and PR1180.1(g)(1)(B) require that facilities maintain a web-based fenceline data display that includes real-time and historic concentrations of all air pollutants measured by the fenceline air monitoring system. Requiring that real time data be available to the public does not allow facilities the time to perform their QA/QC process to ensure data quality. This could result in presenting data that is not valid due to equipment malfunction. Data should be allowed to undergo QA/QC before it is made available for public download. Additionally, the rules should not require that a facility's real time data be publicly available until that facility's QAPP has been approved. References to "real-time" data should be removed from these sections of the rules.

4. Requirements related to the web-based fenceline data displays and notification program described in PAR1180(g)(1) and PR1180.1(g)(1) should be in accordance with a facility's approved FAMP, as opposed to the Refinery Fenceline Air Monitoring Plan Guidelines, and the rules should allow a timeline for facilities to make required changes to their websites.

PAR1180(g)(1) and PR1180.1(g)(1) describe requirements related to the web-based fenceline data displays and notification program. WSPA requests that the following update be made to the draft rule language in these sections:

The owner or operator of a Facility shall maintain a web-based fenceline data display and notification program ~~according to the Refinery Fenceline Air Monitoring Plan Guidelines in~~ accordance with the approved FAMP...

Additionally, time should be allowed for implementation of any changes that are required to be made to facilities' websites to meet the reporting requirements of these rule sections and should not be required until all FAMPs under rule are fully approved.

5. PAR1180 and PR1180.1 would require facilities to include a mechanism in their notification programs to provide text messages to the public. WSPA believes that text messages are not the appropriate communication method for public notifications.

PAR1180(g)(4) and PR1180.1(g)(4) would require that facilities include a mechanism in their notification programs to provide text messages to the public. Fenceline notifications can happen at any hour of the day, and the public may not be interested in receiving notifications late at night. Text messaging can impact users' data plan limits and have the potential to incur additional fees for the users. Additionally, messages are limited to a certain number of characters and therefore texts may not be able to fully convey the scope of the notification. Finally, carriers and devices are not necessarily reliable. There is a concern that if a text fails to be received by a member of the public, it could be perceived as a shortcoming of the refinery rather than an issue with a carrier or device. For these reasons, WSPA believes that text messages are not the appropriate communication method for notifications and requests that this requirement be removed from the rule.

6. PR1180(j)(2) and PR1180.1(j)(2) would require that a root cause analysis (RCA) be performed when an air pollutant listed in Table 1 is measured above the notification threshold. The impetus for including root cause analyses in the proposed rules was alignment with SB674. Now that SB674 has been moved to the inactive file for this legislation, WSPA requests that requirements pertaining to root cause analyses be removed from the proposed rule/rule amendments.

Per SCAQMD, the main goals and objectives of Rule 1180 are as follows:⁹

- Implement a robust, continuous and near real-time community air monitoring network near all refineries in the Basin;
- Provide near real-time air quality information through a dedicated website to inform the public of current air quality conditions in their community;
- Notify the public in case the ambient concentration of one or more air pollutants exceeds pre-determined thresholds;
- Collect air pollution data suitable for short- and long-term air quality assessments;
- Provide up-to-date community air quality data;
- Promote awareness of the potential impact of refinery emissions on air quality through public education; and
- Track progress in improving community air quality.

⁹ SCAQMD Rule 1180 Community Air Monitoring. Available at: <http://www.aqmd.gov/home/rules-compliance/rules/support-documents/rule-1180-refinery-fenceline-monitoring-plans/rule-1180-community-air-monitoring>.

The purpose of Rule 1180 is to require real-time fenceline air monitoring systems and **“to provide air quality information to the public** and local response agencies about levels of various criteria air pollutants, volatile organic compounds and other compounds at or near the property boundaries of petroleum refineries.”¹⁰ [emphasis added] Requiring results of RCAs in the notification program does not align with this stated purpose for Rule 1180, and inclusion of RCAs in the notification program would inappropriately set the expectation to members of the public that PAR1180 and PR1180.1 are compliance rules. They are not. Additionally, existing regulations that address equipment repairs may already call for an RCA to be performed. In instances such as this, the RCA requirement would be duplicative.

Also, because SB674 has been moved to the inactive file by the legislature, and it is no longer necessary for the District to align these amendments with that legislative proposal, WSPA requests that requirements pertaining to root cause analyses be removed from the rule.

Although WSPA requests that RCAs be removed from the rule, WSPA offers the following comments with respect to RCAs as they apply to fenceline monitoring:

a. Dealing with off-site sources

- The most recent versions of PAR1180 and PR1180.1 acknowledge that refineries may not be the cause of an exceedance of a notification threshold. Other sources, such as vehicle traffic near the fenceline, could cause or contribute to pollutant exceedances. PAR1180 and PR1180.1 should include exceptions for reporting of RCAs when it is determined that pollutant exceedances are likely caused by off-site sources.
- PAR1180(j)(2)(C) and PR1180.1(j)(2)(C) require that a facility notify an off-site source subject to the rule if it is determined that the root cause was from the off-site source. It is not appropriate for SCAQMD to require one facility to assign a possibly legally enforceable compliance obligation to another facility; that is the District’s responsibility.

b. Management of confidential business information

- Publication of the details of an RCA must avoid disclosure of confidential business information to the public. The requirements listed under PAR1180(j)(2) and PR1180.1(j)(2) must allow for the exclusion or redaction of confidential business information in RCAs before they are publicly disclosed.

c. Qualified independent party

- PAR1180(j)(3) and PR1180.1(j)(3) state that if three RCAs within the same year indicate the same cause or indicate the cause cannot be determined for the same air pollutant detected above the notification threshold, the facility must have a qualified independent party conduct an RCA within 14 days of the most recent instance of exceedance of a threshold. SCAQMD has not defined “qualified independent party.” There are few who understand the complexities of refinery operations, so it will be difficult to source a qualified independent party to do the RCA. In addition, it is unlikely that such an individual outside of the refinery operations would be able to perform the audit in the suggested

¹⁰ SCAQMD Rule 1180 Refinery Fenceline Air Monitoring Plan Guidelines, December 2017.

timeframe. Further, if the threshold exceedances are spaced out over several months, it may be impossible to track down a root cause.

d. Instrument or operator error

- The rules should include exceptions for when data has been determined to not meet the requirements of the approved QAPP. This could be the result of, for example, instrument malfunction or operator error. If the facility determines that this has occurred, then the monitoring data should be considered invalid, and an RCA should not be required.

7. PAR1180(h)(1) and PR1180.1(h)(1) include reporting requirements that are already required to be included in the quarterly reports; WSPA requests that these reporting requirements be removed from the draft rule language.

PAR1180(h)(1)(B) and PR1180.1(h)(1)(B) require that phone notifications to the SCAQMD be made within two hours of discovering, and no more than eight hours of the start of downtime or malfunction, that the fence-line air monitoring system has failed to accurately provide real-time air monitoring information for more than one hour. Additionally, PAR1180(h)(2) and PR1180.1(h)(2) require written notification be submitted to SCAQMD within 24 hours of discovering that downtime of the fence-line air monitoring system has resulted in a failure to accurately provide information as required by the FAMP for 24 hours or longer. The same information related to equipment downtime is required to be included in the quarterly reports, so such additional reporting appears to be redundant. SCAQMD should only require that this information be included in the quarterly reports, as opposed to the shorter-term notification timelines prescribed in the revised preliminary draft rules.

8. A facility should not be required to perform an audit unless there is an approved audit protocol. Audits should only be implemented at facilities when all FAMPs and QAPPs have been fully approved. Additionally, the rules should include a provision to allow facilities to contest audit findings if they determine that the findings are inaccurate or if the audit protocol was not followed correctly.

PAR1180(i) and PR1180.1(i) describe requirements related to independent audits of the fence-line air monitoring systems. However, SCAQMD staff have not yet developed and approved a protocol for third parties to conduct these audits.⁶ WSPA recommends that stakeholders be allowed to review and comment on the audit protocol prior to audits being performed. Audits should not be conducted until the protocol has been reviewed by stakeholders and approved by the Executive Officer. Additionally, audits should not be performed for a facility until all the FAMPs and QAPPs have both been fully approved for each facility.

The rules should include provisions to allow facilities to contest audit findings. There may be instances where findings are inaccurate, or the approved audit protocol was not correctly applied. Facilities must be given the opportunity to independently review the third-party auditor reports to determine whether the audits were conducted accurately and according to the approved protocol. If not, facilities must be allowed to contest the findings, report any such disputes to SCAQMD, and request an appropriate remedy.

9. PAR1180(I) exempts Related Facilities from monitoring of black carbon. SCAQMD has used the OEHHA priority list of pollutants to inform what pollutants to include in monitoring in PAR1180 and PR1180.1. Because black carbon is not included in the OEHHA priority list, the rule should not require any facilities to monitor black carbon emissions.

PAR1180(I) states that an owner or operator of a Related Facility is exempt from monitoring black carbon. Although black carbon is not included on the OEHHA priority list of pollutants, facilities with existing black carbon monitors could, at their discretion, still use these monitors. But since black carbon is not included on the OEHHA list, facilities should no longer be required to monitor black carbon and its future monitoring should be at each facility's discretion.

WSPA appreciates the opportunity to provide these comments related to PAR1180 and PR1180.1. We look forward to continued discussion of this important rulemaking. If you have any questions, please contact me at (310) 808-2146 or via e-mail at rcromartie@wspa.org.

Sincerely,



Cc: Michael Krause, Assistant Deputy Executive Officer
Yanrong Zhu, Program Supervisor
Mojtaba Moghani, Ph.D., Air Quality Specialist
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