January 25, 2021

VIA: ELECTRONIC MAIL ONLY (mkrause@aqmd.gov)

South Coast Air Quality Management District
Attn: Michael Krause, Planning & Rules Manager
21865 Copley Drive
Diamond Bar, California 91765

Re: Comments on Draft Proposed Rule 1109.1 (Refinery Equipment)

Dear Mr. Krause:

The undersigned organizations submit the following comments concerning the South Coast Air Quality Management District's ("AQMD") draft of Proposed Rule 1109.1. There is great urgency to finalize this rule this year given the immense health benefits that will be derived as we face the worst air quality in decades. Even with this urgency, the rule must be strengthened in several ways. As detailed below, there are significant concerns regarding the agency's proposed rule language, including unlawful compliance exemptions and prolonged implementation timelines. These deficiencies would provide petroleum refineries and related operations (collectively "petroleum refineries") with loopholes to avoid complying with applicable emission limits and create unreasonable delays in achieving long-overdue pollution reductions.

Petroleum refineries are largely concentrated in environmental justice communities in Wilmington, Carson, and West Long Beach that are the focus of the agency's AB 617 Community Emissions Reduction Plan ("CERP").[1] Based on the CERP's findings, petroleum refineries are among the largest point sources of NOx pollution in the area, which in total contribute about 29 percent of NOx emissions.[2] Moreover, previous nitrogen oxide ("NOx") Regional Clean Air Incentives Market ("RECLAIM") program evaluations found that petroleum refineries contributed more than 59 percent of the program's total NOx emissions audited in 2011 alone.[3]

This significant NOx pollution from petroleum refineries exacerbates the Basin's lung-burning ozone that has detrimental health effects on individuals, particularly children and elderly

[1] SCAQMD, *Community Emission Reduction Plan for Wilmington, Carson, West Long Beach* 5b-1 (Sept. 6, 2019).
[2] *Id.* at 3b-2.
[3] SCAQMD, *Revised Draft Staff Report – NOx RECLAIM*, 16, 17 fig.1.5 (Nov. 4, 2015).

in the region. In fact, 2020 ranks among the region's worst air quality years in decades with 157 bad ozone pollution days.[4] Given the region's continued ozone pollution, the South Coast AQMD has made Proposed Rule 1109.1 a critical part of obtaining the necessary NOx reductions to achieving air quality standards.[5] The agency, however, has repeatedly delayed finalizing this rule since 2018, and the proposed rule language would allow petroleum refineries to unreasonably delay or avoid implementation of life-saving pollution controls.

For decades, petroleum refineries have avoided installing life-saving pollution controls through their participation in the RECLAIM program. As a result of these deferred investments in emission reductions, petroleum refineries have saved about $205 million between 2007 and 2015 by delaying the installation of 47 selective catalytic reduction systems ("SCRs")—these cost savings will continue to accumulate as long as petroleum refineries are able to delay or avoid the installation of SCRs and equivalency with emission limits under Best Available Retrofit Control Technology ("BARCT").[6] Indeed, these cost savings have allowed petroleum refineries to continue to make *billions* in payouts to investors even during the COVID-19 pandemic.[7] The agency must address the concerns outlined below to ensure the proper, timely implementation of BARCT standards.

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I. South Coast AQMD Must Expedite the Implementation of Long Overdue Life-Saving Pollution Controls at Petroleum Refineries.

As you know, the South Coast AQMD originally aimed to finalize Proposed Rule 1109.1 by December 2018; the agency then moved the deadline to October 2019; and then to September 2020. As of the December 2020 Governing Board meeting, the agency now proposes to finalize this rule for adoption by June 2021.[8] Despite these repeated postponements, the South Coast AQMD proposes compliance deadlines under Proposed Rule 1109.1 that would allow for

[4] Tony Barboza, *L.A. Began 2020 with a Clean-Air Streak but Ended with its Worst Smog in Decades*, L.A. Times (Dec. 6, 2020), https://www.latimes.com/california/story/2020-12-06/2020-la-air-quality-southern-california-pollution-analysis.
[5] *Community Emission Reduction Plan*, *supra* note 1, at 5b-11 to 5b-13.
[6] SCAQMD, *Draft Final Socioeconomic Report – NOx RECLAIM* E-6, 54 (Nov. 4, 2015).
[7] *See, e.g.*, Daniel Foelber, *Is Chevron Stock a Buy?*, NASDAQ (Nov. 29, 2020), https://www.nasdaq.com/articles/is-chevron-stock-a-buy-2020-11-29 (Chevron made "$7.19 billion in dividend payments" during the first 9 months of 2020); *Phillips 66 Reports Second-Quarter 2020 Financial Results*, Bloomberg (July 31, 2020), https://www.bloomberg.com/press-releases/2020-07-31/phillips-66-reports-second-quarter-2020-financial-results ("Phillips 66 funded $393 million of dividends in the quarter."); *Valero Energy Reports Third Quarter 2020 Results*, Business Wire (Oct. 22, 2020), https://www.businesswire.com/news/home/20201022005582/en/Valero-Energy-Reports-Third-Quarter-2020-Results ("Valero returned $399 million in cash to stockholders through dividends.").
[8] SCAQMD, *Minutes of the December 4, 2020, Meeting* (Jan. 8, 2021).

significant delays to achieve the necessary NOx emission reductions and to implement BARCT by December 31, 2023, as required under Health and Safety Code section 40920.6.[9]

Under Proposed Rule 1109.1, petroleum refineries have until July 1, 2022, to submit permit applications for various equipment categories, including boilers greater than 40 MMBtu/hour (2 NOx ppmv) and process heaters less than 40 MMBtu/hour (40 NOx ppmv).[10] For other equipment categories, such as SMR heaters with gas turbines and furnaces, petroleum refineries have between six to twelve months to submit permit applications.[11] After submitting permit applications, petroleum refineries must then comply with the applicable emission limits "within 18 months from when the permit to construct is issued" by the agency.[12] This compliance timeline after issuance of permits to construct is excessive. The timeline should be shortened to six months to expedite implementation, given that petroleum refineries would have had years to plan. Moreover, the proposed rule fails to establish a deadline for the agency to finalize its review of permit applications, which could further delay implementing these BARCT limits.

The proposed rule also provides petroleum refineries with up to *ten years* after rule adoption (i.e., June 2031) to submit permit applications to ensure process heaters less than 40 MMBtu/hour (9 NOx ppmv) comply with the applicable standards.[13] Alternatively, petroleum refineries must comply with applicable emission limits "when 50 percent or more of the unit's burners are replaced" for boilers less than 40 MMBtu/hour (5 NOx ppmv) or process heaters less than 40 MMBtu/hour (9 NOx ppmv).[14] The agency neglects to explain its decision to establish an alternative compliance timeline based on the percentage of replaced burners rather than by the percentage of total *rated heat input* for each unit.

The South Coast AQMD fails to provide any justification in establishing these long timelines for process heaters less than 40 MMBtu/hour (9 NOx ppmv) and boilers less than 40 MMBtu/hour (5 NOx ppmv). Instead, the agency argues the "delayed implementation schedule . . . is consistent with AB 617" goals.[15] This assertion, however, is inconsistent with the CERP for the Wilmington, Carson, and West Long Beach areas, which commits to a minimum 50 percent reduction of NOx in ten years (i.e., September 2029) or *earlier*.[16] Other than speculation, there is no evidence indicating that petroleum refineries are unable to meet emission limits within the timeframe under the CERP or earlier for these equipment categories.

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[9] Cal. Health & Saf. Code § 40920.6(c)(1)
[10] Rule 1109.1(d)
[11] Rule 1109.1(d)
[12] Rule 1109.1(d)(1)
[13] Rule 1109.1(j)(2)
[14] Rule 1109.1(j)(1); Rule 1109.1(j)(2)
[15] SCAQMD, Rule 1109.1 – NOx Emission Reduction for Refinery Equipment Presentation, 16 (Nov. 4, 2020) (Working Group Meeting #15).
[16] *Community Emission Reduction Plan*, *supra* note 1, 5b-5, tbl.5b-2.

In summary, the compliance delays under Proposed Rule 1109.1 are not only arbitrary but also violate Health and Safety Code section 40920.6 that requires the implementation of BARCT at petroleum refineries "not later than December 31, 2023."[17] The agency must revise these implementation timelines and expedite implementation of established emission limits. At a minimum, the proposed rule should require that—consistent with other equipment categories—petroleum refineries submit permit applications within six to twelve months of rule adoption, and meet applicable emission limits within six months of receiving permits to construct. Further, the agency must commit to a deadline for processing permit applications submitted by petroleum refineries.

II. South Coast AQMD Must Strike the BARCT Compliance Alternative Plan Option, or at a Minimum Shorten the Timeframe and Eliminate Loopholes.

As an alternative to the already lengthy compliance timelines, the South Coast AQMD would allow petroleum refineries to use a BARCT Compliance Alternative Plan (or "B-CAP") if required to retrofit or replace "six or more units" to meet emission limits.[18] Under this B-CAP approach, petroleum refineries can prepare a tailored compliance plan to meet the emission targets in three phases.[19] At a minimum under the B-CAP approach, petroleum refineries would have until about July 2029 to implement all equipment retrofits or replacements after issuance of permits to construct, with an additional six months to meet applicable emission limits after implementation.[20] Once again, this extended compliance timeline is contrary to Health and Safety Code section 40920.6, which requires BARCT implementation by December 31, 2023.[21] The South Coast AQMD must remove this B-CAP approach or at a minimum reduce the timeline for compliance and address several other deficiencies described below.

a. Proposed B-CAP Timeline Extensions Provide Petroleum Refineries With Loopholes to Delay Compliance with Emission Limits.

Proposed Rule 1109.1 allows petroleum refineries to request from the Executive Officer a "one six-month extension *per* unit" during each of the implementation phases.[22] Petroleum refineries would be required to submit these requests a mere "60 days prior to the implementation deadline" even if known by the operator well in advance.[23] These requests for additional time can be based on broad, open-ended reasons that "may include, but is not limited

[17] Cal. Health & Saf. Code § 40920.6(c)(1)
[18] Rule 1109.1(c)(2)
[19] Rule 1109.1(k)
[20] Rule 1109.1 – NOx Emission Reduction for Refinery Equipment Presentation, *supra* note 15, at 63–64 (Working Group Meeting #15); Rule 1109.1(k)(4)(A),(B)
[21] Cal. Health & Saf. Code, § 40920.6(c)(1)
[22] Rule 1109.1(k)(5)
[23] Rule 1109.1(k)

to," "economic burden" or "technical infeasibility."[24] Both of these items are issues that have already been considered under the rule development process and would again be assessed when reviewing the permit to construct application.[25] As currently written, the rule *guarantees* petroleum refineries will exploit this extension loophole to create significant delays in implementing BARCT emission limits.

The South Coast AQMD should strike this B-CAP time extension provision. Or at a minimum, the agency should (1) require that petroleum refineries submit under penalty of perjury these time extension requests within 7 days after learning of the unforeseeable issue that could cause delays but no later than 90 days prior to the implementation deadline; (2) limit the "specific circumstances" for an extension that focuses on issues outside of the control of the petroleum refinery (e.g., purchase order delay) and not subjects already assessed during the permit application and rulemaking stages (e.g., technical feasibility and cost); and (3) shorten the standard timeframe from a six-month extension to *three months* to expedite compliance with these overdue emission reductions.

b. <u>The Executive Officer's Review of B-CAPs Provides for an Indefinite Amount of Time for Approval or Disapproval, Allowing for Compliance Delays.</u>

Proposed Rule 1109.1 requires that all B-CAPs be subject to the Executive Officer's review and approval.[26] The Executive Officer is required to "notify the owner or operator in writing whether the B-CAP is approved or disapproved."[27] Petroleum refineries are then required to resubmit the B-CAP "within 30 calendar days after receipt of notification of disapproval of the plan."[28] The proposed rule, however, does not provide a firm deadline for the Executive Officer to complete the review and approve or disapprove B-CAPs, which allows for additional compliance delays. The agency must set a deadline for the Executive Officer to review and provide either an approval or disapproval of B-CAPs.

c. <u>Petroleum Refineries are Required to Implement Each B-CAP Phase Only After the Issuance of Permits to Construct, Despite Permit Application Backlogs.</u>

Proposed Rule 1109.1 requires that petroleum refineries submit applications for permits to construct and complete implementation under the following schedule for each B-CAP phase:

	Phase I	Phase II	Phase III
Permit Application Submittal Deadline	July 1, 2022	July 1, 2024	January 1, 2026
Implementation and Final Compliance Date	30 months after a Permit to Construct is issued	24 months after a Permit to Construct is issued	24 months after a Permit to Construct is issued

[24] Rule 1109.1(k)(5)
[25] Rule 1109.1(k)(5)(B)(ii)
[26] Rule 1109.1(k)(3)(A)
[27] Rule 1109.1(k)(3)(A)
[28] Rule 1109.1(k)(3)(B)(i)

The South Coast AQMD aims to process these applications for permits to construct within 12 months after submission by petroleum refineries.[29] After approval by the agency, petroleum refineries would then be required to implement the necessary equipment retrofits or replacements within 30 months under Phase I (increased from 24 months previously) and 24 months under Phase II and III (increased from 18 months previously).[30] The proposed rule, however, fails to secure the necessary resources for the agency to review and issue permits to construct in a timely manner to trigger the implementation deadlines under each phase. Consequently, petroleum refineries electing to use the B-CAP approach should be required to pay fees enough to process the necessary permits to construct within the timeframes under Proposed Rule 1109.1.

The South Coast AQMD continues to experience significant permit application backlogs. As of November 2020, the agency has about 2,461 permit applications pending.[31] The vast majority of these permits have been pending for over 12 months, with hundreds lingering for more than two years.[32] Despite these permit application processing delays, the agency fails to address how it would alleviate this backlog to process B-CAP permit applications in a timely manner. Although we oppose the B-CAP approach and its extended implementation timeline, at a minimum, the rule should provide for fees sufficient to process permits to construct for petroleum refineries that opt to utilize the B-CAP approach.

d. <u>Petroleum Refineries Can Use 2017 Annual NOx Emissions Data or Another Single Source Year as a Baseline Despite Emission Fluctuations.</u>

Proposed Rule 1109.1 requires that petroleum refineries calculate the NOx share of each unit that comprise the B-CAP targets.[33] In establishing each unit share, petroleum refineries must establish baseline emissions.[34] The baseline emissions "shall be determined by the Executive Officer based on the applicable 2017 NOx Annual Emissions Reporting data or another year or source of data if the 2017 NOx Annual Emissions Reporting data is not representative and is expressed as pounds per year."[35] Using a single year for the emissions baseline would not be representative of actual petroleum refinery emissions. Instead, the South Coast AQMD should require that petroleum refineries use at a minimum five years of NOx emissions data to account for emission fluctuations due to turnarounds and other operational anomalies.

[29] SCAQMD, Rule 1109.1 – NOx Emission Reduction for Refinery Equipment and Related Industries Presentation, 38 (Dec. 10, 2020) (Working Group Meeting #16).
[30] Rule 1109.1(k)(4)(A)
[31] SCAQMD, Permit Streamlining Task Force Subcommittee Meeting Presentation, 6 (Dec. 16, 2020).
[32] *Id.*
[33] Rule 1109.1(k)(2)(A)
[34] Rule 1109.1(k)(2)(B)
[35] Rule 1109.1(k)(2)(D)

III. South Coast AQMD Must Require CEMS for All Equipment to Ensure Compliance, or at a Minimum Increase the Frequency of Source Tests.

The South Coast AQMD proposes to require continuous emission monitoring systems ("CEMS") for any "units that have a rated heat input capacity of 40 MMBtu/hour or greater: boiler, FCCU, gas turbine, petroleum coke calciner, process heater, SMR heater, SMR heater with a gas turbine, and SRU/TG incinerator."[36] CEMS are critical to verify compliance with applicable emission limits and for petroleum refineries to initiate timely corrective action to address deviations.

CEMS is designed to "continuously determine air contaminants and diluent gas concentrations" from each source.[37] CEMS continuously monitor equipment by recording "a minimum of one measurement (e.g., concentration, mass emission, flow rate) . . . each minute."[38] The previous version of the proposed rule, however, would have allowed petroleum refineries to avoid installing CEMS and instead use an undefined "equivalent verification system."[39] We appreciate South Coast AQMD striking this language from the proposed rule. Accordingly, any future iterations of the rule and final rule itself should exclude this open-ended language and instead firmly require CEMS implementation.

Additionally, the South Coast AQMD does not require CEMS for a large universe of equipment subject to Proposed Rule 1109.1. Under the proposed rule, all boilers and process heaters with less than 40 MMBtu/hour would be allowed to use source tests "every 12 months" to confirm compliance; and vapor incinerators and flares would be allowed to use source tests "every 36 months."[40] Source tests provide merely a snapshot of emissions that are easily manipulated and often taken under ideal conditions not characteristic of normal operations. Petroleum refineries must install CEMS on all equipment to ensure compliance with emission limits.

At a minimum, however, petroleum refineries utilizing source tests under the proposed rule should be required to conduct these tests more than every 12 or 36 months, unless the equipment would be classified under a low-use category. For boilers and process heaters with less than 40 MMBtu/hour, vapor incinerators, and flares with NOx emissions of 10 tons per year or more, the South Coast AQMD should require that petroleum refineries conduct source tests *quarterly* and if after eight consecutive quarters petroleum refineries meet applicable emission limits, source testing can occur once a year. These source tests should revert to quarterly tests if the annual source tests reveal an exceedance.

[36] Rule 1109.1(f)(1)
[37] Rule 1109.1(c)(6)
[38] Rule 218(a)(7)
[39] Rule 1109.1(f)(1)
[40] Rule 1109.1(g)(2)

IV. South Coast AQMD's Averaging Times for Emission Limits Are Speculative and Would Result in Excess NOx Emissions.

The South Coast AQMD originally planned for a 1-hour averaging time; it then modified that to an 8-hour averaging time on the grounds that doing so would allow for petroleum refineries to address potential fluctuations (i.e., exceedances of emission limits). The agency now plans to allow for an outrageous *24-hour* averaging time for several equipment categories based on consultant assertions that petroleum refineries require even longer averaging times because "experience has shown that an upset event occurring within a refinery on an infrequent basis that is not part of operations day-to-day routine will require some time to identify and remedy."[41] Consequently, "[a] modest averaging time of 24 hours will minimize unwanted exceedance events and minimize reporting to the authorities if the solution is simple enough to implement within a relatively short period of time."[42]

The reasons provided by consultants are entirely speculative and not based on the feasibility of meeting applicable emission limits or public health concerns.[43] First, a change from an 8-hour averaging time to a 24-hour averaging time is not a modest increase. It represents a significant allowance from an already excessive 8-hour averaging time selected by the agency to provide petroleum refineries with flexibility to address potential fluctuations. In fact, consultants acknowledge that petroleum refineries would have time to address deviations under an 8-hour averaging time, as well as under a 2-hour averaging time.[44] Consequently, although the 24-hour averaging time is recommended to provide petroleum refineries with *even more* leeway to deviate from emission limits, it is unnecessary.

Finally, increasing the averaging time comes at the expense of public health and accountability. Under a 24-hour averaging time, petroleum refineries can hide large amounts of pollution being released into surrounding communities that exceed applicable emission limits. In fact, petroleum refineries would avoid having to file a deviation report and would not be subject to a potential notice of violation due to these exceedances. Petroleum refineries would lack any incentive to act immediately to address excess emissions recorded by CEMS at various units, under the 24-hour averaging time the agency now proposes to adopt. For these reasons, the South Coast AQMD must revise the averaging time to constrain deviations. This averaging time should be 2-hours or at a minimum return to the originally proposed 8-hour averaging time.

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[41] Norton Engineering, *NOx BARCT Analysis Review,* 34 (Dec. 4, 2020) (Draft Report, revision 4), .
[42] *Id.*
[43] Rule 1109.1(d)(1)(C)
[44] Norton Engineering, NOx BARCT Analysis for Proposed Rule 1109.1 Presentation, 11 (Dec. 10, 2020).

V. South Coast AQMD Must Remove the Start-up, Shutdown, and Malfunction Exemptions under the Proposed Rule to Comply with the Clean Air Act.

The agency must remove the start-up, shutdown, and malfunction ("SSM") provisions from the proposed rule, which would "exempt from the applicable . . . NOx and CO emission limits" all petroleum refineries during SSM events.[45] These SSM provisions are unlawful under the Clean Air Act and established judicial precedent, and the justifications provided by the agency for including these provisions are arbitrary and lack any evidentiary support. Further, the agency fails to consider other alternatives that would control excess pollution during these events, such as temperature recording devices or alternative emission limits during start-up periods.

First, the proposed rule's SSM exemptions violate the Clean Air Act, which mandates that emission limits apply continuously, without exception.[46] Under the Clean Air Act, an "emission limitation" is defined as a "requirement . . . which limits the quantity, rate, or concentration of emissions of air pollutants *on a continuous basis*, including any requirement relating to the operation or maintenance of a source to assure *continuous emission reduction*, and any design, equipment, work practice or operational standard . . . ."[47] Moreover, the U.S. Environmental Protection Agency has emphasized that "an emission limitation can take various forms or a combination of forms, but in order to be permissible . . . it must be applicable to the source *continuously*, i.e., cannot include periods during which emissions from the source are legally or functionally exempt from regulation."[48]

The South Coast AQMD's proposed rule would legally and functionally exempt petroleum refineries from complying continuously with established emission limits during SSM events. The proposed rule would authorize petroleum refineries to exceed emission limits an undetermined number times a year and for outrageously long periods of time during each event, including 48 hours (2 days) for boilers and heaters greater than 40 MMBtu/hour, 60 hours (2.5 days) for gas turbines, and 120 hours (or 5 days) for FCCUs.[49] As a result, petroleum refineries would pollute with impunity during each of these SSM events and people living near these operations would be subjected to significant pollution levels without recourse under the proposed rule's SSM provisions.

Second, the South Coast AQMD's inclusion of SSM exemptions is not only unlawful, but the justification provided for these provisions is also arbitrary and capricious, entirely lacking in evidentiary support. The agency contends that SSM exemptions are necessary because petroleum

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[45] Rule 1109.1(e)(1)
[46] *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008) (SSM exemptions violate the Clean Air Act requirement that emission standards apply on "continuous" basis).
[47] 42 U.S.C. § 7602(k) (emphasis added).
[48] 80 Fed. Reg. 33,840, 33,842 (June 12, 2015).
[49] Rule 1109.1(e)(1)

refinery equipment requires minimum temperature to reduce NOx emissions.[50] In particular, the South Coast AQMD notes that these equipment temperature limitations require flexibility during equipment *start-up* to "reach optimal unit operating temperatures" to "achieve NOx reduction and operate effectively."[51] The flue gas temperature must reach "the minimal operating temperature of the emission control equipment."[52]

In providing this rationale, the agency fails to detail the estimated amount of excess emissions above applicable limits resulting from start-up procedures under each equipment category, nor the feasibility of curtailing other operations during and after equipment start-up procedures at petroleum refineries to comply with the established emission limits. These emission limits are based on rolling averages for various equipment categories that allows petroleum refineries to adjust operations to maintain emissions below the applicable limit. Moreover, the South Coast AQMD does not provide any explanation or rational basis for extending this compliance loophole to *shutdown* and *malfunction* events that can result from deficient maintenance or repair practices. These events should be excluded from the rule. In particular, malfunctions must not be rewarded by exempting emissions during these periods – such exemptions effectively incentivize operators to find a way to interpret non-compliance periods as "malfunctions," or to cut corners on maintenance.[53] Even if an event legitimately fits a strict definition of malfunction, emissions exceedances during these times should be considered violations of standards.

Finally, the South Coast AQMD fails to consider whether there are feasible alternatives to allowing petroleum refineries to pollute for hours or days during equipment start-up periods. For instance, petroleum refineries could instead be required to add temperature recording devices to equipment to determine when the unit has reached the minimum operating temperature during start-up periods. The Title V permits should incorporate the manufacturer's minimum operating temperature requirement for each equipment subject to the rule. Additionally, the agency does not consider whether an alternative emission limit could be created for these equipment categories to limit pollution during start-up. For these reasons, the agency must remove the current SSM provisions or at a minimum consider alternatives for start-up periods.

VI. South Coast AQMD Must Provide the Public with Transparency into the Implementation of Various Elements of the Proposed Rule.

One of the South Coast AQMD's guiding principles of environmental justice is that the public should have the right to "participate in the development and *implementation* of adequate

[50] Rule 1109.1 – NOx Emission Reduction for Refinery Equipment Presentation, *supra* note 15, at 6 (Working Grup Meeting #15).
[51] *Id.* at 6.
[52] Rule 1109.1(c)(23)
[53] Indeed, the propose rule's definition for what constitutes a "malfunction" is very general and could be subject to abuse by petroleum refineries. *See* Rule 1109.1(c)(16).

environmental regulations in their communities."[54] Proposed Rule 1109.1 fails to conform to this principle. In particular, there are two key aspects of Proposed Rule 1109.1 that deny the public transparency into the implementation of various provisions.

The first issue is that the agency removed critical transparency and accountability provisions required when petroleum refineries use SSM exemptions, including the mandate that petroleum refineries implement "good air pollution control practices to minimize NOx emissions," notify the Executive Offer after an SSM event, and submit reports to the agency summarizing the "[d]ates, times, and duration" of each event.[55] Although the SSM provisions are unlawful and should be removed, as noted above, without these omitted provisions, the public is denied visibility into how the agency is implementing these exemptions, and whether petroleum refineries are abusing these allowances.

Finally, the agency neglects to include a provision providing the public with an opportunity to review and comment on the B-CAPs submitted to the Executive Officer for approval.[56] The public should have an opportunity to assess and weigh-in on the proposed B-CAPs after submission to the Executive Officer and before final approval. The final approved B-CAPs should then be accessible to the public. The proposed rule's lack of transparency undermines public confidence in the adequacy of these B-CAPs, and prevents the public from understanding how these emission limits will be implemented at individual petroleum refineries.

VII. South Coast AQMD Improperly Exempts Various Units from Compliance with Emission Limits Without a Rational Basis or Evidentiary Support.

Proposed Rule 1109.1 exempts various equipment categories.[57] Before providing these exemptions, there are three central concerns that South Coast AQMD should address. First, the agency fails to provide the total amount of annual NOx pollution that would be released by these exempt units, which could be cumulatively considerable. Second, the agency fails to note whether these units are concentrated at particular petroleum refineries, or scattered across all petroleum refineries across the region to understand the need for these exemptions. Lastly, the agency neglects to define certain categories of exempt units, such as "[b]oilers that are unfired," that could be subject to interpretation and abuse.[58] These issues should be addressed to assess whether these exemptions are appropriate.

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[54] *Guiding Principles of Environmental Justice*, SCAQMD,https://www.aqmd.gov/nav/about/initiatives/community-efforts/environmental-justice/ej-guiding-principles.
[55] Rule 1109.1(e)(2)(A)-(C)
[56] Rule 1109.1(k)(3)
[57] Rule 1109.1(l)
[58] Rule 1109.1(l)(1)(a)

VIII. South Coast AQMD's Revised Definition for Rated Heat Input Should Require New Source Review for Any Altered or Modified Rated Heat Input.

Proposed Rule 1109.1 removes language allowing petroleum refineries to use an "altered or modified . . . maximum heat input" as the "new maximum heat input . . . considered as the Rated Heat Input Capacity."[59] We appreciate the South Coast AQMD's removal of this problematic language from the definition for rated heat input capacity. The agency, however, should confirm at the next working group meeting that the removal of this language is meant to avoid implying that petroleum refineries can reinterpret the maximum heat input capacity without New Source Review. In particular, petroleum refineries should not be able to claim that past authorization to operate at a higher heat rate than specified in the nameplate would mean a present increase in the heat rate does not actually constitute an increase.

IX. South Coast AQMD Must Remove or Restrict the Use of Emission Factors by Petroleum Refineries that Can Underestimate Actual Emissions.

For vapor incinerators, the proposed rule would allow petroleum refineries to determine emissions by using "a default emission factor approved in writing by the Executive Officer."[60] Emission factors are unreliable and do not necessarily reflect the actual emissions from a source. Consequently, the use of an emission factor should only be allowed if the equipment cannot be tested based on a technical determination. The South Coast AQMD should remove this language or constrain its use to circumstances where source testing would not be feasible to establish emissions for vapor incinerators.

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Respectfully submitted,

Oscar Espino-Padron, Attorney
Byron Chan, Attorney
Adrian Martinez, Attorney
Community Partnerships Program
Earthjustice

Taylor Thomas, Co-Director
East Yard Communities for Environmental Justice

Julia May, Senior Scientist
Communities for a Better Environment

Christopher Chavez, Deputy Policy Director
Coalition for Clean Air

Maya Golden-Krasner, Deputy Director and Senior Attorney
Climate Law Institute
Center for Biological Diversity

Monica Mariko Embrey, Associate Director
Beyond Dirty Fuels Campaign
Sierra Club

[59] Rule 1109.1(c)(21)
[60] Rule 1109.1 (i)(5)(B)