



March 29, 2017

Mathew Rodriquez, Secretary
California Environmental Protection Agency
1001 I Street
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Submitted electronically to SectyRodriquez@calepa.ca.gov (916-324-9214)

RE: Proposed Revisions to California Accidental Release Prevention (Cal/ARP) Program 4 Requirements

Dear Secretary Rodriquez,

We are pleased to see the recently posted revisions to the California Accidental Release Prevention program (Cal/ARP) requirements.⁽¹⁾ With the text changes that are now reflected in this revision, we are reasonably confident that—with effective enforcement—the revised Cal/ARP proposal will significantly improve the safety of fence-line communities, refinery workers and contractor workers. Improving the mechanical integrity and resilience of the state's refineries will also mitigate the environmental health and statewide economic impacts of refinery fires, explosions and other system failures.

¹ California OES, Governor's Office of Emergency Services, Accidental Release Prevention program (February 14, 2017) (<http://www.caloes.ca.gov/cal-oes-divisions/fire-rescue/hazardous-materials/california-accidental-release-prevention>).

However, the Cal/ARP proposal is still weakened by a few internal inconsistencies that we believe can be easily remedied. By this letter, we raise the below-listed items, which—if corrected—will help prevent misinterpretation during implementation and enforcement.

We are raising a somewhat similar set of issues with the Department of Industrial Relations' Process Safety Management (PSM) revisions.⁽²⁾

1) Section 2735.3 Definitions (y): *Highly Hazardous Material*, at page 8.

We recommend that the Cal/ARP include 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 Cal/ARP 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*.

For example, asphyxiants will not be included in the requirements of Section 2762.7 *Pre-Startup Safety Review* (page 78) if they are not included in the definition of *Highly Hazardous Material*:

(b) "The pre-startup safety review shall confirm, as a verification check, independent of the management of change process, that prior to the introduction of *highly hazardous materials* to a process..."

2) Section 2735.3 Definitions (hh): *Major Change*, at page 9.

The Cal/ARP definition differs from the PSM definition, as follows:

Cal/ARP: "Major change means: (1) introduction of a new process, or (2) new process equipment, or new regulated substance that results in any operational change outside of established safe operating limits; or (3) any alteration in a process, process equipment, or process chemistry that introduces a new hazard or increases an existing hazard."

PSM, at page 2, Definitions: "Major Change. Any of the following: (1) Introduction of a new process, new process equipment, or new highly hazardous material; (2) Any operational change outside of established safe operating limits; or, (3) Any alteration that introduces a new process safety hazard or worsens an existing process safety hazard."

² Department of Industrial Relations, Occupational Safety and Health Standards Board, Process Safety Management for Petroleum Refineries (<https://www.dir.ca.gov/oshsb/documents/Process-Safety-Management-for-Petroleum-Refineries-15day.pdf>).

We encourage you to harmonize the Cal/ARP with the PSM text, which we believe is clearer, more protective and more enforceable.

We also do not understand the use of the term “regulated substance” in Cal/ARP’s definition, where the term “highly hazardous material” is otherwise used through the Program 4 section.

3) Section 2762.3 Operating Procedures (b)(3), at page 70.

“Follow established criteria for handling leaks, spills, or discharges that are designed to 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 the *Accidental Release Prevention Program Management System* subsection (f)(1)(C) at page 92, 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 (b)(3) would 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 in the regulation.

Option A:

Amend (b)(3) to read: *“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 (f)(1)(C).”*

Option B:

Strike the above sentence from (b)(3) completely; that is,

4) Section 2762.12 Contractors (b)(1) at page 83.

Change “require” to “ensure” in this sentence to match the rest of the subsection: “...and shall ~~require~~ ensure that its contractors and any subcontractors...”

By using both “ensure” and “require” in this subsection, rather than the single term “ensure,” the regulation forces an adjudicating body to establish a dichotomy in interpreting these words; that is, “because they are both used, they must mean different things.” The word “ensure,” which is used throughout the remainder of this subsection, imparts a higher degree of accountability relative to “require;” this therefore begs the question of what the Cal/ARP intends by allowing for a lower degree of accountability in the sentence where “require” is used. The single use of the word “require” should be replaced with “ensure” to be consistent with the rest of the subsection.

5) Section 2762.0.2 Purpose, at page 63.

The Cal/ARP definition differs from the PSM definition, as follows:

Cal/ARP: 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.

PSM at page 1, (a) Scope and Purpose: This section contains requirements for petroleum refineries to reduce the risk of major incidents and eliminate or minimize process safety hazards to which employees may be exposed.

We believe the Cal/ARP language is consistent with the Governor's report and is more protective than the PSM, which would allow the employer to "reduce the risk of a major incident" by anywhere from 1% to 99%.

We encourage you to work with DIR to harmonize the PSM language with the Cal/ARP by recommending the following change to the PSM: *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.*

To support a smooth transition to implementation and enforcement, and to avoid unnecessary confusion, we urge you to consider correcting these final items in the Cal/ARP proposal. If it would be helpful to discuss any of this with us directly, please contact Charlotte Brody of the BlueGreen Alliance.

Sincerely,

Charlotte Brody, BlueGreen Alliance

Greg Karras, Communities for a Better Environment

Kim Nibarger, United Steelworkers

Lena Moffitt, Sierra Club

Doug Parker, Worksafe

cc. Gina Solomon, Deputy Secretary for Science and Health, Cal/EPA
DIR Director Christine Baker
David Lanier, Secretary, Labor and Workforce Development Agency
Alice Reynolds, Governor's Office