DOCKETED	
Docket Number:	23-SB-02
Project Title:	SB X1-2 Implementation
TN #:	254388
Document Title:	Julia May-CBE Comments-SBX1-2 Prel, Guid for Env and Climate Justice from CBE & APEN
Description:	N/A
Filer:	System
Organization:	Julia May / CBE
Submitter Role:	Public
Submission Date:	2/8/2024 3:30:01 PM
Docketed Date:	2/8/2024

Comment Received From: Julia May / CBE
Submitted On: 2/8/2024
Docket Number: 23-SB-02

SBX1-2 Prel, Guid for Env and Climate Justice from CBE & APEN

See attached comments from Communities for a Better Environment (CBE) and the Asian Pacific Environmental Network (APEN) on SBX1-2 principles and evaluation needed on the Fuels Assessment and the Transportation Fuels Transition Plan.

Additional submitted attachment is included below.

February 8, 2024

California Energy Commission (CEC)
Submitted by Portal to SB-12 Docket 23-SB-02

Re: SBX1-2 Preliminary Guidance for Environmental and Climate Justice

Honorable Commissioners and CEC Staff,

Thank you for engaging with our California environmental justice communities in the SBX1-2 proceeding thus far. We commend the Commission and the Division of Petroleum Market Oversight (DPMO) for its efforts to ensure accountability and transparency for all Californians introduced in its letter published on January 31, 2024.

The following letter is about a broader set of issues that the Commission must address under SBX1-2. In anticipation of the first Transportation Fuels Transition Assessment and the Transportation Fuels Transition Plan, this letter offers guidance on some of the key issues CEC should consider in the early stages of the SB-02-23 rulemaking. Please also note our comments following the August 17, 2023 panel discussion, submitted Aug. 31, 2023.[1]

These preliminary recommendations are grounded in more than four decades of environmental justice leadership from California refinery communities like Wilmington and Richmond, expert engagement in technical rulemakings at the local, regional, state, and national levels, as well as administrative appeals and litigation against oil refinery actions that continue to prolong and worsen pollution and hazards in our communities—and ultimately, for all Californians.

In summary, our comments recommend the following first steps:

I. **Acknowledge key factors for refinery communities in the Transportation Fuels Assessment**, which are necessary to meet SBX1-2's requirements to provide "safe, reliable, affordable, and equitable" transportation; and

II. **Plan to propose additional regulatory frameworks in the Transportation Fuels Transition Plan** to step down emissions from California's fossil fuel supply and demand.

Details are provided below.

[1] Submitted by CBE, available at: https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-SB-02.

I. Transportation Fuel Assessment

In the first Transportation Fuels Assessment due to the legislature this year, authorized under Section 25371, the Commission should reference the following issues and identify the need to collect further data and conduct future analyses. The CEC should also invite the public to provide additional information about important community impacts and the best data sources to measure them. Addressing the issues below is ultimately necessary to ensure an "equitable" supply of fuels, because Black, Indigenous, Latinx, Asian immigrant and refugee communities, and low-income communities are the worst hit by the hazards and costs of our current fossil fuel transportation chain from extracting and refining to the combustion of fossil fuels.

a. Assessment of Health Benefits and Avoided Social Costs

1. **To ensure a "safe" supply of transportation fuels, the Commission should consider the climate, air quality, and physical safety risks and impacts of oil refineries on nearby communities,** pursuant to Section 25371(a)(1)(A) and (B). Oil refineries create physical safety risks via refinery fires, explosions, and the continued use of extremely hazardous Modified Hydrogen Fluoride (at two California refineries).[2] This fuel supply system creates harmful emissions at the refineries themselves, upstream in the production and transportation of refinery feedstocks—whether crude oil or biofuel crops—and during the ultimate combustion of transportation fuels, resulting in the worst smog in the nation. In the context of extreme climate impacts, the entire fossil fuel transportation chain is catastrophically unsafe for all Californians. For all of these impacts, the Commission should assess the heavily disproportionate impacts in frontline communities of color.

2. **In future analyses of costs and cost-effectiveness, the Commission should include a social cost-benefit analysis for the region surrounding each refinery.** This analysis should reflect changes in monetized health costs of total emissions from refineries' total production, regardless of whether the fuel is produced for in-state demand, domestic out-of-state export, or foreign export. Reductions in pollutant and greenhouse gas emissions bring significant health benefits with corresponding monetized health benefits.

3. **We recommend contracting with public health experts who have experience analyzing such data from refinery communities at a granular level**.[3] This process

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[2] The LA County Health Department found that the use of Modified Hydrogen Fluoride at the Valero Wilmington and Torrance PBF refinery endanger millions of people in Los Angeles in the event of a release. *See, e.g.,* County of Los Angeles - Public Health, Letter on Proposed Rule 1410 to the AQMD, Apr. 2, 2019, https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1410/1410-comment-letters/county-of-los-angeles-public-health-04282019.pdf?sfvrsn=9. Sheriff, Lucy. *Chemical Used in Many Oil Refineries Could Cause Mass Deaths If Leaked*, Truthout.org, Apr. 17, 2021, https://truthout.org/articles/chemical-used-in-many-oil-refineries-could-cause-mass-deaths-if-leaked/.

[3] This could serve as a follow-up to the Office of Environmental Health Hazard Assessment (OEHHA) 2022 report, *Benefits and Impacts of Greenhouse Gas Limits on Disadvantaged Communities*, which found that low-income communities of color who live near oil refineries and facilities producing hydrogen through steam methane reforming experienced *increases* in greenhouse gas and PM2.5 pollution from 2012 to 2018. *See* Table 2 and accompanying explanation. OEHHA, *Benefits and Impacts of Greenhouse Gas Limits on Disadvantaged*

would also include public vetting to identify the best data on refinery and other fossil fuel emissions. As an example, the Wilmington, Carson, West Long Beach area has a heavy concentration of refineries, oil drilling, transportation, ports, and other cumulative impacts. Under AB617, the region developed a customized emissions inventory which found refineries are the largest emitter of certain pollutants even in this heavy transportation corridor.[4] However, even with a customized inventory, a specialized study found benzene at every South Coast refinery was grossly underestimated.[5] A public process would help identify these additional sources of reliable emissions data.

b. Financial and Economic Analysis

1. **Ensuring a "reliable" and "affordable" supply of transportation fuels** in the state requires analyzing the effects of foreign and domestic exports on fuel costs within California, as well as the state's risk of financial liabilities, the potential undervaluation of soil and groundwater remediation costs at oil refineries, and the profound costs of climate impacts from the emissions the refinery sector is responsible for causing.[6] Additionally, the state should consider safety and corresponding financial risks to workers, surrounding communities, and the state during this mid-transition period. For example, as incentives for refineries to maintain the same risk criteria and calculations decrease, risks to those physically closest to the aging refinery infrastructure increase.

   Furthermore, prioritizing maximum use of existing gasoline storage in-state ahead of refinery shutdowns, may be sufficient to smooth out reduced gasoline supply in-state that could otherwise cause price spikes. And as California demand declines, more existing storage capacity would be available for use in-state to avoid price spikes, if refiners prioritize use for in-state purposes.

c. Site-Specific Analysis

1. **Section 25371(a)(1)(C) inherently calls for the inclusion of site-specific information, as "supply conditions" are variable depending on each refinery** (though also interconnected). It would be beneficial for the Commission to develop a database that aggregates existing public information from partnering agencies and compile key

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Communities (Feb. 2022), p. 37, https://oehha.ca.gov/media/downloads/environmental-justice//impactsofghgpoliciesreport020322.pdf.

[4] In Wilmington, Carson, and West Long Beach, oil refineries are the largest source of VOCs and second largest source of NOx (among other pollutants). South Coast Air Quality Management District, Community Emissions Reduction Plan: Wilmington, Carson, West Long Beach (Sep. 2019), pp. 3b-2, 3b-6, https://www.aqmd.gov/docs/default-source/ab-617-ab-134/steering-committees/wilmington/cerp/final-cerp-wcwlb.pdf?sfvrsn=8.

[5] Every South Coast refinery showed major underestimation of VOCs and benzene (Fluxsense 2017 study measured VOCs 6 times, benzene 34 times higher on average. (p. 94) https://www.aqmd.gov/docs/default-source/fenceline_monitroing/project_1/fluxsense_scaqmd2015_project1_finalreport(040717).pdf

[6] Counting GHG emissions from just four subsectors including Refineries, in-state extraction of their feedstocks (crude oil), cars, and trucks that refineries fuel, add up to about half of the state's GHG emissions. This doesn't count other subsectors (jet fuel, etc.). You can't solve climate impacts without a phaseout of California refineries and the fuels they make.

confidential business information (CBI) needed by the Commission and partnering agencies to complete its analysis. If legitimately CBI, the Commission can then provide aggregated versions of this data for the public.

2. **Useful and necessary site-specific refinery data** include: minimum and maximum throughput capacity at each refinery and each process unit, actual throughput over time, crude oil sources and volumes for each refinery over time (domestic and foreign),[7] Clean Air Act Title V permit and other Air District information on individual refinery units (size, capacity, and emissions for distillation, cracking, reforming, alkylation, desulfurization, coking, etc., including sub-units of these processes (e.g., boilers and heaters)). These are necessary to monitor and plan for reductions in production and associated emissions over time, as well as refinery performance fluctuations, maintenance, shutdowns, and ultimately, decommissioning. Additional relevant data may come from the U.S. Energy Administration Agency (EIA), the CEC, CARB, California Air Districts, and other sources.

3. Section 25371(a)(1)(D) indicates that **the Commission should also include an analysis of the public record of complaints and requests for variances made at regional air districts;** a record of Notices of Violation issued by local, regional, and state enforcement agencies; and a series of interagency meetings between the Commission and Air District inspection, enforcement, equity, climate, and community engagement staff should be convened to understand the nature of the violations, associated infrastructure risks, and associated financial costs.

d. Public Process

1. In both the Transportation Fuels Transition Assessment and Transportation Fuels Transition Plan, the CEC and all public agencies involved should commit to a public process of engagement. This procedural commitment is necessary for the meaningful establishment and engagement of the multi-stakeholder, multi-agency workgroup to address total emissions from extraction and refinery operations in California, maximize public health benefits, address the growing issue of excess production beyond in-state demand, and support frontline communities and workers.

2. **The Commission should recommend a community- and worker-centered regulatory gaps analysis for refinery contraction, indefinite idling, and decommissioning processes.** The planning processes of decommissioning oil wells, phasing out power plants, and shutting down mines provide a few examples of how to manage the decommissioning of refineries, but there are specific regulatory gaps that need to be filled when it comes to decommissioning refineries. Unlike offshore oil wells, which have complex decommissioning notification and financial assurance schemes,[8] there are no

[7] These should include sulfur content, API gravity, and any special hazards, because sources of crude oil have climate and smog implications. *See* STAND.earth, *Linked Fates: How California's Oil Imports Affect the Future of the Amazon Rainforest State and Corporate Leaders can Chart a New Path* (Dec. 2021), https://stand.earth/wp-content/uploads/2022/10/linked_fates_report_final_eng_0.pdf.

[8] Bureau of Ocean Energy Management (BOEM), "Leasing – Decommissioning – Pacific – Financial Assurance," https://www.boem.gov/oil-gas-energy/leasing/decommissioning-pacific; *see also* Interagency Decommissioning

notification procedures and extremely limited and outdated financial assurances required for California oil refineries, despite being century-old facilities. Oil companies may seek to slow investments or engage in cost-cutting measures in these otherwise stranded refinery assets in a way that jeopardizes worker and community safety. For example, a regulatory gap analysis would show that refineries have a great deal of latitude to change their risk assessment thresholds, protocols, and procedures for maintenance and safety. This lack of regulatory certainty and consistency can and will result in harm to workers and communities if the state fails to fill these regulatory gaps that exist for other industrial infrastructure.

3. The Commission should encourage engagement with the CalEPA Office of Environmental Health Hazards and Assessment (OEHHA); CARB Air Quality Planning and Science Division; State Lands Commission as well as other counties, cities, or local bodies which may hold port or wharf leases, the Department of Toxic Substances Control (DTSC); regional Water Boards, and the regional air districts—South Coast Air Quality Management District (SCAQMD or AQMD), Bay Area Air Quality Management District (BAAQMD), the San Joaquin Valley Air Pollution Control District (Valley Air) and others. Staff who specialize in community engagement, public health, and establishing equity should be engaged at each agency.

II. SBX1-2's Transportation Fuels Transition Plan: Proposed Framework to Step Down Local Emissions from Oil Refinery Supply of Fossil Fuels in Line With Declining In-State Demand

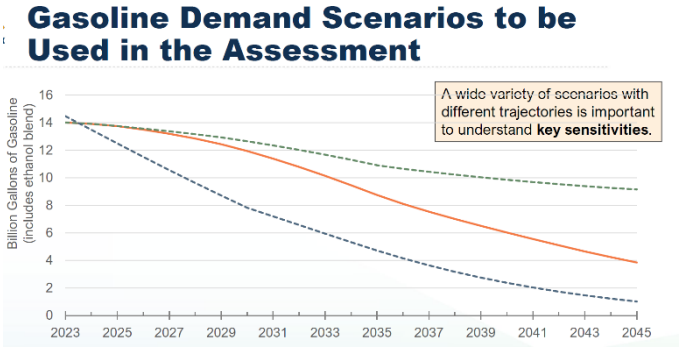
a. Correct the Business As Usual (BAU)

The baseline assumptions in the Assessment will be an important foundation for the Plan. Previously, CBE submitted comments with a warning about overestimating high levels of gasoline use in 2035.[9] Landmark transportation sector regulations, such as the Advanced Clean Truck, Advanced Clean Fleet, and In-Use Locomotive Regulation, should be assumed to be implemented. Otherwise, the business as usual (BAU) scenario in the Transportation Assessment will fundamentally distort and mar the Fuels Transition Plan.

Workgroup, *A Citizen's Guide to Offshore Oil and Gas Decommissioning in Federal Waters Off California* (2019), https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Regional-Leasing/Pacific-Region/Leasing/Decomissioning/BOEM-Decomm-Guide-7-22-19.pdf.

[9] CBE Comments – EJ panelist comments SBX1-2 – CA Gas Price Gouging & Fossil Transition Law, Aug. 31, 2023, available at: https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-SB-02.

For example, at right, CBE's previous comments highlighted the need to plan for no higher than the lower-most trajectory at right, which includes implementation of adopted transportation regulations and the Scoping Plan modeling.



b. Begin Exploration of Regulatory Framework

Under Section 25371.3, the Transportation Fuels Transition Plan must identify mechanisms to plan for and monitor progress toward the state's reliable, safe, equitable, and affordable transition *away from petroleum fuels* in line with declining in-state petroleum demand. **We propose the CEC begin exploring high-level regulatory frameworks for regulations to carry out SBX1-2 and AB 32 directives to ensure actual emissions from oil refineries are falling at the rate necessary for our climate future.**

The emissions modeling in the 2022 Update to the Climate Change Scoping Plan *assumes* emissions in the refinery sector fall according to "in-state demand." Yet oil refinery communities have *not* seen decreases in greenhouse gas emissions so far; the Cap and Trade experiment has failed refinery communities.[10] On the other hand, the electricity sector has made major progress in reducing greenhouse gas emissions due to the introduction of the Renewable Portfolio Standard, which ensures an orderly and predictable fossil fuel phaseout. Refineries now need serious attention in a managed phasedown.

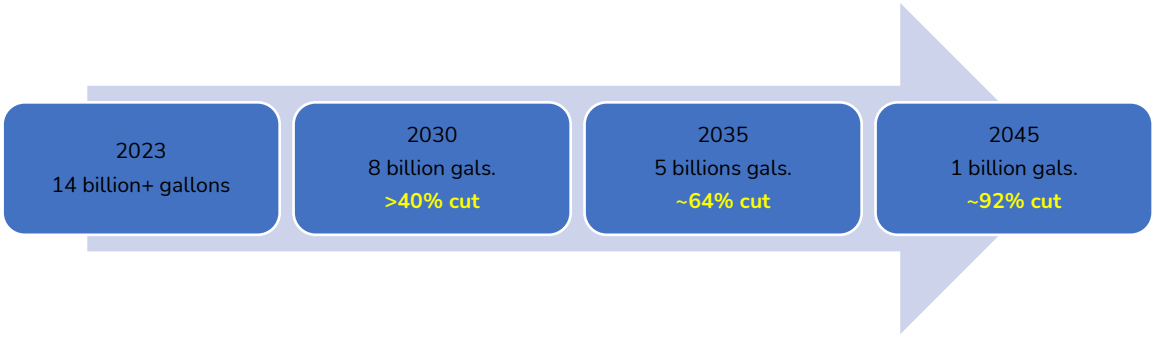
c. Proposed Framework: Emissions from California Oil Refineries Should Be Limited Approximately Equal to Projected Emissions from In-State Gasoline Demand to Maximize Direct Environmental Benefits and Meet Climate Goals

If the CEC seeks to institute a minimum reserve, local emissions from refinery supply should certainly be limited, at a maximum, to meet remaining demand in California. This approach would help ensure that the fossil fuel demand reductions that California achieves are not undermined by increasing fossil fuel exports outside California. Over time, this reliable managed decline is the most cost-effective and secure policy pathway to meet California's transportation needs. Limiting emissions from operations at refineries is necessary to meet state greenhouse gas, smog, environmental justice, and hazard reduction goals.

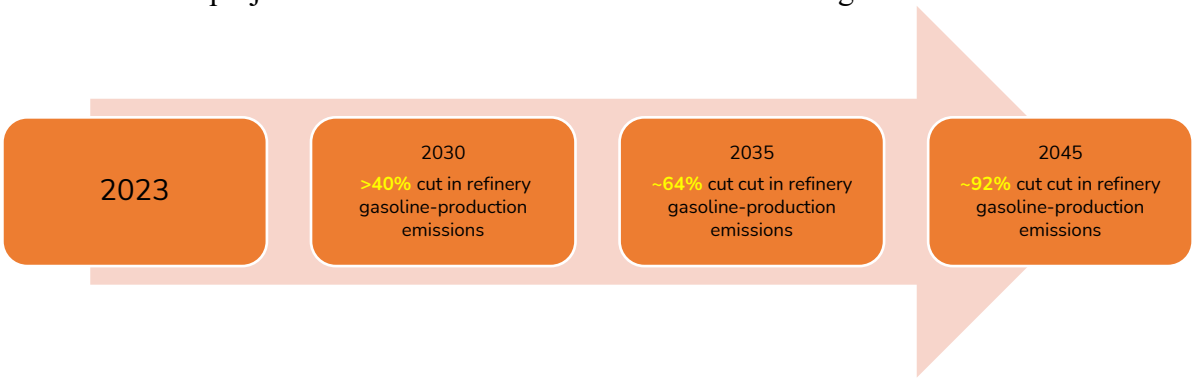
The following high-level steps illustrate our first proposed framework.

[10] OEHHA, *Benefits and Impacts of Greenhouse Gas Limits on Disadvantaged Communities* (Feb. 2022), p. 37, https://oehha.ca.gov/media/downloads/environmental-justice//impactsofghgpoliciesreport020322.pdf.

1. First, **identify declining in-state demand milestones** that track the downward trajectory in the 2022 Scoping Plan, derived from the CEC chart below. Given the dire nature of climate change, restrictions may need to be further accelerated.[11] Note that a similar 2040 Milestone should be added.



2. Next, **emissions cuts at each refinery would roughly track the same proportion** as the associated projected decline in emissions of overall in-state gasoline demand above.



3. These emissions cuts would include **proportional cuts of specific greenhouse gases** (e.g. CO2, Methane, etc.), and health-harming criteria pollutants (e.g. NOx, VOCs, CO, PM10/PM2.5, SOx), and toxic pollutants (e.g. benzene).

4. Set requirements for similar reductions in refinery emissions associated with diesel fuel production at each oil refinery, and evaluate interconnected dynamics across refineries and within each refinery.

5. Evaluate the costs and benefits of this fossil-fuel phaseout strategy, including the benefits of meeting Clean Air Act smog standards, benefits of toxic chemical emission reductions, and benefits of reducing GHGs, cost benefits to California water supplies and fisheries, and cost benefits to more secure, sustainable, and less costly energy sources, etc. Also evaluate benefits of reduced risk from explosions, fires, and elimination of risks from Modified Hydrogen Fluoride.

We encourage the CEC to embrace this public rulemaking SB-02-23 as a key forum for interagency and interdisciplinary dialogue to shift from a fossil-based economy to a fossil free

[11] Note that CEC could consider the inclusion of a very small percentage to accommodate existing supply from California refineries to nearby Western states in PADD 5 (Petroleum Administration Defense District) with little or no refinery capacity, and which currently import California gasoline supply (e.g. Arizona).

future. We appreciate your commitment to open dialogue and meaningful engagement with environmental justice communities.

Thanks for your consideration,

Sincerely,

Julia May, Communities for a Better Environment
Amelia Keyes, Communities for a Better Environment

Connie Cho, Asian Pacific Environmental Network