CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

Proposed Amendments to the California Accidental Release Prevention (CalARP) Regulations Title 19, Division 5, Chapter 2, California Code of Regulations

FINAL STATEMENT OF REASONS

GENERAL

In this rulemaking, the California Environmental Protection Agency (CalEPA) is proposing amendments to the California Accidental Release Prevention (CalARP) Program 4 regulations for refineries. The proposed amendments seek to accomplish the following:

- Amend and clarify the definitions of highly hazardous material, process, major change, and employee representative;
- Amend and clarify the requirements pertaining to the Hierarchy of Hazard Control Analysis;
- Amend and clarify, with respect to employee participation in Accidental Release Prevention element activities, how owners and operators will allow for effective participation by employees engaged in such activities; and,
- Amend a footnote to address an error in a reference citation.

For this rulemaking, public engagement was conducted as required. Beginning with publication of the Notice of Proposed Rulemaking, the 45-day public comment period began on March 7, 2025, and concluded on June 30, 2025. Following a request to conduct a public hearing, CalEPA conducted two public hearings to receive oral comments on the proposed regulations, which took place on May 29, 2025, and June 26, 2025. Written and oral comments were received from a wide range of stakeholders including workers, labor organizations, industry representatives, local agencies, elected officials, environmental groups, and community members.

Following review of the public comments received during the 45-day comment period (which CalEPA extended to 115 days total), CalEPA made modifications to the proposed regulatory text and issued a Notice of Modified Text for a 15-day public comment period (which CalEPA extended to 30 days total and

occurred from December 9, 2025, through January 7, 2026). Comments received during this period were also reviewed and considered, and CalEPA prepared written responses as part of the final rulemaking record.

UPDATE TO INITIAL STATEMENT OF REASONS (Gov. Code, § 11346.9(a)(1))

Since publishing the Notice of Proposed Rulemaking, CalEPA has proposed two focused adjustments:

1. CalEPA restored the stand-alone definition of "major change" that currently exists in the regulation and included language to specify that the definition shall not apply to Program 4 (Article 7) facilities. The definition is re-numbered to section 5050.3(hh)(1).

2. CalEPA relocated the newly proposed definition to apply solely to Article 7 (Program 4), in order to align with the refinery-specific concerns described in the ISOR. The newly proposed definition removes reference to "regulated substances" and replaces it with "highly hazardous materials", further reiterating the applicability to Program 4. The definition is numbered to section 5050.3(hh)(2).

These amendments clarify the applicability of the originally proposed definition of "major change" and ensure that the clarifications apply only to the regulated community for which they were intended. The modifications correct an over-inclusive drafting approach and align the applicability with the intent and rationale already provided in the ISOR.

Because the 15-day changes refine the original proposal, address the same subject matter, and remain consistent with the purpose explained in the ISOR, they are sufficiently related to the originally proposed amendments under Government Code section 11346.8 and Office of Administrative Law's related rulemaking standards.

The modifications are sufficiently related to the amendments originally noticed for public comment because they address the same regulatory term ("major change"), maintain the same objective described in the ISOR, and do not introduce new concepts beyond those contained in the original proposal. Instead, the changes refine the applicability of the originally proposed definition to ensure consistency with CalEPA's stated intent and the problem identified in the ISOR.

LOCAL MANDATE DETERMINATION (Gov. Code, § 11346.9(a)(2))

The proposed regulation does not impose a mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD (EXTENDED TO 115 DAYS) (Gov. Code, § 11346.9(a)(3))

On March 7, 2025, CalEPA published a Notice of Proposed Rulemaking, Initial Statement of Reasons, Proposed Regulatory Text, and Form 399 in the California Regulatory Notice Register. The public comment period began with the publication of the Notice of Proposed Rulemaking and aforementioned documents. The comment period was scheduled to end on June 30, 2025. The comment period was extended from the original date of April 22, 2025, and an extension date of May 30, 2025. Below is a summary of individuals and organizations who submitted comments to CalEPA, and the dates they were received, during the period of March 7, 2025, to June 30, 2025. As required by the Administrative Procedure Act, CalEPA considered all relevant matter it received, including public comments, and hereby provides responses to all public comments received. (Gov. Code §§ 11346.8, subd. (a), 11346.9, and 11340.85 subds. (a) and (b)(4).)

A	Royce Long, Los Angeles City Fire CUPA, (04-21-2025)
B	Michael Dossey, Contra Costa Health, (04-22-2025)
C	Chad San Juan, Kern County Public Health, (04-22-2025)
D	Charlotte Brody, Blue Green Alliance, (04-22-2025)
E	Josh Sonnenfeld, Blue Green Alliance, (04-22-2025)
F	Tamina Chordhurry, Blue Green Alliance, (04-22-2025)
G	John Giona, Contra Costa County District One, (04-22-2025)
H	Melissa Newton, Member of the Public, (04-22-2025)
I	Eduardo Martinez, Richmond California, (04-22-2025)
J	Ian Patton S., Torrence Refinery Action Alliance, (04-22-2025)
K	Fatima Iqbal-Zubair, California Environmental Voters, (04-24-2025)
L	Vincent, Member of the Public, (04-28-2025)
M	Danielle D., Member of the Public, (04-27-2025)
N	Sophie Ellinghouse, WSPA, (05-23-2025)
O	Gaylan Prescott, United Steelworkers, (05-22-25)
P	Steve Owens, U.S. Chemical Safety and Hazard Investigation Board, (05-27-2025)
Q	Robert Travis, United Steelworkers, (05-28-2025)
R	Tracy W. Scott, United Steelworkers, (05-29-2025)
S	Mark DeSaulnier and John Garamendi, Congress of the United States House of Representatives, (05-30-2025)
T	Dr. Genghmun Eng – Member of the Public, (06-06-2025)

U	Kerry Guerin & Dexter Lim, Communities for a Better Environment, (06-30-2025)

Summary of and Response of Comments Received during the Notice Period of March 7, 2025, to June 30, 2025.

COMMENTER A

Royce Long – Los Angeles City Fire CUPA

April 21, 2025

A-1 Comment: Employee Representative Definition

The revised language provides more flexibility in designating employee representatives, especially in non-union environments. However, the phrase "on-site and qualified for the task" could benefit from further clarification to ensure consistent interpretation by both UPAs and regulated facilities.

Suggested change to the Employee Representative definition - Section 5050.3(t)
"Employee representative" means an employee, who is on-site and qualified for the task, selected by a union for said task, or by the employees in the absence of a union. The term 'employee representative' is to be construed broadly and may include an employee currently working in the covered process at the site ~~such as the~~ or a safety and health committee representative. Nothing in this subsection shall be construed to supersede an employee representative selection process in a collective bargaining agreement.

A-1 Response:

No action was taken in response to this comment. The definition of "employee representative" provides sufficient clarity and flexibility for implementation. Adding additional language specifying selection "for said task" is unnecessary and could inadvertently limit employee representation. The recommendation to add "working in the covered process" would be limiting, as "covered" processes are specific to processes with regulated substances meeting a regulated threshold quantity. Program 4 for refineries regulates all processes at a refinery and is not limited to "covered" processes. Adding the term "or a" also may inadvertently limit employee representation. CalEPA believes that maintaining the existing phrasing ("such as the") provides greater flexibility in selecting an employee representative because the language is not prescriptive, and is more consistent with the existing requirement in section 5050.3(t) that the term "employee representative" be construed broadly.

A-2 Comment:

Limiting the definition to only those materials stored at reportable quantities per HSC §25507 or threshold quantities under CalARP (Title 19) may exclude materials that, though under threshold, still present significant process safety risks in refinery operations. The previous broader definition captured these tenable hazards better.

Suggest no changes be made to the regulations.

A-2 Response:

No action was taken in response to this comment. The concern that limiting the definition of "highly hazardous materials" to only those materials stored at reportable quantities per Health and Safety Code (HSC) section 25507 or threshold quantities under 19 CCR may exclude materials that, though under threshold, still present significant process safety risks in refinery operations is noted; however, the existing regulatory framework already accounts for such scenarios.
"Process" is defined in 19 CCR 5050.3(yy) as ""Process" for purposes of Article 7, means petroleum refining activities involving a highly hazardous material, including use, storage, manufacturing, handling, piping, or onsite movement. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that an incident in one vessel could affect any other vessel, shall be considered a single process…"

"Vessel" is defined in 19 CCR 5050.3(aaaa) as "Vessel" means any reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose, or other container.

Therefore, any materials contained within a vessel are considered part of the process when they are located in such proximity to a process that an incident in one vessel could affect any other vessel, regardless of whether the material contents of the individual vessels meet a reportable quantity per HSC section 25507 or threshold quantities under 19 CCR.

Accordingly, a refinery with small amounts of materials that are connected to or could contribute to a release of a highly hazardous material in a process, would be required to consider those materials part of the process and therefore be subject to applicable requirements. Due to the interconnectedness of refinery processes, CalEPA does not believe that the proposed amendment to the definition of "highly hazardous materials" creates new significant process safety risks.

A-3 Comment: Major Change

The redefinition replaces clear and concise language with a multi-part test that may unintentionally limit what constitutes a major change. This could allow avoidance of essential safety reviews and studies that are currently required. We recommend retaining broader language that ensures a precautionary approach. Similarly, the addition of "An alteration in process or process equipment.." seemingly allows the refinery to change the process without considering the alteration of the process as a Major Change.

"Major change" means: (1) introduction of a new process, or (2) introduction of new process equipment that results in any operational change outside of established safe operating limits, or
(3) introduction of a new regulated substance that results in any operational change outside of established safe operating limits;, or

(34) any alteration in a process, process equipment, or process chemistry that ~~introduces a new hazard or increases an existing hazard.~~ results in any operational change outside of established safe operating limits. An alteration in ~~process or~~ process equipment does not include a replacement in kind.

For the purposes of Article 7 (program 4), an introduction of new process equipment or alteration in process or process equipment must result in an operational change outside of established safe operating limits to be considered a major change.

A-3 Response:

No action was taken in response to this comment. CalEPA disagrees that the revised definition of "major change" would allow for avoidance of required safety reviews and is not aware of any basis for demonstrating that the proposed language would result in that outcome. The comment does not provide detail as to how the commentor believes there is an avoidance of essential safety reviews and studies that are currently required and it is not specified as to how the addition of "An alteration in process or process equipment.." allows the refinery to change the process without considering the alteration of the process. The proposed amendments to 19 CCR 5050.3(hh) to the definition of major change are intended to clarify the scope of changes that trigger a "major change". CalEPA believes that the amendments to 19 CCR 5050.3(hh)(4) (now 5050.3(hh)(2)(D)), in reference to the addition of "established safe operating limits", allows for a more quantifiable and enforceable provision.

A-4 Comment: Process

This change appears to narrow the applicability of Program 4 by focusing only on regulated substances instead of the broader category of highly hazardous materials. However, a conflicting clause is introduced later in the same subsection that includes petroleum refining activities involving a highly hazardous material as part of a process. This internal inconsistency creates confusion.

CalOSHA has not revised its definition in 8 CCR 5189.1, potentially leading to misalignment between CalARP and PSM programs.

Suggest no changes be made to the regulations

A-4 Response:

No action was taken in response to this comment. As stated in the ISOR, this amendment aligns the definition of "process" with the CalARP statute as well as clarifies the applicability of Program 4 to refinery activities.

A-5 Comment: 5110.1(b) – Exemptions

The proposed changes appear to have no substantial impact. However, CalOSHA made no revisions, which may result in future conflicts in interpretation between CalARP and PSM exemptions.

Suggest no changes be made to the regulations

All processes of the petroleum refinery are covered except process plant laboratories or laboratories that are under the supervision of a technically qualified individual as defined in section 720.3(ee) of 40 CFR. This exemption does not apply to specialty chemical production; manufacture, processing or use of substances in pilot plant scale operations; and activities conducted outside the laboratory.

A-5 Response:

No action was taken in response to this comment. These amendments are non-substantive amendments that are being proposed to improve clarity, readability, and sentence structure.

A-6 Comment: 5110.13 – Employee Participation

The changes by both CalEPA and CalOSHA are similar. However, the main concern is the undefined term "advance notice". It is unclear how

implementation at the facility level will be harmonized. Further guidance will be required to ensure consistent participation and enforcement protocols.

A-6 Response:

No action was taken in response to this comment. The proposed amendments to 19 CCR 5110.13(a) are intended to ensure that owners and operators provide advance notice to employees involved in Accidental Release Prevention element activities in order to allow for effective participation. While "advance notice" is not defined, CalEPA does not believe it is appropriate to designate a specific timeframe that advance notice must take place because circumstances and incidents can vary at each refinery and thus there is a need for flexibility. Owners and operators are required to consult with employees and employee representatives to implement and maintain a written plan to provide effective participation in Accidental Release Prevention elements. Therefore, it is more appropriate for owners and operators, in consultation with employees and employee representatives, to include refinery-specific information in the written plan in order to provide for effective participation.

A-7 Comment: 5110.16 – Hazard of Control Analysis

The revised language introduces flexibility but may dilute the strength of current HCA requirements. It now allows for the recommendation of less inherently safe measures provided the rationale is documented. This weakens the preference hierarchy historically emphasized in risk reduction and may compromise safety if not properly enforced.

Suggested change to Section 5110.16(f) Hierarchy of Hazard Control Analysis (HCA)

"…The HCA team shall consider all process safety hazards that may be impacted by a particular inherent safety measure or safeguard and shall select those inherent safety measures or safeguards that, in the team's judgment, are most effective at reducing all

such process safety hazards…"

A-7 Response:

No action was taken in response to this comment. CalEPA disagrees with the comment that the amendments provide for recommendation of less inherently safe measures provided a rationale is documented. The amendments specify in 19 CCR 5110.16(f) that "For each process safety hazard identified using the

analysis required by subdivision (e), the team shall develop written recommendations in the following sequence and priority order". The regulations make clear the priority order. Additionally, proposed subsection 19 CCR 5110.16(f)(1) and 5110.16(f)(2) reference first order and second order inherent safety measures. The suggestion to add the word "inherent" twice to 19 CCR 5110.16(f) is not needed as it is referenced in 19 CCR 5110.16(f)(1) and 5110.16(f)(2).

A-8 Comment: 5130.6 – List of Substances

The corrections are logical and appreciated. However, we note unreferenced corrections were made in Table 3, which may lead to confusion. These have been correctly updated in the current draft.

- **Section 5050.1**: "Section 5130.5" should read "5130.6"
- **Section 5090.7 (d)**: "AA" should be updated to "UPA"
- **Section 5100.2 (b) & (e)**: "AA" should be updated to "UPA" (appears twice)
- **Section 5100.9 (e)**: "AA" should be updated to "UPA"
- **Section 5130.1**: "Authority cited 25532(I)" may actually be "25532(j)"
- **Section 5130.2 (b) (1)(C) ii**: "Section 5130.5" should read "5130.6"; Authority citation should also be checked for accuracy
- **Table 1**:

Propyleneimine [Aziridine,2-methyl-]	yes	75-55-8	10,000	b
Propylene oxide [Oxirane, methyl-]	yes	75-56-9	10,000	b

A-8 Response:

Partial action was taken in response to this comment. CalEPA has made non-substantiative updates to Footnotes 2 and 5 in Table 3 and has updated the cross reference from Health and Safety Code 25532(g)(2) to cross reference 25532(i)(2). No further changes have been made with respect to the other recommendations because they are beyond the scope of the rulemaking.

COMMENTER B

Michael Dossey – Contra Costa Health

April 22, 2025

B-1 Comment: Section 5050.3(t) – Employee Representative

The draft language puts too much emphasis on an employee representative potentially being from the safety and health committee. Safety and health committees are commonly staffed by management and organized labor representatives. These organized labor representatives are elected to a term to represent their union employees. Based on the audits and inspections conducted at CCH, some refineries have pushed employee representatives to attend meetings instead of releasing employees operating or maintaining the plants.

There is a limit to how many meetings an employee representative can attend and sometimes it may be preferable for the topic at hand for employees to be released from their normal duties to attend a meeting instead. CCH suggests that the proposed language be slightly altered to encourage this:

Suggested change to the Employe Representative definition - Section 5050.3(t)

"Employee representative" means an employee, who is on-site and

qualified for the task, selected by a union for the task, or by the employees in the absence of a union. The term 'employee representative' is to be

construed broadly and may include an employee currently working in the covered process at the site ~~such as the~~ or a safety and health committee representative. Nothing in this subsection shall be construed to supersede an employee representative selection process in a collective bargaining

agreement.

B-1 Response:

No action was taken in response to this comment. CalEPA disagrees that the proposed amendments place too much emphasis on an employee representative being from the safety and health committee. The proposal did not provide an exhaustive list of who may be deemed an "employee representative" and provided a "safety and health committee representative" as one example in the definition of employee representative in 19 CCR 5050.3(t). As stated in the existing and unchanged portion of section 5050.3(t), "[t]he term

'employee representative' "is to be construed broadly"; the proposal does not exclude other employees who may fall within the definition.

Additionally, CalEPA believes the definition of "employee representative" provides sufficient clarity and flexibility for implementation and the phrase "on-site and qualified for the task". Adding language specifying selection "for said task" is unnecessary and could inadvertently limit representation. The recommendation to add "working in the covered process" would be limiting, as "covered" processes are specific to processes with regulated substances meeting a regulated threshold quantity. Adding the term "or a" also may inadvertently limit employee representation. CalEPA believes that maintaining the existing phrasing ("such as the") provides greater flexibility in selecting an employee representative because the language is not prescriptive, and is more consistent with the existing requirement in section 5050.3(t) that the term "employee representative" be construed broadly.

B-2 Comment: 5050.3(y) – Highly Hazardous Material

CCH understands that the impact of this change will essentially define a lower threshold quantity limit for chemicals and substances handled at the regulated stationary sources. The California Hazardous Materials Business Plan rule typically has lower limits of 55 gallons for liquids, 200 cubic feet for compressed gases, and 500 pounds for solids. This would result in some substances to have a lower limit than otherwise listed in Tables 1, 2, or 3 under the CalARP regulations (e.g., 9 pounds of ammonia, 18 pounds of hydrogen sulfide, 0.5 pounds of hydrogen). CCH has no further comments on this change.

B-2 Response:

No action was taken in response to this comment. Amendments to this section specify that a highly hazardous materials will not include any substances in quantities below the thresholds set forth in the California Hazardous Materials Business Plan rule at California Health and Safety Code § 25507(a)(1)(A) (55 gallons for materials that are liquids, 500 pounds for solids, or 200 cubic feet for compressed gas) or the regulated substances thresholds in Tables 1, 2, and 3 of the Chapter, whichever is lesser.

B-3 Comment: 5050.3(hh) Major Change

<u>Section 5050.3(hh), CCH Comment (1):</u>

CCH believes different punctuation should be used to ensure that all parties accurately understand this definition. Specifically, semi-colons are suggested to be used prior to each "or" before each numbered item to make each item

more distinct. CCH has witnessed many incorrect interpretations over the years with commas and recommends this definition to be clearly defined to remove the potential for misinterpretation.

B-3 Response:

No action was taken in response to this comment. CalEPA believes that the use of commas is sufficient.

B-4 Comment: Major Change

Section 5050.3(hh), CCH Comment (2):

The proposed change to the regulation defines a "major change" specifically with reference to operational changes that fall outside of established safe operating limits. However, the regulation provided does not explicitly define the term "safe operating limits." Instead, the regulation repeatedly uses the phrase "established safe operating limits," implying that facilities must have these limits clearly documented or established prior to evaluating whether a change is "major."

The regulation clearly relies on the concept of established safe operating limits as the determining factor for identifying a major change. If safe operating limits are not defined or established at the facility, any alteration in process or introduction of new equipment that could impact operations would, by default, qualify as a "major change." Facilities without clearly established safe operating limits (Integrity Operating Windows or IOWs) could face increased regulatory scrutiny and compliance challenges due to more frequent triggering of major changes. The proposed language may also have the opposite effect as well—it could inadvertently disincentivize facilities from formally documenting or defining safe operating limits. If the absence of established limits allows a facility to argue that a change does not technically fall "outside" any known bounds, then in practice, fewer changes may be classified as “major change” simply because there is no benchmark to measure against. This creates a potential regulatory blind spot, where facilities that have not clearly defined Integrity Operating Windows (IOWs) or other safe operating limits face fewer obligations for internal review or agency notification.

Moreover, IOWs are typically applied at the process level and may not extend to all equipment or instrumentation. For example, level controllers that use radiological sources (such as gamma-based devices) may not directly impact process operations, but their operating limits can have important implications for personnel exposure and safety. If the regulation does not specify which limits

qualify as "safe operating limits"—whether process-related, equipment-specific, or personnel-protective—facilities and regulators may lack clarity in determining what constitutes a major change.

By contrast, the existing definition explicitly required evaluation of whether a change introduced new hazards or increased existing hazards, typically assessed by referencing established Process Hazard Analysis (PHA) scenarios and risk rankings. Under the previous definition, auditors would verify changes against these scenarios documented in the PHA. If a new scenario or a higher risk ranking emerged, it was classified as a "major change".

As a result of changing the definition of major change, although we do not wish to speculate prematurely, the following routine or common scenarios may now be classified as "major changes" under the new definition:

- Equipment rerates
- Modifying pump impellers that impact flow rates
- Initiating emergency operations that deviate from documented operating parameters (e.g., bypassing a damaged control valve)
- Installation of temporary clamps, enclosures, or plugs on leaking piping or vessels causing deviations in pressure or temperature limits
- Installation or removal of bypass piping, common during maintenance or repairs, which temporarily or permanently affects safe operating limit

This new language about operating outside of established safe operating limits also raises questions about whether bypassing critical protections—like safety systems, alarms, or interlocks—would now count as a major change. If so, that would be a big shift from current practice. Many refineries handle these bypasses with internal procedures, such as bypass forms and 72-hour time limits, and only treat them as Management of Change (MOC) if they last longer. These temporary bypasses are not typically reviewed as major changes. If the new definition includes them, it could greatly increase the number of major changes and add a significant administrative burden. As a result, CCH believes the proposed language should be removed and the previous regulatory language should be retained.

B-4 Response:

No action was taken in response to this comment. The proposed amendments to 19 CCR 5050.3(hh) to the definition of major change are intended to clarify the scope of changes that trigger a "major change". CalEPA believes that the

amendments to 19 CCR 5050.3(hh)(4) (now 19 CCR 5050.3(hh)(2)(D)), in reference to the addition of "established safe operating limits", allows for a more quantifiable and enforceable provision. Although the term "safe operating limits" is not separately defined, the regulations currently require facilities to develop and maintain process safety information, operating procedures, and hazard analyses that identify parameters for safe operation (19 CCR 5110.3, 5110.6, and 5110.4). As such, the proposed amendments focus on information that facilities are already obligated to develop.

B-5 Comment: Section 5050.3(hh)

CCH disagrees with the intent of the second paragraph. CalARP Program 4 was designed to require more stringent requirements for refineries than established for Program 3. Whereas CalEPA's proposed language does just the opposite by requiring more stringent requirements for Program 3 than for Program 4. In addition, the first paragraph already connects the "alteration of a process, process equipment" to "any operational change outside of established safe operating limits", so that language is redundant and not needed twice in the regulation. More importantly, CCH does not believe it is appropriate to generalize all new process equipment the same way. Section 5050.3(zz) defines "process equipment". Pressure vessels and rotating equipment are included in this definition. Some refinery pressure vessels are over 100 feet tall. Some rotating equipment are larger than a house. Installing new equipment of this magnitude (i.e., not replacement in kind) is one of the reasons why studies such as Damage Mechanism Reviews (DMR) and Hierarchy of Hazard Control Analysis (HCA) were originally linked to major changes in the first place. Safe operating limits established for the previous process design have little bearing on whether the new equipment has been properly evaluated. In situations where safe operating limits do not change when installing new equipment, CalEPA's proposed wording would allow the refinery to completely skip the HCA even knowing that is the absolute best time to do the HCA (i.e., before installing something new). The second paragraph language makes the Program 4 language less strict than for Program 3. CCH recommends this language be removed from the definition.

B-5 Response:

No action was taken in response to this comment. As the ISOR explains, the amendments to the definition of "major change" are intended to increase clarity and consistency of applications of the regulations; the amendments are not intended to reduce the stringency of Program 4 nor make it less effective than Program 3. CalEPA also disagrees that redundancies need to be eliminated and believes the proposed language reinforces the requirements.

The proposed amendments to the definition of "major change" are necessary to clarify the types of triggers which constitute a major change within a process, which includes making clear what constitutes a major change as it relates to new process equipment.

Additionally, CalEPA disagrees that the proposal would allow refineries to skip the HCA. The proposed amendments to the definition of major change in 19 CCR 5050.3(hh) do not exempt refineries from conducting an HCA when new equipment introduces changes that could impact safe operation. In other words, refineries will be required to conduct an HCA before installing new equipment that could impact safe operation.

B-6 Comment: Section 5050.3(hh)

The new definition of major change seems to focus too heavily on the term "introduction," particularly concerning whether the change leads to surpassing established safe operating limits. This emphasis could result in insufficient oversight of specific modifications, such as the removal of critical process equipment.

B-6 Response:

No action was taken in response to this comment. CalEPA disagrees with this assessment. The addition of the word "introduction" is non-substantive and without regulatory effect. The addition of "introduction" at the beginning of the second and third subdivisions provides a necessary change to explain precisely when a major change occurs. Further, addressing the existing syntax and grammar is helpful to address the readability and comprehension of the definition.

B-7 Comment: D. Section <u>5050.3(yy) "Process" Definition</u>

CalEPA's proposed changes to this definition will reduce the number of processes covered by the CalARP Program 4 regulation. Program 4 was developed to subject the "Stationary Source" (i.e., the refinery) to the regulatory requirements. The proposed modifications will limit the prevention program requirements to only those units that handle above a CalARP threshold quantity (TQ) and exempt some plants with lesser amounts of regulated substances from Program 4 requirements (e.g., smaller hydrogen plants, some utilities). Most refineries conduct process hazard analyses (PHAs) on individual plants to manage the hazards onsite. By separating out some plants from being subject to Program 4, a refinery could use this definition to eliminate operations from being subject to Program 4 requirements. CCH finds this proposed change limits

the effectiveness of the regulation and should be removed, and the "highly hazardous material" language be retained.

B-7 Response:

No action was taken in response to this comment. CalEPA disagrees with this assessment. CalEPA has included language in the definition of "process" in 19 CCR 5050.3(yy) to clearly specify that any petroleum refining activities involving a highly hazardous material shall be considered part of a process.

B-8 Comment: Section 5050.3(yy)

Sites classified under NAICS refining code 324110 and involved in petroleum refining but not involved with regulated substances may potentially be excluded unless they handle these substances in relevant quantities. HHM is largely based upon the properties of the materials.

B-8 Response:

No action was taken in response to this comment. CalEPA has included language in the definition of "process" in 19 CCR 5050.3(yy) to clearly specify that any petroleum refining activities involving a highly hazardous material shall be considered part of a process.

B-9 Comment: 5110.13(a)(4) – Employee Participation

The tone of the proposed language is inconsistent with other sections of the regulation. Its composition effectively condemns inaction by employees and/or their representatives, while simultaneously failing to provide clarity regarding the meaning of "advance notice" from refinery management. CCH has witnessed firsthand at refineries in Contra Costa County what advance notice could mean. For example, providing an email to one local union representative (instead of a shared email box), when that representative is off, inviting them to a meeting that same day. CCH has seen some invites be sent with as little as 5 minutes "advance notice" before a meeting was to take place. There needs to be some timeframe defined for what "advance notice" means, or some refineries may take undue liberties. CCH has also seen examples of where activities were delayed to when employee participation could take place that may be more favorable to the owner or operator. For example, knowing there was opposition to a certain change happening, there have been times when a refinery would wait to schedule the management of change meeting when those against the change were not on shift or at the refinery. The proposed language does nothing to alleviate these types of situations.

The proposed language seems too one-sided, placing all the burden on the employee instead of allowing for a more mutually agreeable process to take place. This draft language would likely dramatically reduce participation rates within the refineries.

Although most would agree that emergency management of change (MOC) notifications need to happen quickly, in general, these typically involve direct communication and involvement with those working on the process instead of the union representatives. Therefore, any suggested changes to this proposed language should not impact emergency MOCs.

> **Suggested change to Section 5110.13(a)(4)Employee Participation,** "With respect to employee participation in Accidental Release Prevention element activities required by this Article, the owner or operator shall allow for "effective participation" by employees in such activities if it confirms advance notice has been received by the appropriate parties at least seventy-two (72) hours of each such Accidental Release Prevention element activity. This seventy-two (72) hour advance notice does not apply to emergency management of change reviews. The owner or operator shall preferentially consider the input ~~and considers input~~ provided by individuals participating in each such activity, including the employee representative. ~~If the requisite advance notice is provided as specified above,~~ The owner or operator shall select an employee representative for ~~not be required to delay~~ any Accidental Release Prevention element activity that balances the input provided and the operational needs of the refinery. ~~due to the failure by a union, or employees in the absence of a union, to select an employee representative, or the failure of a selected employee representative to participate in the noticed activity. Nothing in this subsection shall be construed to require an owner or operator to accept recommendations or findings of employee representatives."~~

B-9 Response:

No action was taken in response to this comment. The proposed amendments to 19 CCR 5110.13(a) are intended to ensure that owners and operators provide advance notice to employees involved in Accidental Release Prevention element activities in order to allow for effective participation. Additionally, in proposed section 5110.13(a)(4), it states that owners and operators "consider[] input provided by individuals participating in each" Accidental Release Program Prevention activity. While "advance notice" is not defined, CalEPA does not believe it is appropriate to designate a specific timeframe that advance notice must take place because circumstances and incidents can

vary at each refinery and thus there is a need for flexibility. Owners and operators are required to consult with employees and employee representatives to implement and maintain a written plan to provide effective participation in Accidental Release Prevention elements. Therefore, it is more appropriate for owners and operators, in consultation with employees and employee representatives, to include refinery-specific information in the written plan in order to provide for effective participation.

B-10 Comment: 5110.13(b) Employee Participation

CalEPA changed the intent of this section of the regulation. CCH provided comments and suggested changes to section 5110.13(a)(4) associated with input from employees and employee representatives. CCH has no additional comments in this section.

B-10 Response:

No action was taken in response to this comment. Refer to the response provided in B-9 above.

B-11 Comment: 5110.16(e) HCA

CCH agrees with this change as this information is challenging to obtain and has little value since what worked best for one refinery does not necessarily mean it works for another refinery.

B-11 Response:

CalEPA appreciates the support for the proposed amendments to section 5110.16(e).

B-12 Comment: 5110.16(f) HCA

CCH notes that the Hierarchy of Hazard Control Analysis (HCA) section uses the terms "inherent safety measures" and "safety measures" inconsistently. The proposed second paragraph only states "safety measure(s)" instead of "inherent safety measure(s)". To maintain clarity and reinforce the intended prioritization of inherent safety, we recommend that the phrase "inherent safety measures" be used consistently throughout this section—especially in this key decision-making sentence.

This section otherwise follows a well-structured hierarchy that prioritizes inherent safety first, consistent with CCPS principles. However, the omission of the term

"inherent" safety measure in some sections of the proposed section could lead to misinterpretation or de-prioritization of inherent safety during the selection phase. It may also suggest that only "safety measures" and safeguards (i.e., non-inherent controls) are under consideration at that point in the analysis.

> **Suggested change to Section 5110.16(f) Hierarchy of Hazard Control Analysis (HCA)**
>
> "…The HCA team shall consider all process safety hazards that may be impacted by a particular inherent safety measure or safeguard and shall select those inherent safety measures or safeguards that, in the team's judgment, are most effective at reducing all such process safety hazards…"

B-12 Response:

No action was taken in response to this comment. Proposed subsection 19 CCR 5110.16(f)(1) and 5110.16(f)(2) reference first order and second order inherent safety measures. The suggestion to add the word "inherent" twice to 19 CCR 5110.16(f) is not needed as it is referenced 19 CCR 5110.16(f)(1) and 5110.16(f)(2).

B-13 Comment: 5110.16(g)(6) HCA

CCH agrees with this change.

B-13 Response:

CalEPA appreciates the support for the proposed amendments to section 5110.16(g)(6).

COMMENTER C

Chad San Juan – Kern County Public Health

April 22, 2025

C-1 Comment: Major Change

The previous language should be kept concerning the statement: "that introduces a new hazard or increases an existing hazard." This statement is aligned with how current EPA guidelines are written for program 3 and 2 concerning modifications and the need to coordinate with the AA. Introduction of new equipment may not cause a change that causes it to be outside of its safe operating limits, but may introduce a entire hazard in itself. For example, introduction to a new regulated substance specifically for storage will most likely not trigger this safe operating limits criteria to be considered a major change. Its placement and location may cause a new hazard to emerge and increase other existing hazards in this scenario. The definition of "major change" is important because it would trigger the need to perform a HCA. I can see that facilities may have an issue with this because any change could potentially introduce a new hazard and trigger the need to perform an HCA. There may need to be language to include a risk ranking determination with documentation generated by the facility to confirm that these changes would warrant a HCA or may not be needed based on a facilities determination.

I think the wording should be the following (highlighted in yellow):

(hh) "Major change" means: (1) introduction of a new process, or (2) introduction of new process equipment, or (3) introduction of a new regulated substance that results in any operational change outside of established safe operating limits, introduces a new hazard, or increases and existing hazard;, or any alteration in a process, process equipment, or process chemistry ~~that introduces a new hazard or increases an existing hazard~~. results in any operational change outside of established safe operating limits, ~~or~~ introduces a new hazard, or increases an existing hazard. An alteration in process or process equipment does not include a replacement in kind.

For the purposes of Article 7 (program 4), an introduction of new process equipment or alteration in process or process equipment must result in an operational change outside of established safe operating limits, introduction of a new hazard, or increase of an existing hazard to be considered a major change.

C-1 Response:

Action was taken in part as a result of this comment. CalEPA has proposed additional amendments to the definition of major change in order to ensure no impacts to program levels 2 and 3, and to maintain uniformity with US EPA regarding the definition of major change for program levels 2 and 3.

CalEPA recognizes the proposed amendments to 5050.3(hh) had inappropriately extended to all Program levels of the California Accidental Release Program and believe that clarifications and amendments to the definition should only extend to for Program 4 (Article 7) facilities. The language provided in the ISOR, including references to refinery process equipment, refinery hazards, and refinery-specific operating limits, makes clear that the purpose of the amendments was to address issues pertaining to the petroleum refineries operating under Program 4.

CalEPA has taken the below actions:

1. CalEPA proposed in "15-day changes" to restore the stand-alone definition of "major change" that currently exists in the regulation and further include language to specify that the definition shall not apply to Program 4 (Article 7) facilities. The definition is re-numbered to section 5050.3(hh)(1).

2. CalEPA proposed in "15-day changes" to relocate the newly proposed definition to apply solely to Article 7 (Program 4), in order to align with the refinery-specific concerns described in the ISOR. Additionally, the newly proposed definition removes reference to "regulated substances" and replaces it with "highly hazardous materials", which further reiterates the applicability to Program 4. The definition will be numbered to section 5050.3(hh)(2).

These amendments clarify the applicability of the originally proposed definition and ensure that the clarifications apply only to the regulated community for which they were intended. The modifications correct an over-inclusive drafting approach and align the applicability with the intent and rationale already provided in the ISOR.

Secondly, CalEPA disagrees with the proposal provided. No action was taken in response to this comment. The proposed amendments to 19 CCR 5050.3(hh) to the definition of major change are intended to clarify the scope of changes that trigger a "major change". CalEPA believes that the amendments to 19 CCR 5050.3(hh)(4) (now 19 CCR 5050.3(hh)(2)(D)) allows for a more quantifiable and enforceable provision.

C-2 Comment: Process

The way I interpret the proposed language is that the term process is triggered only If a regulated substance is utilized, with highly hazardous materials only expanding the scope of the process. If a regulated substance does not exist, an

activity with the highly hazardous material is not a process. Retaining the use of" highly hazardous material" is preferred than the use of "regulated substance" in the proposed change. The use of "regulated substance" limits the reach of program 4 requirements safety measures. Given the nature and complexity of refineries, refinery activities not associated with regulated substance have a potential to affect them and may not be captured in program 4 requirements.

Also based on the proposed language, it is also unclear if threshold quantities is considered for these regulated substances. A clear statements should be included that threshold quantities of regulated substances do not apply to determining applicability concerning Petroleum Refineries **if** "regulated substances" is utilized. Again, retaining the use of "highly hazardous material" is preferred.

C-2 Response:

No action was taken in response to this comment. CalEPA has included language in the definition of "process" in 19 CCR 5050.3(yy) to clearly specify that any petroleum refining activities involving a highly hazardous material shall be considered part of a process.

COMMENTER D

Charlotte Brody – Blue Green Alliance

April 22, 2025

D-1 Comment: Opposition

We strongly disagree with the CalEPA assessment that the proposed amendments to 5189.1 are "clarifying." Instead, we believe that the California Attorney General's settlement of a 2019 lawsuit brought by the Western States Petroleum Association (WSPA) will make California refineries less safe and increase the danger to the workers inside and the community members outside of the refinery fence line

In four significant ways, the proposed language changes to California OSHA's Process Safety Management Rule for Refineries (PSM) (5189.1) and CalARP weaken the protections that were painstakingly negotiated with WSPA after the explosion and fire at the Chevron Richmond refinery in 2012 that threatened the lives of 18 workers, and spread smoke across the Bay Area, resulting in more than 15,000 area residents seeking medical attention.

The proposed amendments would:

- Increase the threat from highly hazardous materials by changing what is defined as highly hazardous
- Reduce safety procedures designed to minimize the dangers in this inherently hazardous industry by limiting the definition of what constitutes a major change
- Weaken solutions to safety problems by diminishing the consideration of actions that eliminate instead of just reducing the safety and health hazard
- Reduce the power of operating and turnaround workers and their unions to keep themselves and the surrounding communities safe.

D-1 Response:

No action was taken in response to this comment. CalEPA disagrees with this assessment. The comment's assertion that the proposed amendment's "weaken protections" is not supported. As stated in the ISOR, the proposed rulemaking provides clarity to the public, the UPAs, and the regulated petroleum refineries for activities addressed under the CalARP program. CalEPA also proposes these changes to address stakeholder concerns about inconsistent application of the regulations. CalEPA believes that the amendments do not reduce existing safety

requirements and do not diminish worker protections, nor do they reduce the decision-making power of operating and turnaround workers and their unions to keep themselves and the surrounding communities safe.

D-2 Comment: Employee Representative Definition

In the existing definition, employees and their local unions may rely on the expertise of their international union to keep their refinery safe. The proposed option eliminates that "broadly construed" option. In addition, the amended definition moves around the phrase "qualified for the task." In practice, this new placement could give employers the power to refuse to work with an employee representative who the employer unilaterally decides is "unqualified for the task." It's easy to imagine a situation in which an employee representative who takes a strong stand on a PSM issue could be dismissed as "unqualified." The addition of the last sentence applies to collective bargaining and does not address the need and the right of employees to also choose who represents them in process safety management. We support maintaining the existing definition.

D-2 Response:

No action was taken in response to this comment. CalEPA makes clear that the term "employee representative" should be construed broadly. Additionally, the regulations state that a written employee participation plan will determine how employees will be selected to participate in overall Accidental Release Prevention program development and implementation planning, and how employees will be selected to participate in Accidental Release Prevention teams and other activities.

D-3 Comment: Highly Hazardous Materials

The lived experience of refinery workers led to the decision to not include quantities in the definition of highly hazardous materials. That experience demonstrated that thresholds were used to ignore the dangers of flammable liquids and gases and toxic and reactive substances. The purpose of 5189.1 is to improve refinery safety and the absence of thresholds in this definition does just that. We therefore support maintaining the existing language or find other ways to prevent the use of thresholds from being used to create the illusion that highly hazardous materials are safe.

D-3 Response:

No action was taken in response to this comment. Due to the interconnectedness of refinery processes, CalEPA does not believe that the proposed amendment to the definition of "highly hazardous materials" creates new significant process safety risks. "Process" is defined in 19 CCR 5050.3(yy) as ""Process" for purposes of Article 7, means petroleum refining activities involving a highly hazardous material, including use, storage, manufacturing, handling, piping, or onsite movement. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that an incident in one vessel could affect any other vessel, shall be considered a single process…" "Vessel" is defined in 19 CCR 5050.3(aaaa) as "Vessel" means any reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose, or other container. Therefore, any materials contained within a vessel are considered part of the process when they are located in such proximity to a process that an incident in one vessel could affect any other vessel, regardless of whether the material contents of the individual vessels meet a reportable quantity per HSC section 25507 or threshold quantities under 19 CCR.

Accordingly, a refinery with small amounts of materials that are connected to or could contribute to a release of a highly hazardous material in a process, would be required to consider those materials part of the process and therefore be subject to applicable requirements.

D-4 Comment: Major Change Definition

If the definition of highly hazardous material is retained, we agree that the other language in the proposed change could be clarifying rather than weakening.

D-4 Response:

No action was taken in response to this comment. To the extent that the comment opposes the proposed changes, CalEPA disagrees and believes that both the proposed amendments to the definition of highly hazardous material as well as the proposed definition to major change provide greater clarity than the existing text. As stated in the ISOR, the proposed rulemaking provides clarity to the public, the UPAs, and the regulated petroleum refineries for activities addressed under the CalARP program.

D-5 Comment: HCA

Changing the language from shall to may increases employers' power to ignore practical, recommended inherent safety solutions, undercutting the intent of this

entire section. This amendment should not be approved because it lessens the power of workers and the PSM rule to keep refineries safe.

D-5 Response:

No action was taken in response to this comment. The comment does not pertain to CalEPA's rulemaking. CalEPA has not proposed to change the language from "shall" to "may" in 19 CCR 5110.16(f).

D-6 Comment: Employee Participation

These proposed amendments would allow employers to unilaterally define "advanced notice," "qualified," "on-site" and the "consideration of employee representative input" to destroy the prevention partnership that is at the heart of Process Safety Management. The proposed WSPA settlement language lets employers handpick and selectively eliminate employee representatives and entirely disregard their recommendations. The current language in this section should be maintained.

D-6 Response:

No action was taken in response to this comment. CalEPA disagrees with this assessment. The proposed amendments do not allow employers to selectively eliminate employee representatives and entirely disregard their recommendations. CalEPA makes clear that the term "employee representative" should be construed broadly. Further, 19 CCR 5110.13(a) requires that owners and operators consult with employees and employee representatives to develop, implement, and maintain a written plan in order to provide for effective employee participation.

COMMENTER E

Josh Sonnenfeld – BlueGreen Alliance

April 22, 2025

E-1 Comment: Opposition

We urge the CalEPA to reject these amendments and preserve the intent and function of the current CalARP PSM and parallel CalOSHA PSM 5189.1 regulation. Adopted in 2017, the current PSM rules establish detailed and effective procedures to quickly identify and respond to safety threats within refineries, and critically, protect the vital role of workers and their union representatives to speak up and ensure action is taken. We strongly disagree with the characterization of the amendments in the Notice of Proposed Rulemaking that the amendments are "clarifying" and reject the assertion that "the proposal would also help ensure protection to public health and safety in California, as well as worker safety."

The proposed language weakens these hard fought-for protections in four critical ways:

1. ***Increase the threat from highly hazardous materials*** by changing what is defined as highly hazardous;
2. ***Reduce safety procedures designed to minimize the dangers in this inherently hazardous industry*** by limiting the definition of what constitutes a major change;
3. ***Weaken solutions to safety problems*** by diminishing the consideration of actions that eliminate instead of marginally reducing the safety and health hazard; and
4. ***Reduce the decision-making power of operating and turnaround workers and their unions to keep themselves and the surrounding communities safe*** by giving upper management back the ability to ignore the warnings of workers.

E-1 Response:

No action was taken in response to this comment. CalEPA disagrees with this assessment. The comment's assertion that the proposed amendment's "weaken protections" is not supported. As stated in the ISOR, the proposed rulemaking provides clarity to the public, the UPAs, and the regulated petroleum refineries for activities addressed under the CalARP program. CalEPA also proposes the changes to address stakeholder concerns about inconsistent application of the regulations. CalEPA believes that the amendments do not reduce existing safety

requirements and do not diminish worker protections, nor do they reduce the decision-making power of operating and turnaround workers and their unions to keep themselves and the surrounding communities safe.

COMMENTER F

Tamina Chordhurry – BlueGreen Alliance

April 22, 2025

F-1 Comment: Opposition

We urge the CalEPA to reject these amendments and preserve the intent and function of the current CalARP PSM and parallel CalOSHA PSM 5189.1 regulation. Adopted in 2017, the current PSM rules establish detailed and effective procedures to quickly identify and respond to safety threats within refineries, and critically, protect the vital role of workers and their union representatives to speak up and ensure action is taken. We strongly disagree with the characterization of the amendments in the Notice of Proposed Rulemaking that the amendments are "clarifying" and reject the assertion that "the proposal would also help ensure protection to public health and safety in California, as well as worker safety."

The proposed language weakens these hard fought-for protections in four critical ways:

- ***Increase the threat from highly hazardous materials*** by changing what is defined as highly hazardous;
- ***Reduce safety procedures designed to minimize the dangers in this inherently hazardous industry*** by limiting the definition of what constitutes a major change;
- ***Weaken solutions to safety problems*** by diminishing the consideration of actions that eliminate instead of marginally reducing the safety and health hazard; and
- ***Reduce the decision-making power of operating and turnaround workers and their unions to keep themselves and the surrounding communities safe*** by giving upper management back the ability to ignore the warnings of workers.

F-1 Response:

No action was taken in response to this comment. CalEPA disagrees with this assessment. The comment's assertion that the proposed amendment's "weaken protections" is not supported. As stated in the ISOR, the proposed rulemaking provides clarity to the public, the UPAs, and the regulated petroleum refineries for activities addressed under the CalARP program. CalEPA also proposes these

changes to address stakeholder concerns about inconsistent application of the regulations. CalEPA believes that the amendments do not reduce existing safety requirements and do not diminish worker protections, nor do they reduce the decision-making power of operating and turnaround workers and their unions to keep themselves and the surrounding communities safe.

COMMENTER G

John Giona – Contra Costa County, District One

April 22, 2025

G-1 Comment: Opposition

I write to urge CalEPA to reject the proposed amendments to the state's landmark Process Safety Management rules under California Accidental Release Prevention (CalARP) Regulations Title 19, Division 5, Chapter 2, California Code of Regulations Sections 5050.3, 5110.1 5110.13, 5110.16, 5130.6, and oppose the parallel proposed Cal/OSHA PSM 5189.1 regulation changes.

The current rules were the product of robust involvement by those most affected by refinery process safety management -- refinery workers, with support from community and environmental justice advocates. I support the efforts of the coalition of organizations who are working together to keep our workers and communities safe, led recently by the BlueGreen Alliance, United Steelworkers, Asian Pacific Environmental Network, and Communities for a Better Environment.

I urge CalEPA to reject these Amendments and preserve the intent and function of CalARP and PSM 5189.1 to effectively keep refinery workers and communities safe.

G-1 Response:

No action was taken in response to this comment. The comment did not appear to include a recommendation specific to the proposed amendments; therefore, no further response is provided.

COMMENTER H

Melissa Newton – Member of the Public

April 22, 2025

H-1 Comment:

Please do not make the proposed changes to Title 19, Division 5, Chapter 2, California Code of Regulations
Sections 5050.3, 5110.1 5110.13, 5110.16, 5130.6.
Altering this language allows refineries more leniency in their accidental releases of hazardous substances, which directly affects my and my family's health in El Cerrito near the border of Richmond, CA. I was only a few days into my PhD program at UC Berkeley in 2012 when the Richmond Chevron refinery had the explosion. I wore masks for weeks because it worsened my asthma, and was a foreboding welcome to the bay area. In recent history, I receive notifications of the Chevron refinery flaring rather frequently and worry that our air is being polluted regularly from accidental releases.
Recent lawsuits from the Western States Petroleum Association aim to bully our public health organizations into giving them even more freedom to pollute and harm our community. They should not be the driving force for policy changes, and union and safety workers should be given more of a say if any changes are to be made in the future.
Pollution standards should be agreed upon by the people most affected by that pollution. It's disturbing that this issue has not had a public hearing.

H-1 Response:

No action was taken in response to this comment. CalEPA disagrees that proposed language allows refineries more leniency in their accidental releases of hazardous substances. The comment did not appear to include a recommendation; therefore, no further response is provided.

COMMENTER I

Eduardo Martinez – City of Richmond, California

April 22, 2025

I-1 Comment:

I write to urge CalEPA to reject the proposed amendments to the state's landmark Process Safety Management rules under California Accidental Release Prevention (CalARP) Regulations Title 19, Division 5, Chapter 2, California Code of Regulations Sections 5050.3, 5110.1 5110.13, 5110.16, 5130.6, and oppose the parallel proposed Cal/OSHA PSM 5189.1 regulation changes.

The current rules were the product of robust involvement by those most affected by refinery process safety management - refinery workers, with support from community and environmental justice advocates. I stand with the coalition of organizations rising again in solidarity with one another to keep our workers and communities safe, led recently by BlueGreen Alliance, United Steelworkers, Asian Pacific Environmental Network, and Communities for a Better Environment.

I urge CalEPA to reject these Amendments and preserve the intent and function of CalARP and PSM 5189.1 to effectively keep refinery workers and communities safe. The commenter states general opposition to the proposed changes to Title 19, Division 5, Chapter 2, California Code of Regulations and Cal/OSHA PSM 5189.1.

I-1 Response:

No action was taken in response to this comment. CalEPA believes the intent and function of CalARP to effectively keep refinery workers and communities safe is preserved. The comment did not appear to include a recommendation; therefore, no further response is provided.

COMMENTER J

Ian Patton – Torrence Refinery Action Alliance Volunteer

April 22, 2025

J-1 Comment:

Thank you for bringing this to our attention, albeit too late for a public hearing.

My comments for the record are as follows:

It is incredibly offensive that the key regulation regarding HCAs (Hierarchy of Hazard Control Analysis, i.e. the facility inherint dangers analysis reports), Sec. 5110.16, is being revised yet *no changes* are being made to actually make these reports available to the public. That lack of transparency is the ridiculous, industry-influenced key flaw in the regulation in the first place!

The trick *the industry* had embedded (and I have the official comment summaries for that process which make that fact clear) when the regulation was first written is highlighted below:

§ 5110.16. Hierarchy of Hazard Control Analysis.

15

(a) The owner or operator shall conduct an HCA for all existing processes. The HCA for existing processes shall be performed in accordance with the following schedule, and may be performed in conjunction with the PHA schedule:

(1) No less than 50% of existing processes within three (3) years of the effective date of this Article;

(2) Remaining processes within five (5) years of the effective date of this Article.

(b) The owner or operator shall also conduct an HCA in a timely manner in the following instances:

(1) For all PHA recommendations for each scenario that identifies the potential for a major incident;

(2) Whenever a major change is proposed at a facility, the owner or operator shall conduct an HCA as part of a Management of Change review required by section 5110.9;

(3) When a major incident occurs, the owner or operator shall complete an HCA on the recommendations of the incident investigation report required by section 5110.12; and

(4) During the design and review of new processes, new process units, and new facilities, and their related process equipment. An HCA report prepared for this purpose shall be provided to the UPA. The UPA shall make these HCA reports available to the public by posting them on the UPA's website within 30 calendar days, with appropriate protections for trade secret information.

The mandate to conduct HCA analyses was a key feature of Cal ARP, and yet the industry insistence that these reports for their facilities be shielded from public scrutiny--absurdly limiting public disclosure only to reports pertaining to "new processes, new process units, and new facilities" (which do not exist at these aging facilities)--*remains*.

That should be no surprise, as the Notice of Proposed Rulemaking makes clear that this spate of text changes was also instigated by the refining industry.

That makes the changes actually being made to this section suspect, to put it mildly:

(e) The HCA team shall:

(1) Include all risk-relevant data for each process or recommendation, including incident investigation reports pursuant to section 5110.12;

(2) Identify, characterize and prioritize each process safety hazard.

(3) Identify, analyze, and document all inherent safety measures and safeguards (or where appropriate, combinations of measures and safeguards) in an iterative manner to reduce each hazard to the greatest extent feasible. Identify, analyze, and document relevant, publicly available information on inherent safety measures and safeguards. ~~This information shall include inherent safety measures and safeguards that have been: (A) achieved in practice by for the petroleum refining industry and related industrial sectors; or, (B) required or recommended for the petroleum refining industry, and related industrial sectors, by a federal or state agency, or local California agency, in a regulation or report.~~

(f) For each process safety hazard identified using the analysis required by subdivision (e), the team shall develop written recommendations in the following sequence and priority order. ~~to eliminate hazards to the greatest extent feasible using first order inherent safety measures. The team shall develop written recommendations to reduce any remaining hazards to the greatest extent feasible using second order inherent safety measures. If necessary, the team shall also develop written recommendations to address any remaining risks in the following sequence and priority order:~~

The HCA team shall consider all process safety hazards that may be impacted by a particular safety measure or safeguard and shall select those safety measures or safeguards that, in the team's judgment, are most effective at reducing all such process safety hazards.

(1) Eliminate hazards to the greatest extent feasible using first order inherent safety measures;

(2) Reduce any remaining hazards to the greatest extent feasible using second order inherent safety measures;

(~~1~~3) Effectively reduce remaining risks using passive safeguards;

(~~2~~4) Effectively reduce remaining risks using active safeguards; and

(~~3~~5) Effectively reduce remaining risks using procedural safeguards.

(g) The HCA team shall complete an HCA report within 90 calendar days following development of the recommendations. The report shall include:

The Notice states that the purpose of all these textual changes is in service of the industry's request for greater clarity.

Yet the main change to 5110.16 is to replace *this* simple declarative text, preceding the priority list of safety measures (i.e. first order = replacing a dangerous process, second order = mitigating a dangerous process):

[old text] "*...the [HCA] team shall develop written recommendations to eliminate hazards to the greatest extent feasible...*"

The replacement is this utterly convoluted, overly worded text:

[new text] "*The HCA team shall consider all process safety hazards that may be*

impacted by a particular safety measure or safeguard and shall select those safety measures or safeguards that, in the team's judgment, are most effective at reducing all such process safety hazards."

In particular, the phrase "all process safety hazards that may be impacted by a particular safety measure or safeguard" is particularly concerning. We had a clear statement about developing "written recommendations to eliminate hazards" and now instead we're to have a *qualified* statement regarding consideration of "hazards that may be impacted by a particular safety measure".

What does that mean?

Is it intended to be anything other than *less* clear than the existing text?

Presumably any and all hazards would be "impacted" by safety measures, yet why is it necessary to qualify the phrase "all process safety hazards"? Is the implication that perhaps some hazards are beyond being "impacted" by safety measures? Who is to interpret such confusing language?

Well, we know who. The refineries will use any ambiguous language to create wiggle room to allow, and plausible deniability to explain after the fact of harm caused (perhaps in a courtroom, after being sued by victims of, say, a hydrofluoric acid release), flaws and omissions in their secretly retained HCA reports.

We have evidence that these reports are not even being reviewed by CUPA inspectors. They cannot be reviewed by the public. And now, it appears, the industry is successfully pressuring CalEPA into watering them down with clumsy, ambiguous verbiage.

J-1 Response:

No action was taken in response to this comment. The comments provided in reference to 5110.16(b) are outside the scope of this rulemaking.

CalEPA believes the intent and function of CalARP to effectively keep refinery workers and communities safe is preserved. The assertion that the proposed revisions reduce clarity or lessen hazard control requirements are not supported. The proposed amendments to 19 CCR 5110.16 do not lessen the obligations to eliminate and reduce hazards.

COMMENTER K

Fatima Iqbal-Zubair – California Environmental Voters

April 24, 2025

K-1 Comment:

The undersigned organizations submit this letter expressing our vehement **opposition to the proposed amendments to the state's landmark Process Safety Management (PSM) rules** under California Accidental Release Prevention (CalARP) Regulations Title 19, Division 5, Chapter 2, California Code of Regulations Sections 5050.3, 5110.1 5110.13, 5110.16, 5130.6. If enacted, the proposed amendments would significantly endanger the safety of the workers and communities in and around California's refineries.

We urge the CalEPA to reject these amendments and preserve the intent and function of the current CalARP PSM and parallel CalOSHA PSM 5189.1 regulation. Adopted in 2017, the current PSM rules establish detailed and effective procedures to quickly identify and respond to safety threats within refineries, and critically, protect the vital role of workers and their union representatives to speak up and ensure action is taken. We strongly disagree with the characterization of the amendments in the Notice of Proposed Rulemaking that the amendments are "clarifying" and reject the assertion that "the proposal would also help ensure protection to public health and safety in California, as well as worker safety."

Refinery workers and surrounding communities have not forgotten the preventable fires and toxic explosions that catalyzed the adoption of these much-needed PSM protections. On August 6, 2012, a massive fire erupted at the Chevron Richmond Refinery that endangered 19 workers' lives and resulted in 15,000 Richmond residents seeking medical attention as the fire filled the sky with a toxic black plume.[1] The Chemical Safety Board investigation found that this incident had been avoidable, if only company management had not been able to ignore repeated warnings from their employees and been required to follow the process safety systems recommended by those refinery workers.[2,3] Through the Interagency Working Group on Refinery Safety convened by Governor Jerry Brown, labor, community, public health, and government agency staff worked over a multi-year period with CalEPA and Cal/OSHA to craft and enact these regulations to address major lessons learned from the Chevron fire and other dangerous incidents.[4]

The amended language deceptively repackages language proposed by Western States Petroleum Association (WSPA) in 2015 and 2016, but rejected for

being wholly insufficient to prevent incidents like the Chevron Refinery fire. 5,6 These proposed changes would make California's refineries less safe and increase the danger to workers inside and community members outside of the refinery fence line, in addition to the surrounding environment.

The proposed language weakens these hard fought-for protections in four critical ways:

1. ***Increase the threat from highly hazardous materials*** by changing what is defined as highly hazardous;

2. ***Reduce safety procedures designed to minimize the dangers in this inherently hazardous industry*** by limiting the definition of what constitutes a major change;

3. ***Weaken solutions to safety problems*** by diminishing the consideration of actions that eliminate instead of marginally reducing the safety and health hazard; and

4. ***Reduce the decision-making power of operating and turnaround workers and their unions to keep themselves and the surrounding communities safe*** by giving upper management back the ability to ignore the warnings of workers.

As the current federal administration seeks to roll-back essential environmental, community, and worker safety protections, it is critical that the CalEPA hold the line. This responsibility is particularly critical for the oil refining sector, which has a troubling history of catastrophic events in California. Most recently in February, an enormous fire at the PBF Martinez refinery burned for three days, released 500 pounds of sulphur dioxide into the community, injured six workers, and forced tens of thousands of local community members to shelter in place. Now is the time for us to consider actions that improve—not weaken—refinery safety in California.

Although the initiation of this rulemaking and the proposal of this language is required by a settlement agreement with the WSPA, a process which completely excluded impacted refinery workers and community organizations, the settlement does not require its final adoption.

We urge CalEPA to reject these amendments and work with stakeholders to preserve the intent and function of CalARP and PSM 5189.1 to effectively keep refinery workers and communities safe.

K-1 Response:

No action was taken in response to this comment. CalEPA disagrees with this assessment. The comment's assertion that the proposed amendment's "weaken protections" is not supported. As stated in the ISOR, the proposed rulemaking provides clarity to the public, the UPAs, and the regulated petroleum refineries for activities addressed under the CalARP program. CalEPA also proposes these changes to address stakeholder concerns about inconsistent application of the regulations. CalEPA believes that the amendments do not reduce existing safety requirements and do not diminish worker protections, nor do they reduce the decision-making power of operating and turnaround workers and their unions to keep themselves and the surrounding communities safe.

COMMENTER L

Vincent – Member of the Public

April 25, 2025

L-1 Comment: General Opposition

Please don't allow refineries to rollback the life saving regulations. We cannot allow these giant companies to continue to do as they please. If left up to them they would pollute all of our natural resources and never notify the public about any life endangering issues they caused. Many of these refineries are owned by companies that hide the fact of climate change for decades all to protect their bottom line. You cannot give them even more wiggle room to hurt Californians.

L-1 Response:

No action was taken in response to this comment. The comment was not responsive to the proposed amendments and did not provide any specific feedback on the proposal.

COMMENTER M

Danielle D. – Member of the Public

April 27, 2025

M-1 Comment: General Opposition

We must protect our communities and our rights! We must protect our already polluted environment, which is getting worse by the day.

We need your help in maintaining the important refinery safety regulations that allows workers the power to stop unsafe operations and requires companies to prevent disasters before they happen.

We are seeing *preventable* disasters happen throughout the world right now. It's up to the people to prevent more from happening.

PLEASE help us! Please reject the proposed rollbacks to California's refinery safety regulations!

M-1 Response:

No action was taken in response to this comment. The comment was not responsive to the proposed amendments and did not provide any specific feedback on the proposal.

COMMENTER N

Sophie Ellinghouse – Western States Petroleum Association

May 23, 2025

N-1 Comment: Applicability of CalARP petroleum refinery regulations

In 2017, CalOES added Article 7 to the CalARP regulations, creating a new "Program 4" that applies only to petroleum refineries. Under these regulations, Program 4 is applicable to any refinery "process" that involves any amount of a "highly hazardous material," which in turn is defined with reference to unrelated hazard communications regulations.[1] By contrast, the other CalARP programs are applicable only to a "covered process," which requires a "threshold quantity" of a "regulated substance."[2]

In its lawsuit, WSPA challenged the existing applicability requirements for Program 4, both because the term "highly hazardous materials" exceeds the statutorily mandated limit to "regulated substances" and because it omits the threshold quantity requirement. Under the authorizing statutes, the CalARP regulations are limited to "regulated substances," which are defined by regulation. Health and Safety Code Section 25531. Because the term "highly hazardous material" is inconsistent with the scope of the authorizing statute, CalEPA has no authority to regulate such materials through the CalARP regulations. The proposed amended CalARP regulations cures this legal defect by replacing the term "highly hazardous materials" with "regulated substances."

The proposed modifications also include a new threshold quantity. WSPA believes that a threshold quantity requirement is necessary for at least the following three reasons: 1) it is required by the authorizing statute; 2) there is no basis for requiring threshold quantities for Programs 1-3 but not for Program 4; and 3) omission of this requirement creates inconsistencies and conflicts within the CalARP regulations for petroleum refineries.

First, elimination of a threshold quantity is inconsistent with the enabling statute. Health and Safety Code Sections 25531-25543.3 establish the requirements and statutory authorization for the CalARP program. The requirements of the CalARP program are expressly limited to "covered processes."3 H&S Code Section 25532(c) defines "covered process" as "a process that has a regulated substance present in more than a threshold quantity." And the enabling statute includes specific criteria and procedures for designating threshold quantities. 4 By eliminating the requirement for threshold quantities, the current regulation is inconsistent, and in conflict, with the authorizing statute.

Second, there is no basis for distinguishing between processes that are subject to Programs 1-3 (which are limited to those involving threshold quantities of a regulated substance) and processes that are subject to Program 4 (which do not require a threshold quantity). As currently drafted, the regulations could require substantial safety programs for refinery processes that contain trivial amounts of regulated substances that do not present a significant safety hazard, but for all other facilities, such processes would not be subject to the CalARP regulations.

Third, as currently framed, the CalARP regulations applicable to petroleum refineries are inconsistent with respect to the requirement for a threshold quantity. While the Program 4 requirements are triggered without regard to threshold quantities, the risk management plan provisions, which apply to all programs including Program 4, are limited to processes with threshold quantities. (see 19 CCR § 5070.1(a)). Several specific RMP provisions – which are equally applicable to refineries and all other facilities – also incorporate a requirement for threshold quantities, including the following: 19 CCR § 5070.4 (Offsite Consequence Analysis); 19 CCR § 5070.11 (RMP Updates); 19 CCR § 5070.4 (Worst-Case Scenario Analysis).

Moreover, several of the regulations in Article 7 that are applicable only to Program 4 include the threshold quantity requirement, including 19 CCR § 5110.14 (Hot Work Permit) and 19 CCR § 5110.15 (Contractors). As a result, the CalARP provisions applicable to petroleum refineries are inconsistent, with some requiring a threshold quantity and others having no such requirement. There does not appear to be any basis for requiring threshold quantities for some, but not all, provisions applicable to refineries, and this inconsistency creates confusion and implementation issues.

For the foregoing reasons, WSPA urged that the pre-existing threshold quantities be restored for all Program 4 purposes. However, during the settlement negotiations, the parties agreed to incorporate the much lower threshold quantities in the California Hazardous Materials Business Plan regulations. WSPA continues to believe that these thresholds are too low and will result in application of Program 4 to processes that do not present a genuine risk of catastrophic release or serious injury – the only risks that the PSM regulations are intended to address – but WSPA accepted this provision as a good faith compromise.

N-1 Response:

No action was taken in response to this comment. The comment appears to be in support of the proposed amendments.

N-2 Comment: Hight Hazardous Material

WSPA also continues to believe that use of the term "highly hazardous material" in other portions of the regulations creates ambiguity, as the definition of that term is based on the state and federal hazard communication regulations, which include complex processes with technical criteria for assessing chemicals to determine if they are toxic or reactive. 19 CCR § 5050.3(y). WSPA believes that incorporation of the hazard communication regulations creates significant uncertainty and risk of inconsistent application, and also relies on definitions intended to address a different hazard (personal safety) than that addressed by the PSM regulations (process safety). Nonetheless, WSPA agreed to these provisions as part of the compromise represented by the overall settlement.

N-2 Response:

No action was taken in response to this comment. The comment appears to be in support of the proposed amendments.

N-3 Comment: Major Change

As noted in WSPA's state court lawsuit, the definition of "Major Change" in the current Program 4 CalARP regulations is inconsistent with the definition of the same term in the parallel regulations adopted by California Occupational Safety and Health Standards Board at 8 CCR 5189.1(c) (the "PSM Standards"). The proposed amendments to the CalARP regulations include revisions to the definition of Major Change that, along with proposed changes to the PSM Standards, will eliminate this inconsistency.

In addition, the proposed changes to the definition of Major Change will go a long way towards eliminating a lack of clarity in the current regulations. As currently framed, the definition does not provide clarity on what changes are "Major," such that regulated parties cannot be certain whether the regulation applies to certain changes. For example, the existing regulation refers to changes that "introduce[] a new process safety hazard or worsens an existing process safety hazard." This language is both ambiguous and requires a subjective evaluation, with the result that refiners and CalEPA could reach different conclusion as to whether a particular change is "Major." This ambiguity does not provide regulated parties sufficient notice to comply with the regulations.

WSPA believes that the proposed changes will significantly reduce this ambiguity by requiring that, to qualify as a Major Change, changes subject to

subparagraphs 2, 3 and 4 must result in operational change outside of safe operating limits. This is an objective standard that can more readily be determined by refiners. It also ties the definition of Major Change to changes that will have a real potential safety impact.

To the extent third parties object that other changes should be subject to the requirements for Major Changes, it is important to note that many other changes that do not qualify as "major" will still be subject to the MOC regulation, which requires a variety of safety reviews. As a result, such minor changes will be evaluated for their safety effects – they will just not be subject to the much more onerous safety reviews that are triggered by Major Changes, thus ensuring that resources are efficiently and effectively employed to evaluate safety impacts from changes.

N-3 Response:

No action was taken in response to this comment. The comment appears to be in support of the proposed amendments.

N-4 Comment: Hierarchy of Hazard Control Analysis

In its lawsuit, WSPA takes issue with two aspects of the regulations relating to HCA. First, WSPA objected to language in 19 CCR § 5110.16(e)(3) that lacked clarity. The proposed CalARP amendments would delete this language, which WSPA supports. This language requires consideration of inherent safety measures that have been "achieved in practice by the petroleum refining industry and related industrial sectors." These terms are highly ambiguous because refiners have no way to definitively determine whether a safety measure has been "achieved in practice" or what constitutes a "related industrial sector." Nor is there any limitation as to geographic scope, such that refiners could be required to search world-wide for responsive information.

Even worse, the provision also required consideration of inherent safety measures required or recommended by any federal, state or local agency. This provision effectively allows any government agency to amend the existing regulations by recommending a safeguard in a report, which then becomes enforceable under the regulations without any notice or comment. This end- run around the Administrative Procedure Act is plainly impermissible. This provision also places a burden on the regulated community to continually search for and obtain government reports that may not be publicly available, an onerous burden that is not feasible to satisfy.

It is important to note that the regulation still requires refiners to identify, analyze and document relevant, publicly available information on inherent safety measures and safeguards. This provision ensures that refiners undertake to educate themselves on available inherent safety measures as part of the HCA process. But consistent with the nature of the regulations as performance standards, it appropriately leaves to refiners the judgment of how best to do this within the context of a particular HCA.

Second, WSPA noted that the HCA regulations are inconsistent with the performance-based goals of the enabling statute and the regulations themselves. Rather than requiring that refineries establish a process to accomplish specified goals, the HCA regulations prescribe exactly what conclusions must be reached in assessing hazard controls and safeguards, subject only to very limited exceptions.

This regime does not permit the flexibility necessary for refineries to assess hazards and safeguards unique to the specific equipment and conditions within each process. For example, efforts to control one hazard can often impact controls or safeguards for another hazard. Determining how best to control all hazards collectively might dictate adopting a control for one hazard that is inconsistent with the prescribed hierarchy in the regulations, but which will lead to the greatest reduction of multiple hazards. As currently framed, the regulations do not appear to allow for such nuance or complexity.

WSPA believes that the proposed changes allow for the necessary flexibility by providing that the HCA team should consider the best means to reduce ***all*** relevant hazards, while documenting any departure from the prescribed hierarchy for any particular hazard. This flexibility is essential to ensure that the HCA process leads to a result that, in the judgment of the HCA team, is most effective at reducing overall hazards.

N-4: Response

No action was taken in response to this comment. The comment appears to be in support of the proposed amendments.

N-5 Comment: Employee Participation

WSPA had several objections to the existing employee participation regulation. First, as currently drafted, the regulation includes disparate treatment of employee representatives at refineries with and without a union-represented workforce. While the existing regulation sensibly requires non- union employee representatives to be both on-site and qualified for the task, it includes no similar requirement for a union representative.

The proposed CalARP amendment eliminates this distinction and requires all employee representatives to be on-site and qualified. It further requires that employees participating in safety reviews be on-site and qualified. WSPA strongly supports these proposed revisions, as they ensure that employees participating in refinery safety processes have the requisite knowledge and familiarity with these processes to meaningfully contribute.

The current PSM regulation also requires that employers, along with employees and employee representatives, prepare an employee participation plan that provides for "effective participation by affected operating and maintenance employees and employee representatives" in all phases of the various safety reviews as well as the development, training and implementation of the PSM program.

This provision is ambiguous as to what constitutes "effective participation," a phrase that is nowhere defined and that does not have any objective meaning. Refinery operators are especially concerned that employees not be allowed to delay or interfere with safety reviews under the guise of "effective participation." WSPA believes that the proposed modification cures this deficiency by spelling out that a refiner provides for effective participation in safety reviews when it provides advance notice and an opportunity for the employee representative to select an employee to participate.

Second, as noted above, the employee participation regulation encroaches on collective bargaining and therefore is preempted by the federal National Labor Relations Act ("NLRA"). The NLRA sets forth a comprehensive framework for the conduct and regulation of labor relations. It imposes a "mutual obligation o[n] the employer and the representative of the employees" to bargain "in good faith with respect to wages, hours, and other terms and conditions of employment." (*Id.* § 158(d).) These terms and conditions include "safety on the job," which "is a mandatory subject of collective bargaining." *Pierce v. Commonwealth Edison Co.* (7th Cir. 1997) 112 F.3d 893, 896; *Sears, Roebuck & Co. v. San Diego Cnty. Dist. Council of Carpenters* (1978) 436 U.S. 180, 193.

The preemptive effect of the NLRA is well-established, and states may not regulate any activities governed by collective bargaining. *San Diego Bldg. Trades Council, Millmen's Union, Local 2020 v. Garmon (*1959) 359 U.S. 236, 244. There can be no credible dispute that employee participation in refinery safety programs is subject to collective bargaining, and that WSPA's members have entered into collective bargaining agreements specifically covering this issue. As a result, the employee participation regulation is preempted and invalid in its entirety.

For example, in violation of the NLRA, the CalARP regulations purport to (a) govern how employees—through their union—select "representatives" to the employer for purposes of addressing a mandatory subject of bargaining; (b) give those "employee representatives" new and greater rights, and impose upon employers reciprocal obligations that touch upon and conflict with those established by federal law and achieved through collective bargaining pursuant to the free play of economic forces; and (c) threaten employers with penalties that far exceed those established by federal law in circumstances where employers fail to submit to these requirements. In all of these respects, the CalARP regulations constitute a direct and unlawful intervention by the state in federally supervised labor-management relations. These matters—including employees' ability to select their "representative," and employers' obligation to recognize and deal with "employee representatives"—are already regulated by federal labor law and are already specifically addressed in collective bargaining agreements between petroleum refiners and unions.

Employees may, of course, designate representatives for purposes of discussing, addressing, and improving workplace safety and safety processes. But this designation, and the representatives' reciprocal rights and responsibilities, are properly determined by the NLRA and through federally regulated collective bargaining between unions and employers, not by state regulation. The CalARP employee participation regulation is therefore preempted by the NLRA in its entirety.

While WSPA could have insisted on revocation of the entire employee participation regulation, instead it compromised by agreeing to a new provision stating that the written employee participation plan will govern the selection of employees to participate in safety reviews. Because these written plans are developed through collective bargaining, this provision will ensure consistency between the regulations and the collective bargaining agreement. Without this provision, the regulation is plainly preempted under federal law.

N-5 Response:

No action was taken in response to this comment. The comment appears to be in support of the proposed amendments.

COMMENTER O

Gaylan Prescott – United Steelworkers

May 22, 2025

O-1 Comment: Opposition

We strongly disagree with the characterization of the amendments in the Notice of Proposed Rulemaking that the amendments are "clarifying" and reject the assertion that "the proposal would also help ensure protection to public health and safety in California, as well as worker safety." The proposed amendments are the product of a legal settlement that the state negotiated with the Western States Petroleum Association (WSPA). Our union had intervened in that litigation. When asked to sign off on the final settlement agreement, we refused. The agreement was negotiated behind closed doors without other key stakeholders, like our members and the community. The proposed language harkens back to WSPA's desired language in multiple areas during the original rule's crafting. This language was deemed insufficient and was rejected in the rulemaking process. The proposed language weakens the rule in four critical areas:

1. Increases the threat from highly hazardous materials by changing what is defined as highly hazardous;

2. Reduces safety procedures designed to minimize the dangers in this inherently hazardous industry by limiting the definition of what constitutes a major change;

3. Weakens solutions to safety problems by diminishing the consideration of actions that eliminate, instead of marginally reducing, the safety and health hazard; and

4. Reduces the decision-making power of operating and turnaround workers and their unions to keep themselves and the surrounding communities safe by giving upper management back the ability to ignore the warnings of workers.

For these reasons, we strongly urge CalEPA to do the following:

- Continue to accept initial comments now and at a public meeting;
- Extend the public comment period to align with the Standard Board's process to ensure alignment of the two rules;
- Conduct a joint hearing with Cal/OSHA to ensure that both agencies are receiving comprehensive technical feedback from experts on these linked regulations; and

- Continue to hold discussions with stakeholders on proposed revisions and their impacts.

O-1 Response:

No action was taken in response to this comment. CalEPA disagrees with this assessment. The comment's assertion that the proposed amendment's "weaken protections" is not supported. As stated in the ISOR, the proposed rulemaking provides clarity to the public, the UPAs, and the regulated petroleum refineries for activities addressed under the CalARP program. CalEPA also proposes these changes to address stakeholder concerns about inconsistent application of the regulations. CalEPA believes that the amendments do not reduce existing safety requirements and do not diminish worker protections, nor do they reduce the decision-making power of operating and turnaround workers and their unions to keep themselves and the surrounding communities safe.

COMMENTER P

Steve Owens – U.S. Chemical Safety and Hazard Investigation Board

May 27, 2025

P-1 Comment: Employee Representative Definition

CalEPA proposes to amend this section to define "employee representative" as a person who is "on-site and qualified for the task" to be applied uniformly whether or not a union is "on-site".

The CSB does not agree with this proposed amendment. While the CSB concurs that being "qualified for the task" is necessary, the CSB is concerned about how "qualified" may be determined. For instance, is "qualified" the same as "experienced" or are there specific technical standards that must be met to be qualified?

The CSB also is concerned that the requirement for a union employee representative to be "on-site" is unclear. It could mean "assigned to that work location and present" or it could mean "physically present for that meeting, discussion, etc." or it could mean something else. This also assumes that electronic alternatives (e.g. Zoom, Teams, etc.) for participation in a meeting or discussion, etc. are not permitted. CalEPA states that employees who are on-site and qualified are often in the best position to understand and explain the details of day-to-day operation, and to know and understand how procedures are carried out in practice. While the CSB generally agrees with that statement, the rationale excludes union representatives who are not employed "on-site" or otherwise not physically present on-site but who may have a wide range of valuable knowledge and experience in the industry or at multiple facilities as opposed to a single facility.

The CSB reviewed all of CalARP Program 4 to determine requirements for an "employee representative." With the exception of Section 5110.13 Employee Participation, the other sections address reviewing various documents (an administrative function as opposed to an operational function) that would not necessitate being "on-site." For example, Section 5110.13 addresses being in consultation with employees and employee representatives to develop, implement, and maintain various plans including process hazard analyses (PHAs), damage mechanism reviews (DMRs), hierarchy of hazard control analyses (HCAs), etc., which, for "effective participation," should all be meetings scheduled in advance. This suggests, therefore, that being "on-site" may not be necessary (assuming that it means "assigned to that work location and

present"), as the employee representative's attendance can be scheduled provided that enough advance notice is provided.

P-1 Response:

No action was taken in response to this comment. The definition of "employee representative" provides sufficient clarity and flexibility for implementation. In general, "on-site" refers to employees of the refinery such as employees, contractors, or those who are working at the site. Employees that are on-site and qualified are often in the best position to understand and explain the details of day-to-day operations, and to know and understand how procedures are carried out in practice.

P-2 Comment: Major Change Definition

CalARP stated that as currently defined, petroleum refineries believe that the term "major change" is overbroad and has resulted in inconsistent applications by petroleum refineries and Unified Program Agencies (UPAs). However, no examples of potential "overbroadness" or overbreadth were provided in the proposal document. Any inconsistent applications of such regulatory language can generally be addressed with proper guidance and training, rather than revising the regulation itself.

Consequently, the CSB does not concur with adding the last sentence in the proposed amended definition, "For the purposes of Article 7 (program 4), an introduction of new process equipment or alteration in process or process equipment *must result in an operational change outside of established safe operating limits to be considered a major change*" (italics added). The introduction of a new process and the introduction of new process equipment are significant (i.e., "major") by themselves and should require significant analysis to include an HCA and, when appropriate, a DMR. Declaring that they constitute a "major change" only when they result in "*an operational change outside of established safe operating limits*" could have significant unintended consequences by allowing hazards to go unanalyzed until a catastrophic incident occurs.

P-2 Response:

No action was taken in response to this comment. The proposed amendments to 19 CCR 5050.3(hh) to the definition of major change are intended to clarify the scope of changes that trigger a "major change". CalEPA believes that the amendments to 19 CCR 5050.3(hh)(4) (now 19 CCR 5050.3(hh)(2)(D)),, in reference to the addition of "established safe operating limits", allows for a more quantifiable and enforceable provision. Although the term "safe operating

limits" is not separately defined, the regulations currently require facilities to develop and maintain process safety information, operating procedures, and hazard analyses that identify parameters for safe operation (19 CCR 5110.3, 5110.6, and 5110.4). As such, the proposed amendments focus on information that facilities are already obligated to develop.

P-3 Comment: 5110.13(a) Employee Participation

The CSB supports the intent of this proposed revision but believes that more clarification is necessary. Specific to the proposed section 5110.13(a)(4), the proposed language is confusing. For example, using the term "will allow" seems to imply that the language is giving permission instead clarifying owner or operator compliance with "effective participation." Additionally, the proposed section 5110.13(a)(4) attempts to clarify "effective participation" by establishing that it only applies if advance notice is provided. However, while the CSB concurs that "effective participation" should be defined, "advance notice" should also be clarified/defined to ensure that "advance" notice cannot be construed to permit "short" notice. A minimum, reasonable timeframe for "advance notice" should be established.

The CSB proposes that the first sentence in the proposed section 5110.13(a)(4) be deleted and that the following language (or something similar to it) be included: ""*Effective participation" by employees is established when the owner or operator provides advance notice of an Accidental Release Prevention element activity addressed in this article and considers input provided by employees participating in each such activity, including the employee representative. Advance notice must be no less than XX calendar days.*"

P-3 Response:

No action was taken in response to this comment. The proposed amendments to 19 CCR 5110.13(a) are intended to ensure that owners and operators provide advance notice to employees involved in Accidental Release Prevention element activities in order to allow for effective participation. Additionally, in proposed section 5110.13(a)(4), it states that owners and operators "consider[] input provided by individuals participating in each" Accidental Release Program Prevention activity. While "advance notice" is not defined, CalEPA does not believe it is appropriate to designate a specific timeframe that advance notice must take place because circumstances and incidents can vary at each refinery and thus there is a need for flexibility. Owners and operators are required to consult with employees and employee representatives to implement and maintain a written plan to provide effective participation in Accidental Release Prevention elements. Therefore, it is more appropriate for

owners and operators, in consultation with employees and employee representatives, to include refinery specific information in the written plan in order to provide for effective participation.

P-4 Comment: 5110.13(b) Employee Participation

Specific to the proposed section 5110.13(b), the CSB does not concur with the inclusion of last sentence, for the reasons stated above about the proposed definition of "employee representative", as well as that the sentence redundantly restates the proposed definition of "employee representative" in 5050.3(t). As such, the CSB recommends deleting the sentence,

"*Any such employees shall be on-site and qualified for the task for which they are selected and shall be subject to all provisions of 5110.13(a)*."

P-4 Response:

No action was taken in response to this comment. CalEPA believes this clarification is necessary in order to make clear any such employees shall be on-site and qualified for the task for which they are selected and shall be subject to all provisions of 5110.13(a). Employees that are on-site and qualified are often in the best position to understand and explain the details of day-to-day operations, and to know and understand how procedures are carried out in practice. Additionally, in proposed section 5110.13(a)(4), it states that owners and operators "consider[] input provided by individuals participating in each" Accidental Release Program Prevention activity.

P-5 Comment: 5110.16(e)(3) Hierarchy of Hazard Control Analysis

The CSB concurs with the intent of the proposed revision and agrees that HCAs are performance-based which should allow for some flexibility. As such, the CSB agrees that "*inherent safety measures and safeguards that have been: (A) achieved in practice by the petroleum refining industry and related industrial sectors; or, (B) required or recommended for the petroleum refining industry, and related industrial sectors, by a federal or state agency, or local California agency, in a regulation or report,*" should not be an HCA <u>requirement</u>.

However, the CSB does believe that these are good examples of what could be in a well-documented HCA. Therefore, the CSB recommends keeping that language but, instead of requiring that it be included (use of "shall include"), offer it as examples of good information that could be included (change it to "may include").

P-5 Response:

No action was taken in response to this comment. CalEPA disagrees that the provisions should specify what the HCA "may include". As explained in the ISOR, CalEPA believes that removing this requirement does not significantly alter the regulations because refineries are still required pursuant to section 5110.16(e)(3) to "Identify, analyze, and document all inherent safety measures and safeguards (or where appropriate, combinations of measures and safeguards) in an iterative manner to reduce each hazard to the greatest extent feasible. Identify, analyze, and document relevant, publicly available information on inherent safety measures and safeguards." CalEPA believes that these amendments do not lessen the scope of publicly available information on inherent safety measures and safeguards that must be identified, analyzed, and documented.

COMMENTER Q

Robert Travis – United Steelworkers

May 28, 2025

Q-1 Comment: Employee Representation

I strongly disagree with the proposed changes simply because it severely limits the ability of the Union to select the correct individuals to participate in ARP teams/elements. It speaks to "effective participation" but directly limits the employees' voices in recommendations or findings. It could remove all ability for the Union to select employees and gives that discretion to the "employee-participation plan".

I personally believe that the changes do violate the National Relations Labor Act because some of the changes required within the ARP Teams/elements do in fact change our terms and conditions of employment.

The proposed changes to the Employee Participation section have basically turned the employee involvement into "sign-off" that an employee was in the room and the voices of the most knowledgeable individuals, those with direct hands-on experience can easily be ignored.

Q-1 Response:

No action was taken in response to this comment. CalEPA disagrees with this comment. Owners and operators are required to consult with employees and employee representatives to implement and maintain a written plan to provide effective participation in Accidental Release Prevention elements. Additionally, in proposed section 5110.13(a)(4), it states that owners and operators "consider[] input provided by individuals participating in each" Accidental Release Program Prevention activity.

Q-2 Comment: Major Change Definition

I am also opposed to this change as it greatly impacts the employees' safeguards and working conditions in the MOC (management of change) and PHA (process hazard analysis) process. Reclassifying a major change to a check box if it changes "safe operating limits" is a major mistake. Refineries are constantly evolving. They are introducing equipment and processes that are sometimes safer and sometimes far more dangerous both of which may not change a SOL. And to prevent a major change classification because it did not change a "safe operating limit" will also prevent the concerns of employees to

be properly documented, mitigated, and protected. This will also affect how training is handled for equipment and process changes. This simple definition change could drastically impact our workplace protections. It makes our work inherently more dangerous. And it makes our communities and environment inherently more susceptible to dangerous events from the facilities that fall under your protection.

Q-2 Response:

No action was taken in response to this comment. The proposed amendments to 19 CCR 5050.3(hh) to the definition of major change are intended to clarify the scope of changes that trigger a "major change". CalEPA believes that the amendments to 19 CCR 5050.3(hh)(4) (now 19 CCR 5050.3(hh)(2)(D)),, in reference to the addition of "established safe operating limits", allows for a more quantifiable and enforceable provision.

COMMENTER R

Tracy W. Scott – United Steelworkers

May 29, 2025

R-1 Comment: Highly Hazardous Material

a. Redefinition of Highly Hazardous Materials

Loosening this definition will exempt dangerous substances from oversight, increasing the likelihood of accidents involving flammable, toxic, or reactive materials.

R-1 Response:

No action was taken in response to this comment. CalEPA disagrees that the amendments to the definition of highly hazardous materials exempt dangerous substances from oversight.

Materials contained within a vessel are considered part of a process when they are located in such proximity to a process that an incident in one vessel could affect any other vessel, regardless of whether the material contents of the individual vessels meet a reportable quantity per HSC section 25507 or threshold quantities under 19 CCR for CalARP.

Accordingly, a refinery with materials that are connected to or could contribute to a release of a highly hazardous material in a process, would be required to consider those materials part of the process and therefore subject to applicable requirements. Due to the interconnectedness of refinery processes, CalEPA does not believe that the proposed amendment to the definition of "highly hazardous materials" creates new significant process safety risks.

R-2 Comment: Major Change

b. Narrowing the Definition of "Major Change"

This change reduces the number of modifications subject to rigorous safety reviews. Even seemingly small equipment or process changes can cause cascading failures in high-hazard environments.

R-2 Response:

No action was taken in response to this comment. The proposed amendments to 19 CCR 5050.3(hh) to the definition of major change are intended to clarify the scope of changes that trigger a "major change". CalEPA believes that the

amendments allow for a more quantifiable and enforceable provision. As stated in the ISOR, CalEPA also proposes the changes to address stakeholder concerns about inconsistent application of the regulations.

R-3 Comment:

c. Moving Away from Hazard Elimination
The proposed amendments de-emphasize the proven principle of eliminating hazards at the source, instead favoring mitigation (e.g., alarms, PPE), which is less effective and reactive in nature.

R-3 Response:

No action was taken in response to this comment. CalEPA disagrees with this comment. The amendments specify in 19 CCR 5110.16(f) that "For each process safety hazard identified using the analysis required by subdivision (e), the team shall develop written recommendations in the following sequence and priority order". The regulations make clear the priority order. Proposed amendments to 19 CCR 5110.16(f) maintain requirements specifying that the HCA team shall consider all process safety hazards that may be impacted by a particular safety measure or safeguard and shall select those safety measures or safeguards that, in the team's judgment, are most effective at reducing all such process safety hazards.

R-4 Comment:

d. Reducing Worker Authority in Safety Decisions
The proposal reintroduces top-down decision-making, undermining worker empowerment. It was worker observations that could have prevented the Chevron fire—ignoring their input again would be a historic and tragic error.

R-4 Response:

No action was taken in response to this comment. CalEPA disagrees with this comment. No proposed amendments limit worker empowerment. Owners and operators are required to consult with employees and employee representatives to implement and maintain a written plan to provide effective participation in Accidental Release Prevention elements. Additionally, in proposed section 5110.13(a)(4), it states that owners and operators "consider[] input provided by individuals participating in each" Accidental Release Program Prevention activity.

R-5 Comment: Recommendations

To protect public health and uphold the integrity of the rulemaking process, I urge CalEPA to:
- Extend the public comment period to align with the Cal/OSHA Standards Board process
- Host joint public hearings with Cal/OSHA to ensure alignment and comprehensive review
- Engage subject matter experts and frontline workers through technical advisory committees
- Reject any proposal lacking transparent, evidence-based justification

R-5 Response:

No action was taken in response to this comment. As stated in the ISOR, the proposed amendments to the CalARP Program 4 regulations will similarly function in parallel with changes to the Process Safety Management program that will be proposed by Cal/OSHA in a separate proposed rulemaking. Additionally, Cal/OSHA's and the Standards Board's regulatory processes under the Administrative Procedure Act are separate from CalEPA's. On March 7, 2025, CalEPA began its comment period to gather public input, and in response to a request from the public, CalEPA extended the comment period to June 30, 2025. In total, the comment period lasted for 115 days – well beyond the required minimum of 45-days under the Administrative Procedure Act. CalEPA also held two public meetings to gather public input. A number of public comments included technical input, which CalEPA considered in this rulemaking. CalEPA maintains that it has acted in good faith to ensure compliance with the APA requirements for this rulemaking.

COMMENTER S

Mark DeSaulnier and John Garamendi – Congress of the United States House of Representatives

May 30, 2025

S-1 Comment:

We believe any proposed changes to the program should be done in a transparent and open way. To our understanding, much discussion of the proposed changes was done without the consultation of all stakeholders, including labor unions. We urge for transparency, especially when regulatory violations and safety incidents have risen to an unacceptable level at refineries that are located on the border between Congressional districts we both represent. Operational and worker safety culture, especially around hazardous materials, at the refineries and in the industry as a whole must remain strong.

The CalARP program works hand in hand with the U.S. EPA's Risk Management Program "to prevent the accidental releases of extremely hazardous substances that pose the greatest risk of immediate harm to the public and the environment."1 Recently, U.S. EPA Administrator Lee Zeldin announced that the EPA will be reconsidering the 2024 Risk Management Program rule, which had been finalized by the Biden Administration and worked to prevent hazardous materials incidents. With continued loosening of safety rules at the federal level, we urge CalEPA to not waiver in its focus on the CalARP mission to protect the health and safety of all individuals.

S-1 Response:

No action was taken in response to this comment. As stated in the ISOR, the proposed amendments to the CalARP Program 4 regulations will similarly function in parallel with changes to the Process Safety Management program that will be proposed by Cal/OSHA in a separate proposed rulemaking. Additionally, Cal/OSHA's and the Standards Board's regulatory processes under the Administrative Procedure Act are separate from CalEPA's. On March 7, 2025, CalEPA began its comment period to gather public input, and in response to a request from the public, CalEPA extended the comment period to June 30, 2025. In total, the comment period lasted for 115 days – well beyond the required minimum of 45-days under the Administrative Procedure Act. CalEPA also held two public meetings to gather public input. A number of public comments included technical input, which CalEPA considered in this rulemaking. CalEPA maintains that it has acted in good faith to ensure compliance with the APA requirements for this rulemaking.

COMMENTER T

Dr. Genghmun Eng – Member of the Public

June 6, 2025

T-1 Comment:

[Section CA-1] Introduction

[CA-1.01]: The CalARP (California Accidental Release Prevention) Program includes and enhances the federal Chemical Accident Provisions of CFR Title 40 part 68 (40 CFR §68), and is primarily set by 12 Articles within CCR §5050 - CCR §5160 of the California Code of Regulations (CCR), Title 19, Division 5, Chapter 2.

[CA-1.02]: The NAICS (North American Industry Classification System) for businesses assigns a NAICS-324110 code for Petroleum Refineries ('Refinery Operators'), primarily engaged in converting crude petroleum into other petroleum products, using processes such as catalyzed crude oil cracking, petroleum product fractionation and distillation, and Alkylation, which reforms 2 butanes into octane. HF Alkylation uses Anhydrous Hydrogen Fluoride (HF/AHF) or Modified Hydrofluoric Acid (MHF), while Sulfuric Acid Alkylation uses anhydrous sulfuric acid, as Alkylation process catalysts.

[CA-1.03]: CalARP has 4 categories, CalARP-Program-1 through CalARP-Program-4, each having increasing CalARP regulation, with all California Refinery Operators being in CalARP-Program-4.

[CA-1.05]: On p. 3-of-22 of ***{CA-Doc-01}***, it notes the following:

"The CalARP program is one of several elements of the State of California's broader Unified Program for Hazardous Materials Management, known as the Unified Program, which is overseen by CalEPA. The purpose of the CalARP program is to prevent the accidental releases of regulated substances that can cause serious harm to the public and the environment, and to minimize the damage if releases do occur. CalEPA broadly oversees the implementation of the Unified Program and certifies Local Agencies to implement the program as Unified Program Agencies (UPAs)."

[CA-1.06]: The Unified Program consolidates 6 state-regulated environmental programs ('6-Programs'); one of those 6 is CalARP.

[CA-1.07]: When CalEPA certifies a Local Agency to implement the Unified Program, that Local Agency is called a CUPA (Certified Unified Program Agency). Each CUPA, within their Local Agency purview, is tasked to implement all the 6-Programs requirements.

[CA-1.08]: Prior to the CUPA, a Refinery Operator may have had to send documentation required by their Title-V Operating Permit or other regulations, to each of these 6-Programs. Establishing the CUPA allowed the Refinery Operator to send the documentation to the CUPA, with the CUPA operating as an umbrella agency over these 6-Programs. Thus, one CUPA function is to be a repository of the required 6-Programs documentation from a Refinery Operator.

[CA-1.09]: The CUPA charter also extends beyond just being a documentation repository. The CUPA can engage other 'Participating Agencies' to help implement all the 6-Programs requirements.

[CA-1.10]: Only 2 Refinery Operators in California presently use HF Alkylation ('HF-Refineries'). Both are in Los Angeles County, with the SCAQMD (South Coast Air Quality Management District) being the permitting authority for their US EPA Title-V Refinery Operating permits.

[CA-1.11]: One is the PBF Energy Corp. Torrance Refining Company HF-Refinery, with the Torrance Fire Chief as the CUPA. The other is the Valero Energy Corp. Ultramar HF-Refinery in Wilmington, CA, with a Los Angeles **City** Fire Department LAFD-CUPA Department, presently being headed by Mr. Royce Long.

[CA-1.12]: LAFD-CUPA staff were recently profiled ***{CA-Doc-02}*** [https://calcupa.org/cupa-profiles/index.html]. It now has 39 people, along with the Los Angeles **County** Fire Department (LA County Fire) as a Participating Agency, where it is:

> "LA County Fire that performs the hazardous waste inspections."

[CA-1.13]: The above shows that the Participating Agency function is to operate **in place of the CUPA** for performing tasks better suited to the scope, expertise, and capability of the Participating Agency. Thus, having the assistance of Participating Agencies is allowed under the present regulations within the UPA/CUPA framework.

[CA-1.14]: As an example, ***{CA-Doc-03}*** is a 17-page list of over 90 Participating Agencies associated with *dot.ca.gov* ('Caltrans'):

[https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/participating-agency-list-a11y.pdf]

[CA-1.15]: As noted in ***{CA-Doc-02}*** the LAFD-CUPA also does:

> "inspections and enforcement, with ... about 10,000 facilities.."

so the Valero-Ultramar HF-Refinery is only 0.01% of their charter.

[CA-1.16]: One important CalARP function is to help determine, understand, mitigate, and prevent worst-case hazardous material releases with off-site consequences ('worst-case scenario'), which is industry and site specific. However, for the 2 California HF-Refineries, Citizen claims that the worst-case scenario is a:

"Catastrophic {Category-4} Corrosive Chemical Accidental Release of HF/AHF/MHF that goes off-site 'outside the Refinery' ", and that this case also constitutes a 'worst-case HF-release scenario'.

[CA-1.17]: If a HF-Refinery Operator were to claim there exists an alternative worst-case non-HF-release scenario with greater off-site human health and environmental impacts, Citizen claims that both scenarios would need to be completed by the HF-Refinery Operator and evaluated, in conjunction with the Regulatory Agencies, due to uncertainties in underlying assumptions and calculations being used, where slightly different release conditions or assumptions could easily make either scenario the calculated worst-case scenario.

[CA-1.18]: In order to be **properly** protective of the Public Health and Safety, and the Environment, Citizen also claims that proper adjudication of HF-release scenarios is needed as a 'Special Task' within the CalARP program. This Special Task should include developing processes, procedures, and ongoing technical evaluations to: [a] better determine, understand, mitigate, and prevent HF-releases from occurring, including the worst-case HF-release scenario, and [b] "...to minimize the damage if releases do occur".

[CA-1.19]: To 'minimize the damage' from HF-releases, including the worst-case HF-release scenario, Citizen claims the HF-Refinery Operator Offsite Consequences Analyses must include plans for mitigating and minimizing: [i] short-term Health and Safety impacts to the Public-at-large and the environment around the HF-Refinery; and [ii] long-term Health impacts to humans due to HF-exposure.

[CA-1.20]: Citizen further claims that CalARP should **assume** that **proper** adjudication of this Special Task, including the worst-case HF-release scenario: [i] is beyond the scope, expertise, and capability of the Torrance Fire Chief CUPA, and the LAFD-CUPA organization, and [ii] is better suited to the scope, expertise, and capability the SCAQMD, in conjunction with the US EPA; therefore, both CUPAs overseeing the HF-Refineries need to have the SCAQMD and US EPA as CUPA Participating Agencies to perform this Special Task.

[CA-1.21]: Based on the above **[CA-1.15]-[CA-1.20],** Citizen claims the CalARP program, as primarily captured in CCR §5050 - CCR §5160, needs CCR changes to carve out an explicit mandate that requires the SCAQMD and US EPA to be CUPA Participating Agencies, for performing this Special Task.

[CA-1.22]: Each step, especially for adjudication of the worst-case HF-release scenario, should be done with joint US EPA and SCAQMD public meetings and workshops, with SCAQMD and US EPA presentation development prior to those events; and it should also allow extended Public Comment periods, due to the catastrophic impacts if a worst-case HF-release scenario were to actually occur.

[CA-1.23]: Citizen proposes CCR changes herein that requires the SCAQMD and US EPA to be CUPA Participating Agencies for performing the Special Task of properly adjudicating HF-releases, including the worst-case HF-release scenario; along with other needed CCR clarifications and changes for this proper adjudication.

T-1 Response:

No action was taken in response to this comment. The comments provided were outside of the scope of this rulemaking.

T-2 Comment:

[Section CA-2] Proposed § 5050.3 and §5070 Changes

CITIZEN PROPOSED ADDITIONS IN ITALIC TEXT HEREIN

[CA-2.01]: CalARP § 5050.3 – Definitions:

(aa0) "HF-Refineries" means Refinery Operators that have Alkylation Units using Hydrogen Fluoride (HF) containing materials as Alkylation Catalysts, including Anhydrous Hydrogen Fluoride (AHF) and/or Modified Hydrofluoric Acid (MHF).

(uu1) "Participating Agencies" means any Federal, State, or Local Agency associated with a UPA, that performs specialized tasks for the UPA, in lieu of the UPA performing those specialized tasks.
(yyy) "Unified Program Agency (UPA)" means the local agency, pursuant to HSC Section 25501, responsible to implement the CalARP Program. *See also (uu1) "Participating Agencies".*
(*yyy)(1) "Certified Unified Program Agency" (CUPA)" means a UPA certified by the CalEPA to implement the Unified Program.*

(yyy)(2) "Unified Program" means the State of California program for Hazardous Materials Management, with the CalARP program being one of 6 elements in the Unified Program.
(bbbb) "Worst-case release" means the release of the largest quantity of a regulated substance from a vessel or process line failure that results in the greatest distance to an endpoint defined in Section 5080.2(a) of this chapter.
(bbbb)(1) "Worst-case HF-release" means the release of the largest quantity Hydrogen Fluoride (HF) from a vessel or process line failure that results in the greatest distance to an endpoint defined in Section 5080.2(a) of this chapter. Applicable only to HF-Refineries.

[CA-2.02]: §5070.4 – RMP Offsite Consequences Analyses

§5070.4(a)(2)(C): As part of the RMP for HF-Refineries, a Compre-hensive Offsite Consequences Analyses shall be developed for HF-releases in conjunction with SCAQMD and US EPA, including the worst-case HF-release scenario. Applicable only to HF-Refineries.

§5070.4(a)(2)(D): The §5070.4(a)(2)(C) Comprehensive Offsite Consequences Analyses shall include plans for mitigating and minimizing: [i] Short-term Health and Safety Impacts to the Public-at-large and the environment around an HF-Refinery from HF-releases; and [ii] Long-term Health Impacts to humans due to HF-exposure from HF-releases. Applicable only to HF-Refineries.

[CA-2.03]: §5070.2 - RMP Review Process

The RMP review process shall include:

[5070.2](a1) RMP Consultation and review*, for all except HF-Refinery Owners or Operators:* The RMP shall be certified complete by a qualified person and the stationary source owner or operator and shall be submitted to the UPA. Completeness shall be determined in accordance with Sections 5070.3 through 5070.10. The stationary source shall work closely with the UPA to determine that the RMP contains an appropriate level of detail.
[5070.2](a2.1) Part 1: RMP Consultation and review for HF-Refinery Owners or Operators. The UPA Participating Agencies for this section shall be the SCAQMD and the US EPA. The RMP shall *include proper adjudication of the worst-case HF-release scenario.* The *HF-Refinery, as a* Stationary source Operator, shall work closely with the *UPA Participating Agencies* to ensure the HF-Refinery RMP *is Comprehensive and* contains an appropriate level of detail*. After HF-Refinery RMP completion,* the RMP shall become a *'Certified Complete HF-Refinery RMP [CC-RMP], to the best of the HF-Refinery Operator knowledge'*, by a qualified person and the

Stationary Source Owner or Operator. The *CC-RMP* shall then be submitted to *UPA Participating Agencies for formal concurrence, with UPA Participating Agencies CC-RMP revisions allowed.*
[5070.2](a2.2) Part 2: RMP consultation and review process for

HF-Refinery Owners or Operators: After the HF-Refinery Owner or Operator submits their CC-RMP to the UPA Participating Agencies; the UPA Participating Agencies shall allow at least a 60-day period for Public Review, to gather Public Comments on the CC-RMP.
[5070.2](a2.3) Part 3: RMP consultation and review process for HF-Refinery Owners or Operators: At the conclusion of the Public
Review and Public Comment period, the UPA Participating Agencies shall consider and document all CC-RMP Public Comments received, and shall develop an Agency-CC-RMP. This Agency-CC-RMP shall then be certified by the UPA Participating Agencies as being: [i] complete, [ii] comprehensive, and [iii] in accordance with CalARP § 5070.3 through CalARP § 5070.10, *to the best of the UPA Participating Agency knowledge. This Agency-CC-RMP shall then be submitted to the UPA/CUPA to allow follow-on efforts to proceed as given in the remainder of Section 5070.2, starting at [5070.2](b).*

T-2 Response:

No action was taken in response to this comment. The comments provided were outside of the scope of this rulemaking.

T-3 Comment:

[Section CA-3] Proposed CCR § 5050.6(b) changes

[CA-3.01]: As noted above in **[CA-1.04]**, the CalEPA recently issued a 22-page ISOR ('Initial Statement of Reasons') for proposed amendments to the CalARP program ***{CA-Doc-01}***, as part of a Court Settlement of two pending actions by the Western States Petroleum Association ('WESPA') against the CalEPA and COSHSB. As part of this Court Settlement, CalEPA proposed numerous changes to CalARP governing documents, as given in ***{CA-Doc-04}***.

[CA-3.02]: The ***{CA-Doc-04}*** defines a "Qualified Operator" as a person who is 'Qualified' **to do** things, after suitable training and demonstrations. In contrast, every "Qualified Person", or person occupying a "Qualified Position", are 'Qualified' only to **attest to** things. They are 'Qualified' **to talk**, instead of to do; and furthermore, they each must **attest to** the **exact same things**.

[CA-3.03]: CalARP § 5050.3(hhh) and § 5050.3(iii) requires every 'Qualified person' and persons in 'Qualified Positions' to attest to:

(1) the validity and appropriateness of the Process Hazard Analyses (PHA) performed pursuant to Section 5100.2;

(2) the completeness of a Risk Management Plan; and

(3) the relationship between the corrective steps taken by the Owner or Operator following the PHAs and those hazards which were identified in the analyses.

[CA-3.04]: The above **[CA-3.03]** makes § 5050.6(b) 'CalARP Program Management System', important. Presently it says: "The Owner or Operator shall assign a Qualified Person or Position that has the overall responsibility for the development, implementation, and integration of the Risk Management Program elements."

[CA-3.05]: Citizen claims the above present-day § 5050.6(b), given in **[CA-3.04]**, is too much work for one person. Instead, § 5050.6(b) should require a whole Team perform that work, as follows: 5050.6(b): "The Owner or Operator shall *constitute together a standing and ongoing Risk Management Program Team ('RMPTeam') consisting of Qualified Persons or Positions* that has the overall responsibility for these Risk Management Program *(RMP)* elements: *(a)* RMP Development *or Modification (RMP-D)*, *(b)* RMP Implementation *or Change in Implementation (RMP-M)*, and *(c)* RMP Integration *or Change in Integration (RMP-I)*."

5050.6(b)(1): Separate sub-teams shall be assigned for the RMP-D, RMP-M, and RMP-I elements of the overall RMP. Each RMP-D, RMP-M, and RMP-I sub-team shall include at least one Employee Representative.

5050.6(b)(3): To ensure viewpoint diversity, no Qualified Person or Position shall simultaneously serve on more than one sub-team. 5050.6(b)(4): The RMP-Team shall also be tasked to review: (1) the validity and appropriateness of Process Hazard Analyses (PHA) performed pursuant to Section 5100.2; (2) the completeness of any related Risk Management Plan; and (3) the relationship between the corrective steps taken by the Owner or Operator following the PHAs and those hazards which were identified in the PHA; with the authority to make changes to ensure the above (1)-(3) are proper. 5050.6(b)(5): All final RMP-Team actions, recommendations, and delivered products of the RMP-Team shall be done by RMP-Team unanimous consensus, so that ***every*** *RMP-Team member can attest that they are appropriate, to the best of the RMP-Team knowledge.*

[CA-3.06]: The above *5050.6(b)(4)* provide 'checks and balances' for PHA and Risk Management Plans, and to capture attestation errors.

T-3 Response:

No action was taken in response to this comment. The comments provided were outside of the scope of this rulemaking.

T-4 Comment: Employee Participation

[Section CA-4] CalEPA CCR Modification Concerns – Part I

[CA-4.01]: The prior Employee Participation CalARP § 5110.13(a) had 3 sub-paragraphs: § 5110.13(a)(1) - § 5110.13(a)(3), while the new proposed CalARP § 5110.13(a) adds in § 5110.13(a)(4): "With respect to employee participation in Accidental Release Prevention element activities required by this Article, the Owner or Operator will allow for "effective participation" by employees… including the Employee Representative… Nothing in this subsection shall be construed to require an Owner or Operator to accept recommendations or findings of Employee Representatives." Citizen claims herein that a new § 5110.13(a)(5) is also needed.

[CA-4.02]: Proposed new § 5110.13(a)(5): *"If an Owner or Operator does NOT accept the recommendations or findings of Employee Representatives, both the Owner or Operator and the Employee Representatives shall prepare and submit separate Formal Variances to the Permitting Authority, with appropriate background information; for concurrence on either the Owner or Operator Position or the Employee Representatives Position; or for the Permitting Authority to develop its own Final Position."*

T-4 Response:

No action was taken in response to this comment. CalEPA disagrees that additional requirements are needed to implement the provisions in 19 CCR 5110.13.

T-5 Comment: Major Change

[Section CA-5] CalEPA CCR Modification Concerns – Part II

[CA-5.01]: The new CalARP § 5050.3(hh), 1st paragraph, defines:

(1) Introduction of a 'New Process' as a "Major Change"; **(2)** Introduction of 'New Process Equipment' (excluding 'replacement-in-kind') as a "Major Change"; **(3)** Any 'Operational Change outside of established Safe Operating

Limits' as a "Major Change", if due to any of these (3a)-(3d) factors : **(3a)** Introduction of a 'New Regulated Substance', **(3b)** Any alteration in a 'Process', **(3c)** Any alteration in 'Process Equipment', **(3d)** Any alteration in 'Process Chemistry'.

[CA-5.02]: The **[CA-5.01]-(1)** - **[CA-5.01]-(2)** are unambiguous, but the **(3a)-(3d)** changes in **[CA-5.01]-(3a)** through **[CA-5.01]-(3d)** might not immediately give an 'Operational Change outside of established Safe Operating Limits'; having instead **delayed effects**. What initially was not a Major Change can evolve into being one. Citizen claims new CalARP provisions are needed for this situation.

[CA-5.03]: Part of the new CalARP § 5050.3(hh), 2nd paragraph, is inconsistent with **[TCA-5.01]-[CA-5.02]**, as the 2nd paragraph allows some "Introduction of 'New Process Equipment'" to no longer be a "Major Change". That 2nd paragraph portion should be removed.

[CA-5.04]: If the inconsistency highlighted in **[CA-5.03]** is removed, the revised new § 5050.3(hh) 2nd paragraph would read: "For the purposes of Article 7 (program 4), an alteration in process or process equipment must result in an Operational Change Outside of Established Safe Operating Limits to be considered a Major Change." Comparing that to the new § 5050.3(hh) 1st paragraph text: " 'Major Change' means .. any alteration in a process, process equipment, or process chemistry that results in any Operational Change Outside of Established Safe Operating Limits," showing both paragraphs are now equivalent, so the 2st paragraph becomes redundant, allowing the entire 2st paragraph to be removed.

[CA-5.05]: If the inconsistency highlighted in [CA-5.03] had been allowed to stand, then 'Introduction of New Process Equipment' would always be a Major Change only for the smaller **[CA-1.03]** CalARP categories, CalARP-Program-1 through CalARP-Program3; while exempting California Refineries, as CalARP-Program-4 Operators, from automatically having 'Introduction of New Process Equipment' be a "Major Change". Such a new CalARP § 5050.3(hh) 2 st paragraph would then intentionally and obscurely carve out a special exemption for California Refineries that Citizen claims goes against the entire CalARP program. Removing such a special exemption for California Refineries further supports why the proposed new CalARP § 5050.3(hh) entire 2st paragraph should be deleted, which also removes the potential inconsistency highlighted above in **[CA-5.03].**

[CA-5.06]: The present-day CalARP § 5050.3(hh) also has all the **(3b)-(3d)** changes listed in **[CA-5.01]** as being "Major Changes", if they "Introduces a New

Hazard, or Increases an Existing Hazard". In contrast, the proposed new CalARP § 5050.3(hh) has all the **(3b)- (3d)** changes as being "Major Changes", only if it results in an 'Operational Change Outside of Established Safe Operating Limits'. These are two very different metrics, but they are not inconsistent with each other. Both be accommodated within new CalARP § 5050.3(hh) text, by requiring that the above **(3b)-(3d)** changes need to be supported by a Process Hazard Analysis (PHA) showing those changes do not introduce New Hazards or Increase an Existing Hazard; in order to retain their status as not being a Major Change.

[CA-5.07]: The proposed final § 5050.3(hh) would then read: (hh) "Major Change means: (1) introduction of a new process, or (2) introduction of new process equipment, or (3) introduction of a new regulated substance that results in any Operational Change Outside of Established Safe Operating Limits; or (4) any alteration in a process, process equipment, or process *chemistry that is **not** supported by a Process Hazard Analyses (PHA) demonstrating that the alteration in a process, process equipment, or process chemistry does not introduce a New Hazard, or increase an Existing Hazard; or (5)* any alteration in a process, process equipment, or process chemistry that results in any Operational Change Outside of Established Safe Operating Limits; *or (6) any combination of the above (3)-(5), that evolves into being or contributing to an* Operational Change Outside of Established Safe Operating Limits.

T-5 Response:

No action was taken in response to this comment. The proposed amendments to 19 CCR 5050.3(hh) to the definition of major change are intended to clarify the scope of changes that trigger a "major change". The proposed amendments to the definition of "major change" are necessary in order to clarify the types of triggers which constitute a major change within a process, which includes making clear what constitutes a major change as it relates to new process equipment. CalEPA believes that the amendments allow for a more quantifiable and enforceable provision.

COMMENTER U

Kerry Guerin & Dexter Lim – Communities for a Better Environment

June 30, 2025

U-1 Comment: Employee Representative

CBE opposes the changed definition of "employee representative" and all the effects that flow from removing the guarantee that this critical role will be filled by a union member where possible. The change from "a union representative, where a union exists, or an employee designated representative in the absence of a union that is on-site and qualified for the task" to simply a worker that is "on-site and qualified for the task"[31] strips away critical provisions that ensure the benefits and agency of unionized work. The current amendment serves as a bulwark against installation of employee representatives who may satisfy criteria for "on-site" and "qualified," but are beholden to the interests and scrutiny of management rather than the collective workforce. This settled-for excision of union representation contravenes the union inclusion and outreach undertaken for the 2017 rules. Empowering workers to choose their most qualified and accountable members is a key measure for stopping preventable disasters like the 2012 Chevron fire and mistreatment by management, but this new amendment would override this. These are of particular concern in consideration of the WSPA's specific complaints against union workers.[32] In sum, these heavy-handed efforts to suppress union representation and worker agency demonstrate how asymmetrical the changes to the substantive protections of PSM rules become when drafted by a process as exclusionary of other stakeholders as these proposed amendments were. USW is the most reliably accountable and qualified entity to protect and advance the safety of refinery workers, which furthermore makes surrounding communities, environments and all workers, union and non-union alike, safer by mitigating the risks of accidental releases.

U-1 Response:

No action was taken in response to this comment. CalEPA disagrees with this comment. CalEPA believes this clarification is necessary in order to make clear any such employees shall be on-site and qualified for the task for which they are selected and shall be subject to all provisions of 5110.13(a).

Amendments to 19 CCR 5050.3(t) define "employee representative" as a person who is "on-site and qualified for the task" and either selected by a union or, where there is no union, selected by the employees. This clarifies that the definition is focused on the requirement to have a person "on-site and

qualified". Employees that are on-site and qualified are often in the best position to understand and explain the details of day-to-day operations, and to know and understand how procedures are carried out in practice.

U-2 Comment: 5110.13(a)(4)

Second, CalEPA's proposed addition of subdivision 5110.13(a)(4) would further encode WSPA's efforts to undermine workers' "fundamental right to seek better working conditions"[40] and to have worker input factored into CalARP elements. In the ISOR, CalEPA states that "that nothing in the subdivision shall be construed to require owners and operators to accept recommendations or findings of employee representatives."[41] This demonstrates how the proposed amendments would turn employee participation into a checkbox, rather than a core component of PSM, and primes the very conditions of unenforceable worker recommendations and unaccountable management that caused the 2012 fire. Furthermore, the impact of these changes would be exacerbated by operating in concert with how the proposed re-definition of employee representative would damage the integrity and representative power of that critical position.

U-2 Response:

No action was taken in response to this comment. CalEPA disagrees with this comment. CalEPA cannot prescribe owners and operators to accept any and all recommendations made by employees. Owners and operators must work collectively with employees and employee representatives as prescribed in 19 CCR 5110.13.

U-3 Comment: 5050.3(y)

First, CBE opposes the proposed change to require minimum quantities of highly hazardous materials before the regulations apply. Current rules limit the list of "highly hazardous material" to include regulated substances under Section mean a "flammable liquid, flammable gas, toxic or reactive substance," each of which are further defined in respective sections of the California Code of Regulation.[42] The coverage of this term and the lack of a quantity-based threshold in the 2017 rules were intentional measures, as both a method to consolidate varied terms throughout the CalARP and to distinguish key pollutants based on the most hazardous chemicals that refinery workers are exposed to each day.[43]

WSPA's and CalEPA's proposed amendments,[44] however, would adopt the generalized Hazardous Materials Business Plan[45] ("HMBP") as the standard for CalARP HHM. The proposed amendments' most impactful change is setting thresholds to quantify "highly hazardous materials" by one of two metrics: (1) a

minimum quantity if it is listed for a substance under Title 19 of the California Code of Regulations,[46] or in the alternative,[47] (2) 55 gallons for liquid materials, 500 pounds for solid materials, and 200 cubic feet for compressed gas. Neither of these standards were designed for the specific context of refinery work, and the HMBP in particular is derived from a high level of generality.[48] This starkly contrasts with the 2017 PSM rules, which were carefully and democratically calibrated with the expertise of USW and refinery workers who best knew what the safety regulations needed to meet the demands and hazards of refinery work. During the 2017 rulemaking, a minimum quantity threshold was rejected precisely because it would be arbitrary and dangerous to implement in light of the accurate assessment of petroleum refineries as "inherently dangerous facilities."[49] Adopting these standards would hamstring CalEPA's ability to act to protect workers or regulate dangerous materials by obfuscating them behind grossly general, uninformed quotas.

U-3 Response:

No action was taken in response to this comment. The concern that limiting the definition of "highly hazardous materials" to only those materials stored at reportable quantities per HSC section 25507 or threshold quantities under CalARP (Title 19) may exclude materials that, though under threshold, still present significant process safety risks in refinery operations is noted, however, the existing regulatory framework already accounts for such scenarios.

Any materials contained within a vessel are considered part of the process when they are located in such proximity to a process whereby an incident in one vessel could affect any other vessel, regardless of whether the material contents of the individual vessels meets a reportable quantity per HSC section 25507 or threshold quantities under 19 CCR for CalARP.

Accordingly, a refinery with materials that are connected to or could contribute to a release of a highly hazardous material in a process, would be required to consider those materials part of the process and therefore subject to applicable requirements. Due to the interconnectedness of refinery processes, CalEPA does not believe that the proposed amendment to the definition of "highly hazardous materials" creates new significant process safety risks.

U-4 Comment: Hierarchy of Hazard Control Analysis

CBE disagrees with CalEPA's claim that the changes to the Hazard Control Analysis ("HCA") are non-substantive.[50] The HCA is the key framework that compels regular proactive efforts to research and develop evolving safety measures. It drives innovation in process safety through the process of gathering,

analyzing, ranking, and publicizing potential options for improved measures. The proposed amendments, however, fundamentally change the purpose and efficacy of this mechanism.

The amendment involves a key textual change to the standard for gathering information on refinery health measures. The complexity of how worksite safety measures evolve and may be implemented—as well as the mortal consequences of failure—demand nothing less than a comprehensive review. Yet the proposed amendment undercuts this essential analysis by eliminating the list of required sources to consider.[51] The latitude in this change is far from the CalEPA's framing of non-substantive, as it allows for a more narrow, less holistic, and more subjectively influenced HCA procedure. The proposed rules facilitate industry-determined outcomes over worker-determined outcomes by permitting hand-picking the sources of input and corresponding measures to consider at the outset of HCA. The empirical costs of shortcomings in new hazard rules far outweigh any merits of WSPA's complaints[52] or this amendment's "solution" that, in the process of updating and assessing critical HCA plans, safety should be subordinate to administrative convenience. The amendment serves to water down this process and the vital safety measures it was designed to help produce.

U-4 Response:

No action was taken in response to this comment. CalEPA disagrees with this comment. The proposed amendments to the HCA requirements are performance-based standards that are intended to allow refineries flexibility in determining how to comply appropriately in particular circumstances. Refineries are still required pursuant to section 5110.16(e)(3) to: "Identify, analyze, and document all inherent safety measures and safeguards (or where appropriate, combinations of measures and safeguards) in an iterative manner to reduce each hazard to the greatest extent feasible. Identify, analyze, and document relevant, publicly available information on inherent safety measures and safeguards." The amendments do not lessen the scope of publicly available information on inherent safety measures and safeguards that must be identified, analyzed, and documented.

CalEPA recommends that petroleum refineries continue to identify, analyze, and document information on inherent safety measures and safeguards that have been achieved in practice by for the petroleum refining industry and related industrial sectors; or required or recommended for the petroleum refining industry, and related industrial sectors, by a federal or state agency, or local California agency, in a regulation or report. \

U-5 Comment:

The current PSM regulations provide critical worker protection, and the exclusion of labor groups and other community involvement from these amendments is distinctly concerning in light of USW's status as an intervenor in the underlying lawsuit.[53] The arguments for standing and concerns filed in the motion for intervenor status, including the importance of the regulations to the union's interests, remain salient in the present moment.

USW identified[54] key health and safety key provisions in the 2017 PSM rules, including:

- Required review of equipment for degradation or damage. This provision serves as a direct response to the 2012 Chevron disaster, which was caused by a failure to inspect worn-down piping.
- The HCA for implementing new safety measures and conducting cost-benefit and comparative analysis of new measures.
- Empowering workers to take on-the-ground preventative action with an emergency stop work authority ("SWA"), allowing workers to halt operations upon discovering hazardous conditions pursuant to the process safety rules.[55]

As discussed in section II, these provisions are among those that WSPA's amendments seek to diminish. Doing so further compromises the substantive ability of workers to take proactive measures under SWA. Unsurprisingly, when approached to sign off on the settlement agreement and its amendments in September 2024, USW refused.[56]

U-5 Response:

No action was taken in response to this comment. The comments provided were outside of the scope of this rulemaking.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC HEARING ON MAY 29, 2025

On May 29, 2025, CalEPA conducted a public hearing in accordance with Government Code section 11346.8. Below is a summary of individuals and organizations that provided oral comments to CalEPA during the public hearing. As required by the Administrative Procedure Act, CalEPA considered all relevant matter it received, including public comments, and hereby provides responses to all public comments received. (Gov. Code §§ 11346.8, subd. (a), 11346.9, and 11340.85 subds. (a) and (b)(4).)

V	Steven Goldsmith, Torrance Refinery Action Alliance
W	Robert Travis, Member of the Public, Chevron Richmond Refinery Employee
X	Shoshana Wechsler, The Sunflower Alliance
Y	Elvira Figueroa, United Steelworkers
Z	Kerry Guerin, Communities for a Better Environment
AA	Tracy Scott, Member of the Public
AB	Heidi Taylor, Member of the Public, Healthy Martinez Co-Founder
AC	Josh Sonnenfeld, Blue Green Alliance
AD	Bk. White, City of Richmond California
AE	Norman Rogers, USW Local 675
AF	Aditi Varshneya, Environmental Justice Alliance
AG	Don Holmstron, Member of the Public
AH	Alicia Rivera, Communities for a Better California
AI	Jerome Serrano, United Steelworkers

Summary of and Response of Comments Received during Public Hearing on May 29, 2025

COMMENTER V

Steven Goldsmith – Torrance Refinery Action Alliance

May 29, 2025

V-1 Comment: HCA and Hydrofluoric Acid (HF)

Thank you for the opportunity to speak our experience with the HCA. I'm with the Torrance Refinery Action Alliance, and we're particularly concerned about a regulated substance highly dangerous hydrofluoric acid used at 2 refineries, Torrance and Wilmington. They did an HCA. In October 2022, and we've been trying to get it public in the process.

We had to file Public Regulators Act and the city of Los Angeles Fire Department says we never received it. We just made sure they did it. How ridiculous! How could they know that? And the other is a Torrance refinery which said that the public's right to know is outweighed by the refinery's privacy and financial interests. We finally got a through the Public Records Act, but it was completely redacted. All the answers were in black were blacked out, the questions were there. So this is not a process that, and a purpose is to for them to assess alternatives vastly safer alternatives of which there are in the industry. So either they did not fill it out properly or they're hiding from the public the fact that there are available alternatives. So this regulation needs to be strengthened that requires full disclosure by the facilities using dangerous chemicals and regulated substances. Otherwise there's no point to it. So we think that it should be made very explicit that existing use of regulated substances must reveal whether there are alternatives, what their cost would be, how big, and these should not be trade secrets.

They can be general numbers and that kind of thing, but mostly what they're trying to hide is that they don't want to convert from this exceptionally dangerous liability that they impose upon the community for death. HF, can, if released, as what almost happened in 2,000 15 from the Torrance refinery produces a can produce a low hanging cloud that kills within minutes. So this is endangering the entire South Bay and entire endangering the Ilwu Dispatch Hall is only 5,000 feet from the Valero Hf. Refinery. Think what that would do to a ports at 500 krayman, or in the Torrance refinery, the schools, the hospitals that

are nearby. And the workforce at places like the Spacex and the La Air Force Base. Thank you. And I'll submit some more in writing, or we will, anyway.

V-1 Response:

No action was taken in response to this comment. The comments provided were outside of the scope of this rulemaking.

V-2 Comment: HF Comment

Yeah, I just wanted to add to my previous comments. One of the people spoke about loopholes, and again on the HCA report it actually should be strengthened. We've all been talking about. Don't weaken. It actually should be strengthened. So there's a loophole that they have used, and CalARP is very aware of it. They said they were going to work to try to, and the governor's person in the meeting said they were going to work to try to strengthen it. So it says that if you have existing facility with a dangerous chemical, you have to do this report every 5 years on alternatives.

And then the second sentence says, if you have a new facility, you have to do a report on, if it has dangerous chemicals, and then it says, and these shall be done in 180 days on the company's website.

So it's been interpreted by somebody, either Cal or Pier, or whatever this loophole that the revealing to the public is only applies to new facilities. But if it's the 1st time they did a report which is in October 2022 after the 5 years after the implementation of that regulation, then they should have to do it for all facilities.

As I mentioned, they redact it completely, which what is the point of it? So they should be strengthened to require that all substances, all facilities using dangerous regulated substances, should have to make a report to the public about the alternatives safer alternatives that are available, which is at the highest second, highest level. The highest level is to eliminate the chemical. The next is to substitute it with a vastly safer, and that's what is. There are 6 alternatives to hydrofluoric acid, all of them vastly safer. Sulfuric acid is more dangerous. It's as not as dangerous, but it is also dangerous to the employees, and we would urge them to go to some of the non acidic.

This is an alkylation process used for making high octane gasoline. So HF, it's only used at 2 refineries, and we should get rid of those at those 2 refineries, because it's the only chemical. I believe I'm not an expert that can cause mass casualties different chemical. That was in Bhopal. But the same kind of mass casualties are

possible with this chemical. And of course it's surrounded by Alicia Rivera's community and probably close to a million people living nearby, and and of course visiting the South Bay of Los Angeles. So we have to get rid of Hf. And this would be helpful if they revealed the alternatives.

Thank you.

V-2 Response:

No action was taken in response to this comment. The comments provided were outside of the scope of this rulemaking.

COMMENTER W

Robert Travis – Member of the Public, Chevron Richmond Refinery Employee

May 29, 2025

W-1 Comment: Employee Participation

I disagree with the proposed changes for employee participation because it severely limits the ability of the Union to select the correct individuals. to participate in the teams and elements. It speaks to effective participation, but directly limits the employees, voices and recommendations or findings.

It could remove the ability for the Union to select employees, and it gives that discretion to the employer participation into employee participation plan which the Union is consulted on and not listened to. I personally believe that the changes do violate the National Labor relations act because some of the changes required within the Arp elements do, in fact, change our terms and conditions of employment. The proposed changes to the employee participation section have basically turned the employee involvement into a sign off that an employee was in the room, and the voices of the most knowledgeable individuals, those with direct hands-on experience can easily be ignored.

W-1 Response:

No action was taken in response to this comment. As stated in the ISOR, the changes clarify employee participation by ensuring that on-site and qualified employee representatives are involved in safety activities. The amendments do no seek to alter employee participation rights or reduce the requirements for effective involvement.

W-2 Comment: Major Change

And secondarily, regarding the changes to the definition of major change. I believe this is a complete step back to to only allow a major change to be indicated due to a safe operating limit change as as operators. We, we work with different equipment and materials that may not change the safe operating limit and to redefine it as to remove the ability to not make it a major change is detrimental to our daily work, and we'll allow will be more dangerous for as employees.

W-2 Response:

No action was taken in response to this comment. The proposed amendments to 19 CCR 5050.3(hh) to the definition of major change are intended to clarify the scope of changes that trigger a "major change". CalEPA believes that the amendments to 19 CCR 5050.3(hh) allows for a more quantifiable and enforceable provision. The regulations currently require facilities to develop and maintain process safety information, operating procedures, and hazard analyses that identify parameters for safe operation (19 CCR 5110.3, 5110.6, and 5110.4). As such, the proposed amendments focus on information facilities are already obligated to develop.

COMMENTER X

Shoshana Wechsler – The Sunflower Alliance

May 29, 2025

X-1 Comment: General Opposition

Commenter expressed general opposition to the proposed amendments, requested rejection of the proposed amendments, and provided support for United Steelworkers, Blue-green alliance and the Coalition of Environmental Justice organizations.

X-1 Response:

No action was taken in response to this comment. The commentor expressed general opposition to the rulemaking and requested that all proposed amendments be rejected. CalEPA disagrees with the comment to reject all amendments. The purpose and anticipated benefits of the proposed amendments are described in detail in the Informative Digest and ISOR. As the commentor did not provide specific recommendations, CalEPA refers the commentor to the reasons articulated for the proposed amendments in the Informative Digest and ISOR.

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COMMENTER Y

Elvira Figueroa – United Steelworkers

May 29, 2025

Y-1 Comment: Employee Participation and Opposition to Amendments

Commenter expressed general opposition to the amendments pertaining to Employee Participation.

Y-1 Response:

No action was taken in response to this comment. The commentor expressed general opposition to the rulemaking, and in particular, employee participation provisions. CalEPA disagrees with the comments regarding employee participation. The purpose and anticipated benefits of the proposed amendments are described in detail in the Informative Digest and ISOR. As the commentor did not provide specific recommendations, CalEPA refers the commentor to the reasons articulated for the proposed amendments in the Informative Digest and ISOR.

COMMENTER Z

Kerry Guerin – Communities for a Better Environment

May 29, 2025

Z-1 Comment: Opposition, Highly Hazardous Material Definition, Employee Participation

WSPA 1st wants to erode the definition of a highly hazardous material by setting a minimum quantity for such materials, but refinery worker expertise, and the State rejected that position in the 2017 rule given the lethality and reactivity of many of the compounds in oil refining 99 pounds of a substance cannot be treated as less hazardous than 100 pounds. Their waterfall changes to the major change definition are similarly absurd.

Another problematic industry edit is the change of terms in the inherently safer system section. The Reg list components of a hazardous controlled analysis, and the changes here would remove the mandatory shall, and replace it with a permissive, may, with respect to what must or may be included in such an analysis.

Perhaps the most tragic change in the proposed rules is the destruction of those protections subjecting employee participation to union contract negotiations. This is a pure giveaway to industry ahead of future collective bargaining rounds.

I'll also note that in 2016 the State hired ran to study the effects on gas prices, and Rand found quite conclusively that the PSM. Rigs would keep gas prices down by protecting supply. So for all these reasons, we urge that CalEPA reject the changes proposed in the backroom deal, making with industry. Thank you.

Z-1 Response:

No action was taken in response to this comment. The comment does not pertain to CalEPA's rulemaking. Additionally, the commenter states the proposal would involve "the destruction of those protections subjecting employee participation to union contract negotiations." However, the CalARP regulations and the proposed amendments thereto do not govern union contract negotiations; the purpose of the CalARP program and its regulations is to prevent the accidental releases of regulated substances that can cause serious harm to the public and the environment, and to minimize the damage if releases do occur.

Contrary to the comment, CalEPA has not proposed to change the language from "shall" to "may" as it pertains to the proposed amendments in 19 CCR 5110.16(e)(3).

COMMENTER AA

Tracy Scott – Member of the Public

May 29, 2025

AA-1 Comment: Highly Hazardous Materials Definition, Major Change Definition

Current regulations were a product of a public consensus and technical rigor. And 2,000 2,017 regulations were the result of years of collaboration through dinner agency, working group on refinery safety.

They reflect best practices and say industrial safety, including mandatory hierarchy of controls, rigorous hazardous analysis and prevention programs empowered worker participation and transparent accountability.

Any revision must match the technical participatory, and ethical standards of the original rulemaking, not be driven by industry legal pressure. Closed door settlement with WSPA is an inappropriate basis for public safety policy. The WSPA settlement was negotiated without the inclusion of the frontline refinery workers, unions, public health advocates and community representatives. This undermines both the democratic governance and the scientific integrity rulemaking process.

The current proposal recycles language previously rejected during the original regulatory process, which included all of the stakeholders. These are changes. These changes are not clarifications. They are rollbacks.

Amendments weaken the regulatory or regulation in 4 key areas.

A redefinition of highly hazardous materials loosening this definition will exempt dangerous substances from oversight, increasing the likelihood of accidents involving flammable toxic and reactive materials.

B narrowing the definition of major change. This change reduces the number of modifications subject to rigorous safety reviews. Even seemingly small equipment or process changes can cause cascading failure in high hazard environments. Moving away from hazardous elimination the proposed amendments de-emphasize the proven principles of eliminating hazards at the source. Instead of favoring mitigation ENG alarms and PPE, which is less effective and reactive in nature.

Reducing worker authority and safety decisions. The proposal reduces top-down decision making undermining worker empowerment. It was worker observations that could have prevented the chevron fire ignoring their input again would be a historic and tragic era.

AA-1 Response:

No action was taken in response to this comment. CalEPA disagrees that the proposed amendments to the definition of highly hazardous materials will exempt dangerous substances from oversight, increasing the likelihood of accidents involving flammable toxic and reactive materials.

"Process" is defined in 19 CCR 5050.3(yy) as ""Process" for purposes of Article 7, means petroleum refining activities involving a highly hazardous material, including use, storage, manufacturing, handling, piping, or onsite movement. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that an incident in one vessel could affect any other vessel, shall be considered a single process…"

"Vessel" is defined in 19 CCR 5050.3(aaaa) as "Vessel" means any reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose, or other container."

Therefore, any materials contained within a vessel are considered part of the process when they are located in such proximity to a process whereby an incident in one vessel could affect any other vessel, regardless of whether the material contents of the individual vessels meet a reportable quantity per HSC section 25507 or threshold quantities under 19 CCR for CalARP.

Accordingly, a refinery with small amounts of materials that are connected to or could contribute to a release of a highly hazardous material in a process, would be required to consider those materials part of the process and therefore subject to applicable requirements. Due to the interconnectedness of refinery processes, CalEPA does not believe that the proposed amendment to the definition of "highly hazardous materials" creates new significant process safety risks.

The proposed amendments to 19 CCR 5050.3(hh) to the definition of major change are intended to clarify the scope of changes that trigger a "major change". CalEPA believes that the amendments to 19 CCR 5050.3(hh)(4) (now 19 CCR 5050.3(hh)(2)(D)) allows for a more quantifiable and enforceable provision.

CalEPA disagrees that the proposed amendments undermine worker empowerment.

COMMENTER AB

Heidi Taylor – Member of the Public, Healthy Martinez Co-Founder

May 29, 2025

AB-1 Comment: General Opposition

The commenter states general opposition to the proposed changes.

AB-1 Response:

No action was taken in response to this comment. The commentor expressed general opposition to the rulemaking. CalEPA disagrees with the comments. The purpose and anticipated benefits of the proposed amendments are described in detail in the Informative Digest and ISOR. As the commentor did not provide specific recommendations, CalEPA refers the commentor to the reasons articulated for the proposed amendments in the Informative Digest and ISOR.

COMMENTER AC

Josh Sonnenfeld – Blue Green Alliance

May 29, 2025

AC-1 Comment: General Opposition

Hi, there! Thank you for the opportunity to provide comment. My name is Josh Sonnenfeld from Blue Green Alliance. I'm the senior California strategist here, and I'm also a resident of Contra Costa County, and was involved in the initial rulemaking process for establishing process safety management, and that was approved in 2017.

You know these process safety management standards. They reflect years of collective advocacy from worker organizations, community groups, government, public health organizations, you know, following the 2,012 chevron Richmond fire, these changes are very concerning with enormous impacts and serious consequences, and at a time when we're seeing major incidents in numerous California refineries as speakers are referencing and also a major statewide fuel supply challenge. Right now we should be doing everything in our power to strengthen refinery, safety regulations not weaken them as these proposed amendments would do. These, you know, as spoken by Tracy Scott earlier from the United Steelworkers. These proposed changes are not clarification, but would really roll back refinery safety here in California.

So I want to join with the many other folks on this call, and requesting the CalEPA not to move forward in implementing the amendments as currently proposed.

I'd also like to request that the CalEPA align their process with the Cal OSHA Standards board process, including extending the public comment period even further than has already been extended. I'm having joint hearing with Cal OSHA, with technical feedback from experts which has been lacking through this entire process.

And engage the key stakeholders who really have the expertise of working in the refineries, dealing directly with safety issues and living in the communities, experiencing the impacts of what happens when refinery safety is not held to the to the standards that are necessary. So thank you for your for the opportunity to provide comments.

AC-1 Response:

No action was taken in response to this comment. CalEPA proposes to amend the Program 4 regulations to provide clarity to the public, the UPAs, and the regulated petroleum refineries for activities addressed under the CalARP program. CalEPA also proposes the changes to address stakeholder concerns about inconsistent application of the regulations. As stated in the ISOR, the proposed rulemaking does not seek to erode existing safety protections. CalEPA refers the commentor to the reasons articulated for the proposed amendments in the Informative Digest and ISOR.

COMMENTER AD

BK White – City of Richmond California

May 29, 2025

AD-1 Comment: General Opposition

Thank you. My name is BK White. I'm the director of policy for Mayor Eduardo Martinez, City of Richmond, California.

The mayor was elected to protect the community and environment of the city of Richmond. Mayor Martinez recognizes the 1st line of defense when it comes to the refinery. Industry is a knowledgeable and well-trained workforce will speak up when needed to ensure not only their safety, but the safety of the surrounding community proposed changes to the PSM language appears to be a threat. To this layer of protection proposed changes would weaken the PSM process.

PSM is a rigorous system approach to safety, and it's designed to analyze process processes, personnel equipment, and chemical changes in these units throughout a series of safeguards and ensure all changes will be well thought out.

Allowing the companies and not the Union to choose who participates in PSM. Process is blatant attempt to silence the workers. It establishes the industry needs. It is established that industry needs oversight.

These changes effectively will allow companies to operate with impunity and make the worksite a less safe facility. There's no proof that Union workers participate. Participation has impeded safety. This appears to be an attempt to expedite work without having to listen to workers. The Union had to drag the industry into participating in PSM. There were never really partners in the process, and it shows with the proposed changes.

Tony Mizaki, former Oca. Leader, and the union that preceded the steelworkers was accredited by Richard Nixon as a primary force behind the enhancement of the Occupational Safety and Health Act of 1970. We were sad to lose Tony in 2002, but at least he did not have to witness the attacks on PSM that we're protesting today.

The steelworkers aren't at the table. You effectively do not have any subject matter experts at the table. Steelworkers made PSM, thank you.

AD-1 Response:

No action was taken in response to this comment. CalEPA disagrees that the proposed amendments to employee participation provisions make the worksite a less safe facility. CalEPA proposes to amend the Program 4 regulations to provide clarity to the public, the UPAs, and the regulated petroleum refineries for activities addressed under the CalARP program. CalEPA also proposes the changes to address stakeholder concerns about inconsistent application of the regulations. As stated in the ISOR, the proposed rulemaking does not seek to erode existing safety protections.

The comment did not appear to include a recommendation specific to the proposed amendments; therefore, no further response is provided.

COMMENTER AE

Norman Rogers – USW Local 675

May 29, 2025

AE-1 Comment: General Opposition and disagreement to Employee Participation Amendments

Thank you, and good morning for the opportunity to speak. I'm Norman Rogers. I'm with USW Local 675, located in Southern California. And I'm going to speak specifically to the employee participation piece. And I'm calling out language that's in the initial statement of reasons. And I quote petroleum refineries and UPAs generally understand that the current definition of employee representative requires that a non-union representative be on site and qualified for the task, whereas and this is the galling part. A union may designate an employee representative without regard for the individual's qualifications or employment connection to the refinery.

Thus Cal EPA proposes amendments to allow for uniformity in application and understanding of the definition of employee representative.

I have to ask, what must Cal EPA think of us to publish a statement that unions would designate someone without the qualifications to share their expertise in a MOC, or, more importantly, to my mind, an incident investigation that a retiree from a refinery with 35 plus years of experience, isn't qualified to assist in an investigation when they may very well be the person who wrote the procedures mentioned in the ISOR.

That's simply baffling, and having engaged in good faith in the 5 year struggle to get the updated PSM Regulations, we would then turn around and undo it by bringing in people who would undermine our safety and potential to earn a living again. It's beyond baffling. We are not here to game the system. There is no benefit for us in that.

The distrust in CalEPA's initial statement of reason speaks to a mindset that is deeply disturbing for those of us. Relying on the agency for help we now find ourselves faced with dropping experience levels in refineries as people with 30, 35, even 40 years of experience are retiring, leaving behind a workforce without that level of exposure to what can happen at a refinery, we find ourselves with companies no longer requiring folks to learn all the jobs on their unit. It had been the case. If a particular unit had 5 job duty stations people had to learn all 5 job

duties, not anymore. And now we find ourselves faced with a change in regulations that equates knowledge and expertise with employment at a specific refinery. Not to make use of the wealth of knowledge of a retiree is wrong for the USW. Not to make use of its health and safety department is wrong to openly state that enlisting knowledge and skill set of former chemical Safety Board members is wrong.

The other move to make a hodgepodge of how employees are chosen that leaves it subject to contract negotiations is also wrong. Whatever Cal EPA may think of us, we are not the enemy. It was not a union that didn't change the thinning pipe that led to 19 people nearly losing their lives. What you think of this is your own affair, but please don't let it get in the way of sensible, necessary, and potentially lifesaving statutes that are already intact. Thank you.

AE-1 Response:

No action was taken in response to this comment. CalEPA disagrees with this comment. Amendments to 19 CCR 5050.3(t) define "employee representative" as a person who is "on-site and qualified for the task" and either selected by a union or, where there is no union, selected by the employees. This clarifies that the definition is focused on the requirement to have a person "on-site and qualified". Employees that are on-site and qualified are often in the best position to understand and explain the details of day-to-day operation, and to know and understand how procedures are carried out in practice.

COMMENTER AF

Aditi Varshneya - Environmental Justice Alliance

May 29, 2025

AF-1 Comment: General Opposition

The commenter states general opposition to the proposed changes.

AF-1 Response:

No action was taken in response to this comment. The commentor expressed general opposition to the rulemaking. CalEPA disagrees with the comment. The purpose and anticipated benefits of the proposed amendments are described in detail in the Informative Digest and ISOR. As the commentor did not provide specific recommendations pertaining to the proposed amendments, CalEPA refers the commentors to the reasons articulated for the proposed amendments in the Informative Digest and ISOR.

COMMENTER AG

Don Holmstron – Member of the Public

May 29, 2025

AG-1 Comment: HCA and Major Change

The Cal EPA ISOR states that the rationale for the proposed revisions is to provide clarity to the public regulators, and the oil industry, however, rather than providing clarity. The proposed amendments undermine the most important provisions in the existing regulation.

The revisions weaken industry, accountability for implementing important safeguards, and create confusion and loopholes for industry that allow for self-regulation rather than risk reduction.

The CSB issued 3 chevron investigation reports with key findings and existing key findings that existing regulations were activity-based lacked accountability for performance did not require effective safeguards for process safety hazards and failed to empower workers who are closest to chemical hazards to effectively participate in incident prevention.

The 2017 CalARP Regs made significant progress. Addressing these issues, while there are many issues to choose from, here are a couple of examples of how these new proposed revisions undermine key incident, prevention advancements.

The revisions to the hierarchy of hazard controls analysis, adding, shall consider and quote in the team's judgment unquote, reduce the former requirement, to quote, eliminate hazards to the greatest extent feasible, using 1st order, inherent safety to permissive language and a mere suggestion risk, reduction is now more industry, self regulation.

The revision of major change. Language is now qualified to changes outside established, safe operating limits. However, it is the company that establishes these safe operating limits. MOCs are performed to address possible previously unidentified hazards that can be present as a result of the change and MOC analysis may identify the need for more.

AG-1 Response:

No action was taken in response to this comment. CalEPA disagrees with this comment. Proposed amendments to 19 CCR 5110.16(f) maintain requirements specifying that the HCA team shall consider all process safety hazards that may be impacted by a particular safety measure or safeguard and shall select those safety measures or safeguards that, in the team's judgment, are most effective at reducing all such process safety hazards. Additionally, as stated in the ISOR, CalEPA believes that the proposed amendments do not lessen the scope of publicly available information on inherent safety measures and safeguards that must be identified, analyzed, and documented.

CalEPA recommends that petroleum refineries continue to identify, analyze, and document information on inherent safety measures and safeguards that have been achieved in practice by the petroleum refining industry and related industrial sectors; or required or recommended for the petroleum refining industry, and related industrial sectors, by a federal or state agency, or local California agency, in a regulation or report

The proposed amendments to 19 CCR 5050.3(hh) to the definition of major change are intended to clarify the scope of changes that trigger a "major change". CalEPA believes that the amendments to 19 CCR 5050.3(hh) allows for a more quantifiable and enforceable provision. The regulations currently require facilities to develop and maintain process safety information, operating procedures, and hazard analyses that identify parameters for safe operation (19 CCR 5110.3, 5110.6, and 5110.4). As such, the proposed amendments focus on information facilities are already obligated to develop.

COMMENTER AH

Alicia Rivera – Communities for a Better California

May 29, 2025

AH-1 Comment: General Opposition and Request to Extend Comment Period
The commenter states general opposition to the proposed changes and requests extension of comment period.

AH-1 Response:

No action was taken in response to this comment. The commentor expressed general opposition to the rulemaking. CalEPA disagrees with the comment. The purpose and anticipated benefits of the proposed amendments are described in detail in the Informative Digest and ISOR. As the commentor did not provide specific recommendations pertaining to the proposed amendments, CalEPA refers the commentors to the reasons articulated for the proposed amendments in the Informative Digest and ISOR.

COMMENTER AI

Jerome Serrano – United Steelworkers

May 29, 2025

AI-1 Comment: General Opposition Request to Include Renewable Fuels

Hello! My name is Jerome Serrano. I'm here on behalf of myself and USW 5 local. I'm currently not in the industry right now due to an injury I received back on November 23rd and in November 2023 in Martinez, California.

I just wanted to make a comment about the amendments that are taking place. If they're going to be amendments that weakens the structure and the safety of the employees and the community, I think that needs to be spoken against currently right now.

The wording in them PSM to cover the refinery as that didn't contain the word renewable fuels, which was we were doing a startup project on and in the process, I got injured.

I'd hope in the future that things these things would be considered to where you have the subject matter experts and input from the community and input mainly from the employees as well on things that consider safety.

We don't want something like this to happen, and I wouldn't want something like this to happen in injury. A life change again to ree to anybody else in the future. Thank you for your time.

AI-1 Response:

No action was taken in response to this comment. The commentor expressed general opposition to the rulemaking. CalEPA disagrees with the comment. The purpose and anticipated benefits of the proposed amendments are described in detail in the Informative Digest and ISOR. As the commentor did not provide specific recommendations pertaining to the proposed amendments, CalEPA refers the commentors to the reasons articulated for the proposed amendments in the Informative Digest and ISOR.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC HEARING ON JUNE 26, 2025

On June 26, 2025, CalEPA conducted a public hearing in accordance with Government Code section 11346.8. Below is a summary of individuals and organizations that provided oral comments to CalEPA during the public hearing. As required by the APA, CalEPA considered all relevant matter it received, including public comments, and hereby provides responses to all public comments received. (Gov. Code §§ 11346.8, subd. (a), 11346.9, and 11340.85 subds. (a) and (b)(4).)

AJ	Dexter Lim, Communities for a Better Environment
AK	Ian Patton, Member of the Public

Summary of and Response of Comments Received during Public Hearing on June 26, 2025

COMMENTER AJ

Dexter Lim – Communities for a Better Environment

June 26, 2025

AJ-1 Comment: General Opposition, Highly Hazardous Materials Minimum Quantities, HCA

Great. Thank you. Good morning, Dexter. Lim. Speaking today on behalf of Communities for a Better Environment, CBE is an environmental justice organization. We work in California communities, including Richmond and Wilmington, where the 2 largest oil refineries in the State are located. CBE is opposing these settled for amendments. They are deregulatory handouts to industry that come at the expense of refinery workers and fence line communities.

CBE is taking this stance in solidarity with United Steelworkers who represent the refinery workers that rely the most on meaningful workplace. Safety refinery workers and the surrounding community are the groups most harmed by industrial deregulation and that is exactly what these proposed amendments do.

First this rulemaking by settlement process excluded all stakeholders beyond the Western States Petroleum Association or WSPA. It was a stark and unaccountable departure from the inclusive process that developed the current PSM rules those brought unions, environmental justice groups, and others to the table. In addition to industry and management. CalEPA is not here to effectuate parochial interests of the oil industry. But that's all that these amendments reflect.

Second, these amendments exclude the expertise of refinery workers and make safety come second to management's convenience, removing a guarantee of union presence in the employee, representative role and removing requirements that make management take employee participation seriously. Both gut the core of the PSM rules.

The amendments would also set an arbitrary and capricious minimum quantity on highly hazardous materials. These minimum quantities are not calibrated for the realities of refinery work, and they neglect basic facts like how multiple chemicals can pose unique risks when they're stored near each other. And I'd remind everyone that the 2017 rulemaking process specifically rejected minimum quantities for how abstract that would be.

Finally, the proposed changes, hamstring workers ability to respond to these new risks by fundamentally altering the hazard control assessment process. Despite CalEPA's claim that this change is non-substantive, the amendment weakens HCA research by replacing the mandatory, shall clause with a permissive, may as to what hazards may or may not be considered. In the analysis, this is irreparably compromising. The integrity of this critical process.

And contrary to WSPA's claims that consumers may suffer pricier gas because of these or other safety regulations. Unsafe refineries cost us far far more. In the Rand report commissioned by the State for the 2017 process, it was raised that California refinery accidents cost an average of 800 million dollars a year to the State economy. The PSM rules cost pales in comparison. It translated to an increase of about 2 extra dollars a year for the average Californian.

Meanwhile, gas prices soar when refineries do have accidents. The Martinez fire, this February increased gas prices by 4 to 8 cents per gallon, and the Benicia fire. This may caused an 18 cent jump. For these reasons CalEPA should reject these undemocratic and flawed amendments to preserve a safer, healthier, and more productive California.

The current rules reflect workers expertise community input and the real wants and needs of those who depend on these rules the most. Thank you.

AJ-1 Response:

No action was taken in response to this comment. As stated in the ISOR, the proposed amendments to the CalARP Program 4 regulations will similarly function in parallel with changes to the Process Safety Management program that will be proposed by Cal/OSHA in a separate proposed rulemaking. Additionally, Cal/OSHA's and the Standards Board's regulatory processes under the Administrative Procedure Act are separate from CalEPA's. On March 7, 2025, CalEPA began its comment period to gather public input, and in response to a request from the public, CalEPA extended the comment period to June 30, 2025. In total, the comment period lasted for 115 days – well beyond the

required minimum of 45-days under the Administrative Procedure Act. CalEPA also held two public meetings to gather public input. A number of public comments included technical input, which CalEPA considered in this rulemaking. CalEPA maintains that it has acted in good faith to ensure compliance with the APA requirements for this rulemaking.

The concern that limiting the definition of "highly hazardous materials" to only those materials stored at reportable quantities per HSC section 25507 or threshold quantities under CalARP (19 CCR) may exclude materials that, though under threshold, still present significant process safety risks in refinery operations is noted, however, the existing regulatory framework already accounts for such scenarios.

"Process" is defined in 19 CCR 5050.3(yy) as ""Process" for purposes of Article 7, means petroleum refining activities involving a highly hazardous material, including use, storage, manufacturing, handling, piping, or onsite movement. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that an incident in one vessel could affect any other vessel, shall be considered a single process…"

"Vessel" is defined in 19 CCR 5050.3(aaaa) as "Vessel" means any reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose, or other container."

Therefore, any materials contained within a vessel are considered part of the process when they are located in such proximity to a process that an incident in one vessel could affect any other vessel, regardless of whether the material contents of the individual vessels meet a reportable quantity per HSC section 25507 or threshold quantities under 19 CCR for CalARP.

Accordingly, a refinery with small amounts of materials that are connected to or could contribute to a release of a highly hazardous material in a process, would be required to consider those materials part of the process and therefore subject to applicable requirements. Due to the interconnectedness of refinery processes, CalEPA does not believe that the proposed amendment to the definition of "highly hazardous materials" creates new significant process safety risks.

In regard to the comment pertaining to the HCA, the comment does not pertain to CalEPA's rulemaking. CalEPA has not proposed to change the language from "shall" to "may" as it pertains to the proposed amendments in 19 CCR 5110.16(e)(3).

COMMENTER AK

Ian Patton – Member of the Public

June 26, 2025

AK-1 Comment: Comments to 5110.16 Amendments

So it's incredibly offensive to me that the key regulation regarding HCA's hierarchy of hazard control analysis, ie., the analysis reports of inherent dangers in these facilities.

Section 5110.16 is being revised. Yet no changes are being made to actually make these reports available to the public.

That lack of transparency is the ridiculous industry influence key flaw in the regulation in the 1st place.

The trick the industry has embedded, and I have the official comment summaries for that process which make the fact clear, when the regulation was 1st written is the fact that they put into the regulation the phrase, new processes, new process units, and new facilities with regard to making reports public, for these refineries are mostly very old facilities. They don't have any new process, units or new facilities, so it effectively exempts public disclosure from the HCA reports, which is this should have been the whole purpose of this section of the regulatory code.

This shielded their entire facilities for public scrutiny. And it should be no surprise, because the notice of proposed rulemaking, where these changes makes clear that they were instigated by the defining industry.

They wanted clarity for their purposes not to enhance clarity for the public. I would just add that the main change to 5110.16 is to replace the following simple declarative text preceding the priority list of safety measures, ie. First order, safety measures replacing a dangerous process, second order being mitigating a dangerous process, the old text being replaced is that the HCA team shall develop written recommendations to eliminate hazards to the greatest extent feasible.

The replacement text is extremely convoluted. The replacement text says the HCA Team shall consider all process safety hazards that may be impacted by a particular safety measure or safeguard, and shall select those safety measures

or safeguards that in the team's judgment are most effective at reducing all such process, safety hazards. In particular, that phrase, all process, safety hazards that may be impacted by a particular safety measure or safeguard is extremely concerning.

We had a clear statement about developing written recommendations to eliminate hazards. And now, instead, or we have a qualified statement regarding consideration of hazards that may be impacted by a particular safety measure. What does that mean?

Thank you. I would just add that that lack of clarity just benefits the refining industry, not the public. Thank you.

AK-1 Response:

No action was taken in response to this comment. The statement that the proposed amendments to 19 CCR 5110.16 eliminate the requirement to develop written recommendations is not substantiated. CalEPA has not proposed amendments to 19 CCR 5110.16(d) which states: "An HCA shall be performed, updated, and documented by a team with expertise in engineering and process operations and the team shall include at least one operating employee who currently works on the process and has experience and knowledge specific to the process being evaluated. The team shall also include one member knowledgeable in the HCA method being used. The owner or operator shall provide for employee participation in this process, pursuant to section 5110.13. As necessary, the team shall consult with individuals with expertise in damage mechanisms, process chemistry, and control systems".

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 15-DAY COMMENT PERIOD (EXTENDED TO 30 DAYS IN TOTAL)

The modified text was made available to the public for comment for a 15-day period, which was scheduled to be open from December 9, 2025, to December 24, 2025. In response to a request for additional time to comment, CalEPA extended the comment period to January 7, 2026, for a total of 30 days. Below is a summary of individuals and organizations that submitted comments to CalEPA that were received during the period of December 9, 2025, to January 7, 2026. As required by the APA, CalEPA considered all relevant matter it received, including public comments, and hereby provides responses to all public comments received. (Gov. Code §§ 11346.5, subd. (a)(18), 11346.8, subd. (a), 11346.9, and 11340.85 subds. (a) and (b)(4).)

AL	Julia May, Communities for a Better Environment
AM	Dr. Genghum Eng, Member of the Public
AN	Ian S. Patton, Torrance Refinery Action Alliance
AO	Zachary Badaouie, Torrance Refinery Action Alliance
AP	Kelly Guerin, Communities for a Better Environment
AQ	Steve Owens, Sylvia E. Johnson, U.S. Chemical Safety Board

Summary of and Response of Comments Received during the comment period of December 9, 2025, to January 7, 2026.

COMMENTER AL

Julia May - Communities for a Better Community

December 16, 2025

AL-1 Comment: Request for Extension of 15-Day Public Comment

Communities for a Better Environment ("CBE"), Defend Ballona Wetlands, Coastal Lands Action Network, Asian Pacific Environmental Network, Physicians for Social Responsibility - Los Angeles (PSR-LA), and San Francisco Bay Physicians for Social Responsibility submit this request for additional time to comment on the California Environmental Protection Agency ("CalEPA") effort to add another set of significant changes to the proposed amendments[1] to the current[2] California Accidental Release Prevention ("CalARP") Process Safety Management ("PSM") rules for petroleum refineries. We are requesting an additional 45 days (and preferably after the CalOSHA rulemaking begins) to comment on the change released December 9, which impacts the definition of major modification.

In solidarity with the United Steelworkers ("USW"), we have submitted requests for hearing, comments on proposed changes, and objections to weakening vital safety provisions that keep workers and communities safe. The existing PSM rules ("the 2017 rules") are well-researched, collaboratively designed measures that make California a safer, healthier, and more productive place by protecting refinery workers and fence line communities.[3] In contrast, the proposed amendments are the product of a settlement agreement with the Western States Petroleum Association ("WSPA").

The latest changes weaken the 2017 rules definition of a major modification. We reiterate the need to engage the workers and the public meaningfully. Requiring a response to additional proposed changes December 24, when most people are on vacation, is unreasonable. Further, CBE's lead attorney in this matter is on medical leave and unavailable to respond to this sudden notice.

AL-1 Response:

No action was taken in response to this comment. This comment was outside of the scope of the additional proposed amendments to the definition of major

change in 19 CCR 5050.3(hh). CalEPA extended the public comment period from December 24, 2025, to January 7, 2026.

COMMENT AM

Dr. Genghum Eng - Member of the Public

December 18, 2025

AM-1 Comment: HCA

PUBLIC COMMENT 2025_GE-01:

Presently, Title-19_Division-5_Chapter-2 § 5050.3(x) defines:

(x) "Hierarchy of Hazard Control" means prevention and control measures, in priority order, to eliminate or minimize a hazard. Hazard prevention and control measures ranked from most effective to least effective are: First Order Inherent Safety, Second Order Inherent Safety, and passive, active and procedural protection layers.

We recommend this § 5050.3(x)(1) addition as a clarification:
(x)(1) "Hierarchy of Hazard Control Analysis" (HCA) means a report that documents the above § 5050.3(x) prevention and control measures, in priority order, to eliminate or minimize a hazard.

AM-1 Response:

No action was taken in response to this comment. This comment was outside of the scope of the additional proposed amendments to the definition of major change in 19 CCR 5050.3(hh). Regardless, "Hierarchy of Hazard Control" is already defined in 19 CCR 5050.3(x).

AM-2 Comment:

PUBLIC COMMENT 2025_GE-02:

Presently, Title-19_Division-5_Chapter-2 § 5050.3(aaa) defines:

(aaa) "Process safety hazard" (**PSH**) *means a characteristic of a process that, if unmitigated, has the potential to cause a fire, explosion, or release of a highly hazardous material which could result in death or serious physical harm or a major incident.*

We recommend this § 5050.3(aaa)(1) addition as a clarification:
(aaa)(1) A "Process Hazard Analysis" (PHA) means a report documenting the process characteristics constituting a Process Safety Hazard (PSH) as identified by § 5050.3(aaa), along with what mitigation measures are being applied, to reduce the potential to cause a fire, explosion, or release of a highly hazardous

material which could result in death or serious physical harm or a major incident.

AM-2 Response:

No action was taken in response to this comment. This comment was outside of the scope of the additional proposed amendments to the definition of major change in 19 CCR 5050.3(hh). Regardless, CalEPA believes the proposed definition is sufficient.

AM-3 Comment:

PUBLIC COMMENT 2025_GE-03:
Presently, Title-19_Division-5_Chapter-2 § 5110.13(a)(1) requires:
§ 5110.13(a)(1): Effective participation by affected operating and maintenance employees and employee representatives, throughout all phases, in performing PHAs, DMRs, HCAs, MOCs, MOOCs, Process Safety Culture Assessments (PSCAs), Incident Investigations, SPAs, and PSSRs;

We recommend the following clarifications (new text in **bold** type):
§ 5110.13(a)(1): Effective participation by affected operating and maintenance employees and employee representatives, throughout all phases, in performing PHAs **(Process Hazard Analyses)** , DMRs **(Damage Mechanism Reviews to identify potential degradation of process equipment due to factors such as corrosion, cracking or erosion)**, HCAs **(Hierarchy of Hazard Control Analyses)**, MOCs **(Management of Change documents)**, MOOCs **(Management of Organizations Change documents)**, Process Safety Culture Assessments (PSCAs), Incident Investigations, SPAs **(Safeguard Protection Analysis for potential failure scenarios identified by a PHA)**, and PSSRs **(Pre-Startup Safety Reviews)**;

AM-3 Responses:

No action was taken in response to this comment. This comment was outside of the scope of the additional proposed amendments to the definition of major change in 19 CCR 5050.3(hh). CalEPA further notes that the existing regulations already spell out these acronyms elsewhere.

AM-4 Comment:

PUBLIC COMMENT 2025_GE-04:

Presently, Title-19_Division-5_Chapter-2 § 5110.16(b)(4) requires:
(b)(4) During the design and review of new processes, new process units, and new facilities, and their related process equipment. An HCA report prepared for this purpose shall be provided to the UPA. The UPA shall make these HCA reports

available to the public by posting them on the UPA's website within 30 calendar days, with appropriate protections for trade secret information.

We recommend the following clarifications (new text in **bold** type):
(b)(4) During the design and review of new processes, new process units, and new facilities, and their
related process equipment. An HCA report prepared for this purpose shall be provided to the UPA **and CalEPA**.

(b)(4)(i): All PHA's (Process Hazard Analyses) and DMRs (Damage Mechanism Reviews) supporting a given HCA, shall also be included as an HCA Appendix.

(b)(4)(ii): Prior to providing the HCA with HCA Appendix prepared according to the above subsection 5110.16(b)(4)(i) to the UPA and CalEPA, the owner or operator shall portion mark all HCA and HCA Appendix sections and/or subsections that are 'Trade Secret' as being 'Trade Secret'.

(b)(4)(iii): A 'Redacted HCA with HCA Appendix' shall also be prepared by the owner or operator, with all 'Trade Secret' information identified in 5110.16(b)(4)(ii) properly redacted out, as appropriate protections for trade secret information. These 'Redacted HCA with HCA Appendix Reports' shall also be provided to the UPA and CalEPA.

(b)(4)(iv): The UPA shall make these **'Redacted HCA with HCA Appendix Reports'** available to the public by posting them on the UPA's website within 30 calendar days.

(b)(4)(v): CalEPA shall also make an electronic version of all 'Redacted HCA with HCA Appendix Reports' prepared under 5110.16(b)(4)(iii) available to the public by
depositing and posting them in the CalEPA Library within 30 calendar days.
(b)(4)(vi): In order to maintain a CalEPA proper historical record, within 1 calendar
year of this rule effectivity, CalEPA shall assemble and deliver to the CalEPA Library properly redacted electronic versions of all historically prepared HCAs covering the design and review of all prior **major processes, major process units, and major facilities, and their related major process equipment; which had been prepared when they were first "*new processes, new process units, new facilities, and .. {new} process equipment*", with these properly redacted historically prepared HCAs being 'Redacted Historical HCA Reports'.**

(b)(4)(vii): The CalEPA Library shall ensure download availability to the Public of all 'Redacted HCA with HCA Appendix Reports', and 'Redacted Historical HCA Reports'.

AM-4 Response:

No action was taken in response to this comment. This comment was outside of the scope of the additional proposed amendments to the definition of major change in 19 CCR 5050.3(hh).

AM-5 Comment:

PUBLIC COMMENT 2025_GE-05:

The proposed CalEPA document already includes these subsections:

§ 5110.16(g)(5): The rationale for the inherent safety measures and safeguards recommended by the team for each process safety hazard, pursuant to subsection (f).;and
§ 5110.16(g)(6): The rationale for NOT recommending any inherent safety measures and safeguards analyzed by the team and identified pursuant to subsection (e)(3).

Including the rationale for adopting, or for NOT adopting the recommendations, is a good idea. We recommend that it should also be applied to the 'Employee Participation' § 5110.13(a)(4) subsection, by the addition of a new § 5110.13(a)(5):

§ 5110.13(a)(5): When the recommendations or findings of the employee representatives under § 5110.13(a)(4) are NOT accepted, the owner or operator must provide a *written* rationale for NOT accepting those recommendations or findings to all employees.

AM-5 Response:

No action was taken in response to this comment. This comment was outside of the scope of the additional proposed amendments to the definition of major change in 19 CCR 5050.3(hh).

COMMENTER AN

Ian S. Patton - Torrance Refinery Action Alliance

December 24, 2025

AN-1 Comment: HCA

The revisions to § 5110.16 (Hierarchy of Hazard Control Analysis) in subsection (e)(3) are unacceptable. Why would Cal. EPA eliminate the requirement that the HCA analysis and report, "include inherent safety measures and safeguards that have been: (A) achieved in practice by for [other than correcting this typo] the petroleum refining industry and related industrial sectors; or, (B) required or recommended for the petroleum refining industry, and related industrial sectors, by a federal or state agency, or local California agency, in a regulation or report."

Also, the reordering of text in subsection (f), if intended to improve clarity, fails at that, with instructions to apply a priority order to the levels of analysis apparently applying to a list which does not immediately follow (interrupted by another paragraph).

Most importantly, the changes to 5110.16 do nothing to correct the existing glaring failing of the regulation, which is the inclusion of the requirement for the UPA to publish the HCA report online only under subsection (b)(4), making it only apply to "new processes, new process units, and new facilities". This faux transparency measure was originally crafted under industry pressure to protect them from disclosure of the HCA reports. To date, I am not aware of a single HCA report being published online by a UPA in California, certainly not by the LA Fire Dept. or Torrance Fire Dept. UPAs, which have oversight over the potentially catastrophic Valero Wilmington and Torrance (PBF Energy) refineries, which still utilize MHA (hydrofluoric acid) in their alkylation units. The industry understood that their plants are decades old and that burying the transparency requirement under (b)(4) would effectively prevent any transparency from occurring at all.

Allowing (b)(4) to stand as is, while watering down (e)(3) suggests a continuing 'industry capture' of Cal. EPA at the expense, potentially, of human lives in the event of an accidental release of MHA into the densely populated urban areas neighboring these refineries. This is not an application of the Legislature's intent behind the creation of CalARP Program 4; it is a unilateral abrogation of it.

AN-1 Response:

No action was taken in response to this comment. This comment was outside of the scope of the additional proposed amendments to the definition of major change in 19 CCR 5050.3(hh). Regardless, CalEPA disagrees with the comment and believes that the proposed changes are sufficient and serve to clarify the HCA requirements.

COMMENTER AO

Zachary Badaouie – Torrance Refinery Action Alliance

January 6, 2026

AO-1 Comment:

1. We fully support and agree with the comments submitted by Ian S. Patton December 23, 2025.

2. We fully support the comments made by Dr. Genghmun Eng.

3. We attach for the record the correspondence from our attorney to the City of Torrance and the City of Los Angeles. It illustrates the insufficiency of the HCA reporting requirements, which under the current regulations has not produced information on the availability and practicality of alternatives to HF, a chemical capable of causing mass fatalities and casualties.

4. Therefore, we draw particular attention to Mr. Patton's call for strengthening the transparency of a required HCA. The proposed changes to weaken public transparency force us to ask: "What are they trying to hide? And why is the State of California helping them hide it?

We have CC'd AG Bonta's office because of his comments submitted to the US EPA regarding transparency leading to phase out of HF. Also attached.

AO-1 Response:

No action was taken in response to this comment. This comment was outside of the scope of the additional proposed amendments to the definition of major change in 19 CCR 5050.3(hh). Regardless, CalEPA disagrees with the comment and believes that the proposed changes are sufficient and serve to clarify the HCA requirements.

COMMENTER AP

Kelly Guerin – Communities for a Better Environment

January 7, 2026

AP-1 Comment:

Communities for a Better Environment ("CBE") submits this letter to comment on the California Environmental Protection Agency ("CalEPA") effort to make additional changes[1] ("December CalARP Amendments") to the ongoing rulemaking[2] related to the current California Accidental Release Prevention ("CalARP") Process Safety Management ("PSM") rules ("2017 Rules") for petroleum refineries.

The December CalARP Amendments frame the dangerous effect of the sweetheart deal between the Western States Petroleum Association ("WSPA"), CalEPA and the California Division of Occupational Safety and Health ("Cal/OSHA") that animates this process. The December CalARP Amendments are now the latest step in this zombie rulemaking, where new law is being dictated by litigation settlement agreement, marching forward uncritically toward a seemingly foregone conclusion. Something is very wrong here.

Throughout, CBE remains troubled by CalEPA's lack of transparency on this matter and its failures to meaningfully engage the public. Despite submitting a comment letter on the earlier proposed amendments in June 2025, we received no direct notification of the December CalARP Amendments.[3]

In addition to that June comment by CBE, we have submitted other letters in coalition with United Steelworkers ("USW"), Asian Pacific Environmental Network ("APEN") and BlueGreen Alliance ("BGA") and others;[4] those comments underscore the substantive dangers of the ongoing rulemaking process and how it weakens the regulations that keep refinery workers and fenceline communities safe.

CBE expands here on its June critique of rulemaking-by-settlement, with new light cast from the December CalARP Amendments, and how this entire process is a threat to the bedrock of California administrative procedure.

We are here because, after five years of stakeholder and public engagement to produce the 2017 Rules and expertise from every level of government,[5] the oil industry sued the State[6] and in late 2024 the State caved.[7] The WSPA settlement binds CalEPA and Cal/OSHA to copy-and-paste agreement language into rulemaking processes. While the agreement acknowledges it does not guarantee the agencies will adopt such rules as final, failing to do so would

allow the oil industry to sue all over again. Seven years of deep-pocketed litigation and the threat for it to resume should agencies deviate from industry's instructions spell out a dire warning of WSPA getting its way. No agency should conduct – nor be judicially permitted to conduct – rulemaking in this manner.

Given that the amendments were drafted in boardrooms and backrooms, agencies are naturally having a hard time defending the proposed changes. When USW questioned the logic behind various changes that threaten their safety, agency representatives have been unable to provide substantive defenses, offering instead "just that it came out of the litigation."[8]

This is not how rules are made. Agencies like CalEPA and Cal/OSHA are charged (in their organic statutes as well as in the California Administrative Procedure Act) with adopting rules that protect workers, the environment, and communities. In contrast, what we see now in 2025 and 2026 is a far cry from the 2017 Rules, which were a model for rulemaking, with years of expertise from agencies, stakeholders and the public, as intended by California law. Instead, industry simply scared the State into doing its bidding by litigation and settlement agreement.

The nature of the sweetheart deal that directs this entire rulemaking is on full display in the December CalARP Amendments:

"The language provided in the ISOR, including references to refinery process equipment, refinery hazards, and refinery-specific operating limits, makes clear that the purpose of the amendments was to address issues *raised exclusively by petroleum refineries* operating under Program 4… These amendments clarify the applicability of the originally proposed definition and ensure that the clarifications apply only to the regulated community for which they were intended."[9]

This explanation shows the puppet strings. The December CalARP Amendments restore the definition of "major change" for facilities outside Program 4 coverage, while narrowing the focus of the ongoing rulemaking's applicability to Program 4 facilities (i.e., refineries).[10] Only refineries took the State to court, and now only refineries are implicated by this effort to purportedly "clarify" regulations.

This rulemaking, including the December CalARP Amendments, violate the California Administrative Procedures Act ("APA"). The APA cites public health and worker safety as bases for rulemaking;[11] this rulemaking does the opposite, and the December CalARP Amendments are a poor attempt of damage control by CalEPA to restrict the rulemaking's deleterious effects on public

health and worker safety to the refinery sector. In this narrowing, as throughout the rulemaking, the agency fails to identify reasonable alternatives, relevant technical sources, significant impacts on businesses, and federal alignment.[12] For these failures, the December CalARP Amendments and the rulemaking are also noncompliant with California Government Code section 11349.1.

AP-1 Response:

No action was taken in response to this comment. As stated in the ISOR, the proposed amendments to the CalARP Program 4 regulations will similarly function in parallel with changes to the Process Safety Management program that will be proposed by Cal/OSHA in a separate proposed rulemaking. Additionally, Cal/OSHA's and the Standards Board's regulatory processes under the Administrative Procedure Act are separate from CalEPA's. On March 7, 2025, CalEPA began its comment period to gather public input, and in response to a request from the public, CalEPA extended the comment period to June 30, 2025. In total, the comment period lasted for 115 days – well beyond the required minimum of 45-days under the Administrative Procedure Act. CalEPA also held two public meetings to gather public input. A number of public comments included technical input, which CalEPA considered in this rulemaking. CalEPA maintains that it has acted in good faith to ensure compliance with the APA requirements for this rulemaking.

Further, CalEPA has made good faith efforts to comply with the provisions of Government Code section 11346.4 regarding providing notice of regulatory activities, which includes providing notice to the commentor Kelly Guerin, as well as four other members of the Communities for a Better Environment. Email notice pertaining to the "Notice of Modification to the Text of the Proposed Rulemaking (15-day Changes)" was provided to Kelly Guerin and the four additional members of Communities for a Better Environment on December 9, 2025. Additionally, subsequent email notice was provided to Kelly Guerin and the four additional members of Communities for a Better Environment on December 23, 2025, notifying them that the 15-day comment period had been extended to January 7, 2026. The extension of the 15-day public comment period was executed by CalEPA following a request from Communities for a Better Environment to extend the comment period to 30 days in total. CalEPA maintains that it has made all efforts to ensure Kerry Guerin and members of Communities for a Better Environment were notified of all regulatory activities taken by CalEPA, as required.

COMMENTER AQ

Steve Owens, Sylvia E. Johnson – U.S. Chemical Safety Board

December 22, 2025

AQ-1 Comment:

The CSB does not concur with the modifications proposed specific to the definition of "major change." In addition to reiterating the comments in our May 27, 2025, comment letter (attached), the CSB urges that the proposed rule be improved to meet the objectives of the CSB's Recommendations issued to various entities of the State of California in connection with the CSB's investigation of the August 6, 2012 explosion and fire at the Chevron Richmond Refinery in Richmond, California. That explosion and fire resulted in a large plume of unknown and unquantified particulates and vapor traveling across the Richmond, California, area and approximately 15,000 people in the area seeking medical treatment.

CSB Comments:

The CSB provides the following comments specific to the 15-day Changes to the CalARP regulations:

Section 5050.3(hh) – Definition of Major Change

The catastrophic Chevron Richmond Refinery incident is the primary reason the more stringent CalARP Program 4 Prevention Program (Article 7) regulations were developed. The incident demonstrated the need for significantly more oversight and prevention measures associated with refineries. The proposed modification to the definition of "major change" significantly reduces those prevention measures, directly contradicting their purpose.

The 15-day Changes notice states, "CalEPA has determined that the proposed amendments to 5050.3(hh) are inappropriately extended to all Program levels of the California Accidental Release Program and believe[s] that clarifications and amendments to the definition should only extend to for Program 4 (Article 7) facilities." As the CSB stated in our May 27, 2025, comment letter, the introduction or alteration of a new process, new process equipment, or process chemistry is significant (i.e., "major") in and of itself and should require significant analysis to include an HCA and, when appropriate, a DMR. Declaring that such actions constitute a "major change" only when they result in "*an operational change outside of established safe operating limits*" is likely to have significant unintended consequences by allowing hazards to go unanalyzed until a catastrophic incident occurs.

AQ-1 Response:

No action was taken in response to this comment. The proposed amendments to 19 CCR 5050.3(hh) to the definition of major change are intended to clarify the scope of changes that trigger a "major change". CalEPA believes that the amendments to 19 CCR 5050.3(hh)(4) (now 19 CCR 5050.3(hh)(2)(D)), in reference to the addition of "established safe operating limits", allows for a more quantifiable and enforceable provision. The regulations currently require facilities to develop and maintain process safety information, operating procedures, and hazard analyses that identify parameters for safe operation (19 CCR 5110.3, 5110.6, and 5110.4). As such, the proposed amendments focus on information facilities are already obligated to develop.

ALTERNATIVES DETERMINATION (Gov. Code, § 11346.2, subds. (b)(4)(A), (b)(4)(B); Gov. Code, § 11346.9, subd. (a)(4))

For the reasons set forth in the Notice of Proposed Rulemaking, ISOR, and in this Final Statement of Reasons, CalEPA determined that no alternative considered by the agency or that was otherwise identified and brought to its attention would be (1) more effective in carrying out the purpose for which the regulation is proposed, (2) as effective and less burdensome to affected private persons or small businesses, or (3) more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law than the action taken by CalEPA.

CalEPA's proposed amendments are the only regulatory provisions identified by CalEPA that accomplish the goal of providing clarity to the public, the UPAs, and the regulated petroleum refineries for activities addressed under the CalARP program, and are the only regulatory provisions identified by CalEPA that address stakeholder concerns about inconsistent application of the regulations.

The purpose of the proposed amendments are described in the Informative Digest and ISOR. Anticipated benefits of the proposed regulations are as described in the Informative Digest and ISOR.

Except as set forth and discussed in the summary and responses to comments, no other alternatives were proposed or otherwise brought to CalEPA's attention. Beyond any alternatives that may have been raised in public comments submitted on this proposal and discussed in responses to comments, no other alternatives were proposed or otherwise brought to CalEPA's attention. No alternative proposed to CalEPA that would lessen any adverse economic impact on small businesses were rejected by the Board.

ALTERNATIVES THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No alternative proposed to CalEPA that would lessen any adverse economic impact on small businesses were rejected by CalEPA.