

**CONTRA COSTA COUNTY  
HAZARDOUS MATERIALS COMMISSION  
PLANNING AND POLICY DEVELOPMENT COMMITTEE MEETING**

**Wednesday, December 18, 2019  
4:00 p.m. – 5:30 p.m.**

**1333 Pine Street  
Suite C-1  
Martinez CA 94553**

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**AGENDA**

- 1. CALL TO ORDER, ANNOUNCEMENTS AND INTRODUCTIONS**
- 2. APPROVAL OF MINUTES: NOVEMBER 20, 2019**
- 3. PUBLIC COMMENT**
- 4. OLD BUSINESS:**
  - a) Continue discussion of a proposed resolution on the Western States Petroleum Association’s lawsuits pertaining to CalARP and PSM regulations.
- 5. NEW BUSINESS:**
  - a) Discuss a recommendation from Communities for a Better Environment that the County perform an independent analysis of process hazards associated with the recent and foreseeable future introduction of new types of oil feed stocks at the Phillips 66 San Francisco Refinery facility in Rodeo.
  - b) Consider “Principle” statements for hazardous materials-related issues for the County’s legislative platform.
- 6. REPORTS FROM COMMISSIONERS ON MATTERS OF COMMISSION INTEREST ..... Members**
- 7. PLAN NEXT AGENDA**
- 8. ADJOURNMENT**

*Attachments*

**Questions: Call Michael Kent (925) 313-6587**

*Any disclosable public records related to an open session item on a regular meeting agenda and distributed by Contra Costa Health Services to a majority of members of the Hazardous Materials Commission less than 72 hours prior to that meeting are available for public inspection at 597 Center Avenue in Martinez*

**Contra Costa County Hazardous Materials Commission  
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## **Hazardous Materials Commission**

### **Draft Minutes**

Planning and Policy Development Committee

November 20, 2019

#### **Members and Alternates:**

**Present:** Don Bristol, Jonathan Bash, Mark Hughes, Jim Payne, George Smith, Tim Bancroft (alternate), Rick Alcaraz

**Absent:** Frank Gordon (represented by alternate), Mark Ross,

**Staff:** Michael Kent

**Members of the Public:** Clyde Trembettas, Cal OSHA; Mike Wilson, Blue Green Alliance

#### **1. Call to order, introductions and announcements**

Commissioner Payne called the meeting to order at 4:07.

#### **Announcements:**

Michael Kent announced:

- The next CAER Safety Summit will be on December 12<sup>th</sup> at 8:00 at the Shell Clubhouse.
- The Bay Area Air Quality Management District held the first in a series of meetings on particulate matter standards on October 28<sup>th</sup>. He will try to find out when the next meeting will be help.

#### **2. Public Comments: None**

#### **3. Approval of Minutes:**

The minutes from the October 16, 2019 meeting were moved by Commissioner Hughes, seconded by Commissioner Smith and approved 2-0-3 with Commissioners Bash, Bristol and Payne abstaining. Commissioner Bancroft arrived after the vote.

#### **4. Old Business:**

- a) Consider a recommendation to support legislation to repurpose the use of the Underground Storage Tank clean-up fund.**

Michael Kent explained that the Board of Supervisors is transitioning their legislative platform from a policy-based platform to a principle-based platform in 2020. They will keep the items in the current platform for 2020, but will not be adding more. Therefore, it would make no sense to make a recommendation to the Board about this specific proposal. Instead, he recommended that

the committee come up with some general principle statements for the issues the Commission has been engaged in – brownfields, pipelines, school siting and Environmental Justice.

Commissioner Smith requested that staff come up with some proposed principle statements for these issue area for the committee, and then the full commission, to consider.

**5) New Business:**

**a) Review and discuss lawsuits pertaining to new CalARP/PSM regulation amendments.**

Mr. Wilson from the Blue Green Alliance began the discussion by reviewing the history of the issue. He pointed out that the state completed amendments to the CalARP and PSM regulations in 2017 in the wake of the National Chemical Safety Board review of the 2012 Chevron fire. The Western States Petroleum Association (WSPA) then filed complaints in state and federal court challenging these regulations in 2019. He then explained that the State complaint makes the claim that the State violated the Administrative Procedures Act (APA) because the regulations are unnecessary, unclear and beyond the scope of the law. The Federal complaint is about employee participation in safety reviews. The complaint claims these interfere with National Labor Relations Board authority, because States don't have the right to protect workers safety beyond what is in the Federal regulations. His group disagrees with this assessment, and consulted with an expert on federal preemption issues who said this change would be significant if the court rule in favor of the complaint. Mr. Trombetta, manager of CalOSHA's Industrial Inspection program, said that he couldn't talk about the State complaint because he is a state employee, but he could talk about his experience running the program. He could talk about the Federal complaint. Mr. Wilson said the way the APA works, the whole regulation would be voided if the complaint is accepted. His group wants to bring public attention to this issue and put political pressure on WSPA to settle their differences through administrative procedures.

Mr. Trombetta said his inspectors have found some issues with some of the wording during the first inspections completed under the new regulations, such as with interpreting the meaning of "Major Change" and "Employee Participation". So they created a "form 9" to give to the OSHA Standards Board to recommend changes to the regulations to clarify the meaning of these terms. This was done before the State complaint was filed. Industry can also put in a petition to the Standards Board to make changes to the regulations in a similar fashion. But this process hasn't been set up yet.

Mr. Wilson said that they would prefer the industry use this administrative process to address their concerns because they don't want to be in a situation where a judge has to make a determination and the whole law gets thrown out.

Mr. Trombetta added that the regulations are complex and the sections are interrelated. If you pull out one section of the regulation it affects all the other sections of the regulation.

Commissioner Smith asked if they were blindsided by the complaints or if WSPA expressed their concerns throughout the process of developing the amendments.

Commissioner Payne said that since the regulations went into effect there have been implementation issues with the employee representatives to safety reviews. The refineries have wanted to make the appointments themselves, but the unions have wanted to appoint their PSM and Health and Safety representatives. One problem that existed at some refineries before the amended regulations went into effect was that the refineries didn't appoint the right person.

Mr. Trombetta agreed that prior to the amended regulations, the refineries appointed whoever they wanted to and sometimes not the appropriate person. The unions felt they could pick the most appropriate person. Now the unions and the facilities decide together who is the appropriate representative using a different method. Commissioner Hughes observed that it seems like WSPA is looking at it differently and they are concerned the person picked wouldn't be qualified. Commissioner Payne countered that the amended regulations only make them document the recommendations and what they did.

Commissioner Hughes asked if the amended regulations define what qualified means. Mr. Trombetta responded that the amended regulations require that the refineries and the unions come up with criteria for what it means to be qualified.

Commissioner Smith asked if there were any efforts made to correct the problems with the regulations pertaining to the appointments. Commissioner Payne said that it differed by facilities. It worked well at some and less at others.

Commissioner Payne then reviewed the events of the Chevron fire in 2012 as a demonstration of why regulations are important.

Mr. Wilson said that Washington State is adopting new PSM laws based on the new amended regulations, and national terrorist laws are also adopting elements of these regulations, which show their importance. Commissioner Payne added that Congressman DeSaulnier is also interested in adopting federal regulations based on the new amended state regulations. Mr. Wilson then pointed to these interests in adopting the amended California regulations as the reason that a national law firm is involved – to stop the spread of these concepts.

Commissioner Smith asked if Chevron was the primary driver of these complaints. Commissioner Bristol said that Randy Sawyer said that Chevron was a driver of the complaints. Commissioner Payne said that Chevron pushed back during the development of the amendments to the regulations.

Getting back to the issue of the qualifications of the representatives appointed to safety reviews, Commissioner Payne said the amended regulations provide for a difference between union and non-union representatives in terms of qualifications. But anyone the unions appoint is going to be qualified, and it allows them to hire outside experts. Non-union representatives can't hire outside experts. Commissioner Bristol said that one of the concerns of WSPA is that there isn't sufficient oversight of outside people. He also added that in practice, stop work authority won't go away if the regulations go away. Mr. Trombetta offered that the regulations give a baseline of expectations.

Commissioner Hughes asked if any of the concerns in the WSPA state compliant are things that the state would like to address. Mr. Trombettas said his program would like to clarify the definition of “major change” and some other definitions. He observed that refineries are concerned that new inspectors could have different interpretations of definitions, so they don’t like squishy definitions. Also, the definition of hazardous materials is in dispute. He feels that anything that affects the process should be included. He thought the refineries would prefer a different definition. Commissioner Payne added that one of the concerns the refineries have expressed is the disparity between the two regulations. He agrees they should be aligned.

Mr. Wilson clarified that the complaint isn’t calling for text changes. They are being used as an example of the State not following proper process, which would result in getting the whole law thrown out. Commissioner Hughes asked if this was just done to get leverage. Mr. Trombettas said that it took time to figure out what the problems were with the amended regulations, but no outreach was done in the meantime. Mr. Wilson added that these types of accusations are difficult to defend. So his group wants to elevate the issue to the public level and the political level and not to leave it to a judge to decide.

Commissioner Hughes observed that unions and refineries are both passionate about health and safety issues. The risk of the route WSPA is taking by filing the complaints is that it might cut off all discussion; but there might be some middle ground. So implying the refineries don’t care about safety could cut off discussion. Mr. Trombettas said he thought there needs to be a conversation between the parties rather than a lawsuit. Mr. Wilson said that is why he supports a resolution calling for more discussion. Commissioner Payne said the unions thought the process was going well and then they were blindsided, but there have been great improvements in safety through the process. Mr. Trombettas agreed.

Commissioner Bristol, referring to the draft resolution Mr. Wilson brought for the committee to consider, noted that Shell has not yet been sold to PBF. He also noted that WSPA votes are taken by all individual members, so even a few refineries opposing the complaints won’t change anything. Commissioner Hughes thought the next to the last points in the draft resolution should be stricken and instead the parties be encouraged to engage in discussions about the issues. Commissioner Payne noted that Marathon was in the VPP program under previous ownership but was dropped because it disallowed monitoring compensation for safety.

The committee thanked their guests for sharing their perspective and asked that the issue be considered again at the next meeting with Randy Sawyer, the Hazardous Materials Program manager, and WSPA.

**6) Items of Interest:** None

**7) Plan Next Agenda:** The committee will continue to review and discuss the lawsuits pertaining to the CalARP /PSM regulations, and consider draft language on principle statements for the County’s Legislative Platform.

**8) Adjournment –** The meeting was adjourned at 5:30.

# **Attachment**

## **Item 1**

# Phillips 66 San Francisco Refinery tar sands expansion update—tars sands up, and a ‘new’ project component

CBE reported on the Phillips 66 Company’s project to expand the capacity to import and process tar sands oil at its San Francisco Refinery (SFR) in [early 2019](#). Now its tar sands imports are increasing drastically, and another part of its tar sands project appears to have been revealed.

## Tar Sands Rising

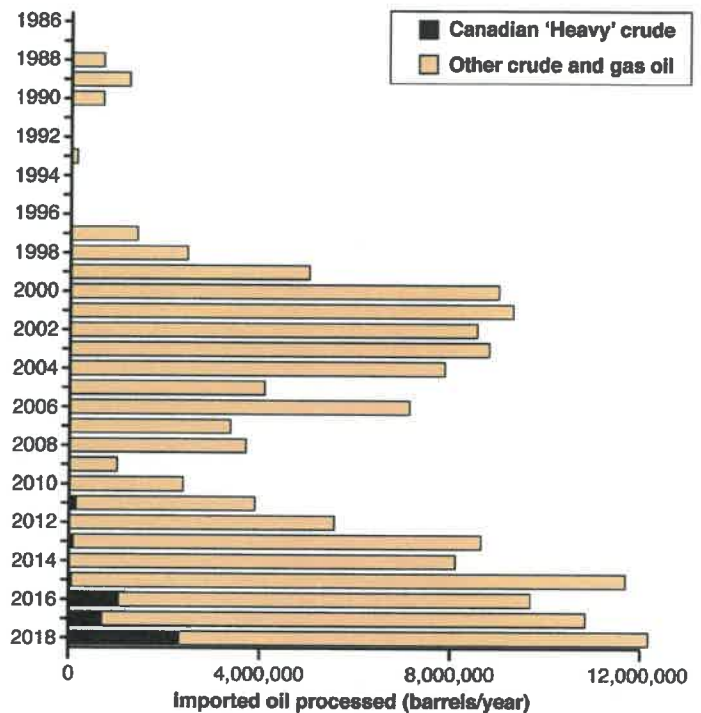
In 2018 the SFR imported and processed more than two million barrels of Canadian ‘Heavy’ crude.<sup>1</sup> Chart 1. Canadian Heavy ( $\leq 25^\circ\text{API}$  and  $\geq 2$  wt. % sulfur) is primarily a ‘dilbit’ mix of diluent oils and bitumen from the Canadian tar sands. It grew to nearly 5 % of the SFR’s total current capacity<sup>2</sup> by 2018. Chart 2.

Compared with the 158,000 barrels of this oil it refined during 2013–2015, during 2016–2018 the SFR refined 4,081,000 barrels of Canadian Heavy.<sup>1</sup> This means its three-year average tar sands oil refining volume grew over this period by a rate of nearly 25 *times*.

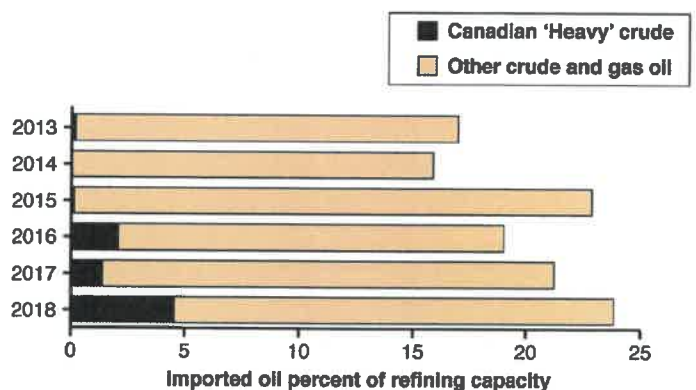
At this rate the Rodeo refinery could make a near-total switch to tar sands oil in another three years or less—but that would require expanding SFR tar sands oil import and refining capacities. Crucially, Phillips 66 has proposed several parts of this expansion, and now has revealed what appears to be a new component of its project

## Diesel Hydrotreater Conversion

On 6 November 2019 Phillips 66 told investors it plans “to convert a diesel hydrotreater to run renewable feedstocks like soybean oils” at the SFR.<sup>3</sup> Its management talked then about how this could take advantage of the Low Carbon Fuel Standard to boost profits.<sup>3</sup> But this *also*



1. Foreign oil imports processed by the San Francisco Refinery from 1986–2018. Canadian Heavy:  $\leq 25^\circ\text{API}$  and  $\geq 2$  % sulfur; is primarily diluted bitumen ‘tar sands’ oil. Data from USEIA imports: [www.eia.gov/petroleum/imports/companylevel/archive](http://www.eia.gov/petroleum/imports/companylevel/archive).



2. Oil Imports v. San Francisco Refinery Capacity, 2013–2018. Canadian Heavy:  $\leq 25^\circ\text{API}$  and  $\geq 2$  % sulfur. Foreign imports from USEIA: [www.eia.gov/petroleum/imports/companylevel/archive](http://www.eia.gov/petroleum/imports/companylevel/archive); total San Francisco Refinery capacity (140,000 barrels/day) from Phillips 66: [www.phillips66.com/refining/san-francisco-refinery](http://www.phillips66.com/refining/san-francisco-refinery).

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## San Francisco Refinery tar sands expansion update—continued

could help the SFR refine more tar sands oil, and refining biofuels has its own hazards.

Tar sands ‘dilbit’ has a notoriously low crude distillation yield of distillate-diesel. Chart 3. This means that a switch to tar sands could idle some of the diesel hydrotreating capacity at the SFR. So, to maximize profits while switching to tar sands dilbit, the SFR would need another hydrotreater feedstock. The refiner’s newly announced diesel hydrotreater conversion could help it switch to tar sands oil in this way.

### Despite the green image, refining biofuels creates new hazards

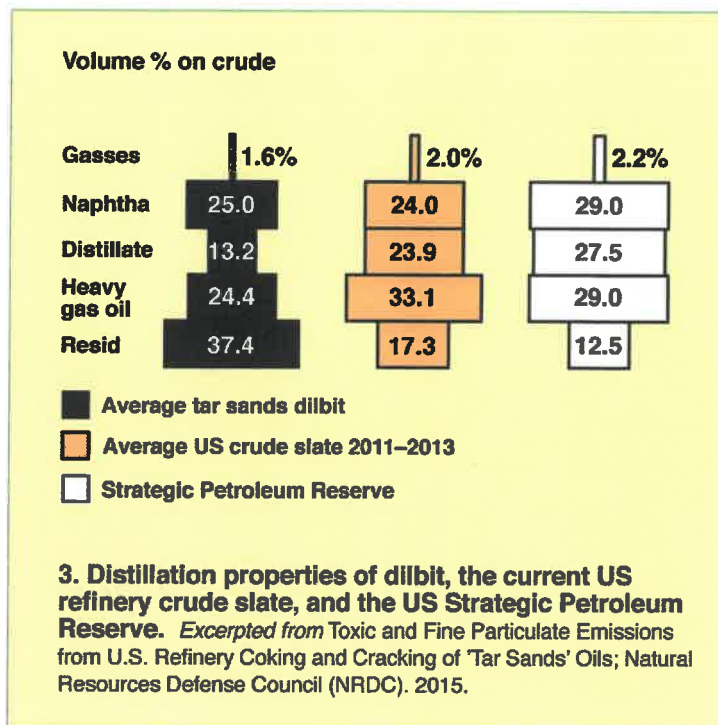
**Climate:** New investments in refining biofuels instead of in solar-electric vehicles risk carbon lock-in (continuing too much oil refining emissions for too long).

**Health:** Compared with maximum feasible reliance on solar and wind-powered electric vehicles, over-reliance on biofuels to meet our 2050 climate target could cause 9,300 air pollution deaths statewide each year.<sup>4</sup>

**Safety:** Introducing a new refinery feedstock introduces new hazards. The Nustar ethanol explosion incident pictured is a disastrous example that this is true for biofuels too.

#### References:

(1) U.S. Energy Information Administration, *Company Level Imports*; [www.eia.gov/petroleum/imports/companylevel/archive](http://www.eia.gov/petroleum/imports/companylevel/archive). Downloaded 2 December 2019. (2) Phillips 66 Company, *San Francisco Refinery: Facts & Figures*; [www.phillips66.com/refining/san-francisco-refinery](http://www.phillips66.com/refining/san-francisco-refinery). Accessed various dates through 3 December 2019. (3) Phillips 66 Company, *Transcript, Phillips 66 2019 Investor Day: Phillips 66 (NYSE: PSX), November 6, 2019 at 8:30 a.m. ET*. (4) Zhao, B., Wang, T., Jiang, Z., Gu, Y., Liou, K-N., Kalandiyur, N., Gao, Y., and Y. Zhu. Air Quality and Health Cobenefits of Different Deep Decarbonization Pathways in California. *Environmental Science & Technology* 2019 53: 7163–7171. DOI: 10.1021/acs.est.9b02385.



Ethanol tank explosions and fire, Nustar Shore Terminals in Rodeo, October 15, 2019. Photo: Chris Riley, Times-Herald