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safety, health, and justice for workers  
seguridad, salud y justicia para los trabajadores

March 1, 2017

Christine Baker, Director  
California Department of Industrial Relations  
1515 Clay St. 17<sup>th</sup> Floor  
Oakland, CA 94612  
Submitted electronically to [cbaker@dir.ca.gov](mailto:cbaker@dir.ca.gov)

**RE: Correcting four final internal inconsistencies in the Process Safety Management (PSM) for Refineries proposal, GISO §5189.1**

Dear Director Baker,

Thank you for providing us with the February 2017 revision to the July 2016 PSM proposal.<sup>1</sup> With the text changes that are now reflected in the document, we are reasonably confident that the revised PSM proposal, if adopted by the Standards Board, will make a significant difference in protecting the safety of refinery workers, contractor workers and surrounding communities.

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<sup>1</sup> California Occupational Safety and Health Standards Board, Notice of Proposed Modifications (<http://www.dir.ca.gov/oshsb/documents/Process-Safety-Management-for-Petroleum-Refineries-15day.pdf>).

However, the proposal contains technical internal inconsistencies that can be easily remedied without triggering an additional 15-day notice. By this letter, we reiterate the following four recommendations, which—by correcting these inconsistencies—will help prevent conflict and misinterpretation during implementation and enforcement:

**1) Internal Inconsistency in *Operating Procedures* at (f)(5)(A), page 9.**

*“Define conditions for handling leaks, spills or discharges that provide a level of protection that is functionally equivalent to, or safer than, shutting down or isolating the process.”*

This sentence is in conflict with subsection (q)(5)(A)(3), *Employee Participation*, which provides explicit authority to qualified operators to “partially or completely shut-down an operation or process, based on a process safety hazard.” The sentence at (f)(5)(A) will allow a refinery employer to countermand an operator’s request to shut-down a process by asserting that the employer’s procedures are “functionally equivalent to, or safer than, shutting down or isolating the process,” and therefore the process does not need to be shut-down. This sentence introduces an internal contradiction within the regulation.

Option A: Amend the sentence as follows: *“Define conditions for handling leaks, spills or discharges that provide a level of protection that is functionally equivalent to, or safer than, shutting down or isolating the process, except that this provision shall be subordinate to an operator’s request to partially or completely shut-down an operation or process, pursuant to subsection (q)(5)(A)(3).”*

Option B: Strike the above sentence from (f)(5)(A) completely.

**2) Internal Inconsistency with the Definition of *Highly Hazardous Material*, page 1.**

Add the following sentence to this definition: *This definition includes asphyxiants, such as nitrogen and carbon dioxide.*

Asphyxiants are hazardous chemical substances that can cause death within seconds of inhalation. They are often used during *partial or unplanned* shutdowns, as well as during turnarounds. Because the PSM proposal covers partial or unplanned shutdowns, chemical asphyxiants should be included in the definition of *Highly Hazardous Material*, rather than in the definition of *Utility*.

**3) Internal Inconsistency in *Contractors* at (h)(2), page 10.**

Change “require” to “ensure” for consistency within this subsection: “...and shall ~~require~~ ensure that its contractors and any subcontractors...”

By using “require,” DIR is setting up a “difference” in the interpretation of this word as compared to the word “ensure,” which is used throughout the remainder of this subsection. As used throughout the subsection, “ensure” imparts a higher degree of accountability on the part of the refinery employee with regard to compliance with HSC Section 25536.7.

**4) Inconsistency with the Cal/ARP proposal in *Scope and Purpose (a)*, page 1.**

Change the sentence to read: *This section contains requirements for petroleum refineries to reduce risks by preventing ~~the risk of~~ major incidents and eliminating or minimizing process safety hazards to which employees may be exposed.*

“Preventing major incidents” is consistent with the Cal/ARP proposal at Section 2762.0.2, p. 63, *Purpose*: “The purpose of Program 4 is to prevent major incidents at petroleum refineries in order to protect the health and safety of communities and the environment.”

As currently proposed by DIR, the *Scope and Purpose* would allow the employer to reduce the risk of a major incident by 1% or 99%. This is an unclear and overly permissive *Scope and Purpose*, and it is in conflict with the more protective Cal/ARP language.

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We urge you to consider correcting these important inconsistencies in the PSM proposal. If it would be helpful to discuss any of this with us directly, either individually or as a group, please contact Charlotte Brody of the BlueGreen Alliance.

Sincerely,

*Charlotte Brody*, BlueGreen Alliance

*Kim Nibarger*, United Steelworkers

*Lena Moffitt*, Sierra Club

*Doug Parker*, Worksafe

*Mitch Seaman*, California Labor Federation

*Jeremy Smith*, State Building and Construction Trades Council

cc. Standards Board Chair and Members, via Marley Hart  
David Lanier, Secretary, Labor and Workforce Development Agency  
Alice Reynolds, Office of Governor Jerry Brown