



CREATING GOOD JOBS, A CLEAN ENVIRONMENT, AND A FAIR AND THRIVING ECONOMY

## **Comments from the BlueGreen Alliance on the Proposed Amendments to the 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**

**Submitted via email to [Elizabeth.Brega@calepa.ca.gov](mailto:Elizabeth.Brega@calepa.ca.gov) and [Jeannie.Lee@calepa.ca.gov](mailto:Jeannie.Lee@calepa.ca.gov).**

**April 20, 2025**

Thank you for the opportunity to submit these comments on behalf of the BlueGreen Alliance (BGA). BGA is a California and national coalition of labor unions and environmental organizations that work together to fight climate change, protect the health of people and the environment, stand against economic and racial inequality, and create and maintain good-paying, union jobs in communities across the country. BGA was closely involved in the development of California OSHA's Process Safety Management Rule for Refineries (PSM) (5189.1), including participating in the stakeholder committee that negotiated every word of 5189.1 with representatives of the Western States Petroleum Association.

The proposed amendments to 5189.1 in 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) weaken the protections that were painstakingly negotiated with WSPA after the explosion and fire at the Chevron Richmond refinery in 2012 that spread smoke across the Bay Area and resulted 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; and
- Reduce the power of operating and turnaround workers and their unions to keep themselves and the surrounding communities safe.

**More specifically:**

**Proposed Amendment to the Definition of Employee Representative.**



CREATING GOOD JOBS, A CLEAN ENVIRONMENT, AND A FAIR AND THRIVING ECONOMY

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 language 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.

### **Proposed Amendment to the Definition of Highly Hazardous Material.**

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 and oppose this added language.

**Proposed Amendment to the Definition of Major Change.** If the definition of highly hazardous material is retained, the other language in the proposed change is clarifying rather than weakening.

### **Proposed Amendment to the Hierarchy of Hazard Control Analysis**

Changing the language from **shall** to **may** increases employers' power to ignore practical, recommended inherent safety, 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.

### **Proposed Amendments to (q) 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.



CREATING GOOD JOBS, A CLEAN ENVIRONMENT, AND A FAIR AND THRIVING ECONOMY

In conclusion, these amendments, and the lack of public and stakeholder notification and involvement to-date, in considering their adoption, are deeply troubling, given the consistent demonstrated interest of the public and policymakers in strong refinery safety regulations. Just last year, the State Legislature and Governor's office approved legislation, AB 3258, which clarified the definition of 5189.1 to ensure that renewable fuel refineries would be covered by the rule. The California OSH Standards Board voted similarly to move forward with this change. This was after a fire at Marathon Martinez refinery in November 2023 that critically injured worker Jerome Serrano, who suffered extreme burns throughout his body.

This incident in addition to the recent February 2 fire at PBF Martinez, which released 500 pounds of sulphur dioxide into the community and resulted in thousands of Martinez-area residents being forced to shelter in place for two days, demonstrates the significant risk to workers, the public, and the environment from this highly hazard industry, requiring strengthened – not weakened – health and safety standards. We urge DIR and the Standards Board to preserve the intent and function of PSM 5189.1.