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Eric Berg
Deputy Chief of Health
Cal/OSHA Research and Standards
**Submitted Via Email**

**Re: Proposed Revisions to California Code of Regulations Title 8 Section 5189.1**

Dear Mr. Berg:

Thank you for the opportunity to review the discussion draft of Cal/OSHA's proposed regulations implementing Assembly Bill 3258, which seeks to expand the scope of the California Refinery and Chemical Plant Worker Safety Act of 1990, previously limited to petroleum refineries, to include other forms of refineries, including those that refine renewable feedstocks to produce gasoline, diesel fuel, aviation fuel, or biofuel. This letter addresses concerns regarding the scope of the proposed language of the discussion draft circulated on August 26, 2025, which goes far beyond the scope and legislative intent of AB 3258, potentially drastically expanding the reach of the statute beyond that contemplated by the Legislature. Specifically, the proposed language in subsections (b) and (c) would impose new and significant safety requirements for plants or units "interconnected with" the refinery. This includes language not contemplated under AB 3258, which could apply to a significant number of facilities well beyond the geographic footprint of regulated refineries or facilities unrelated to refinery operations, safety protocols, and hazard management. This overbroad expansion of safety requirements is inconsistent with the legislative intent and statutory mandate of AB 3258, exceeds Cal/OSHA's regulatory authority and, as it relates to certain "interconnected" facilities, is preempted by the Hazardous Liquid Pipeline Safety Act of 1979 and Government Code Section § 51090.

There is a simple correction to the proposed regulations to avoid these problems. As further discussed below, AB 3258 is exclusively focused on fixing a perceived loophole, where certain refineries manufacturing products derived from feedstocks other than petroleum and using the same equipment are not regulated similar to petroleum refineries. This objective can be fully realized through incorporation of the language in the discussion draft *without* the proposed "and interconnected with" language in subsection (b) and "plants or other units that are interconnected with a refinery process" proposed in subsection (c). We therefore respectfully request that the proposed language be deleted.

## A. The Proposed "Interconnected" Language is Inconsistent with the Statutory Text and Legislative Intent of AB 3258

The proposed rulemaking would significantly expand safety requirements and regulations for many facilities that were not identified as a concern during hearings before Cal/OSHA and enactment of AB 3258. There is no evidence or justification provided by Cal/OSHA to support this expansion to include facilities beyond the purview of the refineries that were the focus of the legislation.

1. <u>The Petition 601 Decision Does Not Support the Proposed Rulemaking</u>

As you are aware, the impetus for AB 3258 and the proposed rulemaking was a petition filed by United Steelworkers following an incident at a Marathon refinery in Martinez, California, Petition 601. Both the Petition and Cal/OSHA's associated analysis focused on whether refineries that use non-petroleum feedstocks and refine other products, such as biofuels, should be subject to the elevated safety requirements provided in Section 5189.1. For example, the Petition requested that "all renewable refineries must be covered under 5189.1." United Steelworkers, Petition for Emergency Rulemaking Under Section 5189.1, Process Safety Management for Petroleum Refineries, 1/15/24, at 3.

In considering the Petition, the Occupational Health and Safety Standards Board ("Board"), did not evaluate "interconnected" facilities. The Board did not discuss or evaluate the safety of hydrogen facilities at all, which is mentioned for the first time as a concern for Cal/OSHA in a comment in the discussion draft. The Board's decision was focused on the similarities between the equipment and operations of traditional petroleum refineries and other refineries that have been repurposed to create biofuels and other sustainable and alternative fuel types. For example, the Board found that "[i]ts changes were focused on the refining of renewable feedstocks, finding that those are "nearly identical to those of refining petroleum" and that "petroleum diesel and renewable diesel are chemically equivalent." Board Decision, Petition 601, 6/20/24, at 7-8. As opposed to Cal/OSHA's proposed regulation of "interconnected" facilities, regardless of where such facilities may be located, the Board was focused on the endpoint of the process – the refinery itself: "The Petitioner notes that physical properties of petroleum crude oil versus renewable fats, oils and greases may be different, *but those differences end at the point of delivery to the facility* where the feedstock is processed into highly flammable gasoline, jet fuel, diesel and industrial chemicals." *Id.* at 1 (emphasis added). The Board recommended that the regulations be updated to "close the safety gap" by including organic fuel sources. *Id.* at 11. The entire justification for granting the petition was to address the potential hazards associated with refineries that utilize renewable feedstock. *Id.* at 14-15. Ultimately, the Board granted the Petition to request that "Cal/OSHA expedite normal rulemaking to ensure renewable refineries are covered by section 5189.1." *Id.* at 16.

Nothing in the Petition, Board Decision, or supporting documentation addressed non-refinery facilities, interconnected facilities, or hydrogen facilities. The proposed regulations go far beyond the geographic scope of the refinery or the end point of delivery to potentially cover the entire supply chain for any refinery. Unlike the facilities considered in the Board decision, many potentially regulated facilities do not use the same equipment as traditional petroleum refineries and process materials and products that are substantially chemically distinct from petroleum products. The Decision and accompanying analysis provide no basis to extend the proposed regulations to such facilities, plants, and/or units. The proposed rulemaking attempts to address an issue that no one has raised as a concern in the underlying legislation and analysis.

2. The Proposed Rulemaking is Inconsistent with AB 3258

AB 3258 was strongly supported by the State Legislature, with very few amendments. The intent of the legislation was clear: "This bill expands the scope of the California Refinery and Chemical Plant Worker Safety Act of 1990 by revising the definition of 'refinery' to mean an establishment that produces gasoline, diesel fuel, aviation fuel, or biofuel through the processing of crude oil or alternative feedstock." Senate Bill Analysis, AB 3258, 6/4/24. The bill's author, Assemblymember Bryan, clearly stated an intention to regulate refinery processes, with no mention of processes that are interconnected with refinery operations. "This definition explicitly includes processes like crude oil refinement, alternative feedstock utilization, redistillation of unfinished petroleum derivatives, and cracking." Senate Bill Analysis, AB 3258, 6/12/24. Similar to the Board's decision on Petition 601, the intent of AB 3258 was to ensure that all refineries (as defined by the bill) were covered and not limited to only traditional petroleum refineries. The legislation was proposed because, according to the bill's author, Process Safety Management (PSM) regulations enacted to protect petroleum refinery workers were considered outdated because the "framework fails to encompass the newer processes that utilize the same machinery." Assembly Bill Analysis, AB 3258, 5/8/24. Thus, the legislation proposed to fix this perceived loophole by broadening the term "refinery" to ensure, "[r]egardless of the specific products or methods involved, all refineries must adhere to existing PSM regulations." Assembly Bill Analysis, AB 3258, 5/8/24.

This intent is reflected in the statutory text of AB 3258 and overall structure of Labor Code Section 7856. For example, Section 7856(a) directs the Board to limit the scope of its regulations to "give priority to facilities and areas of facilities where the potential is greatest for preventing severe or catastrophic accidents because of the size or nature of the process or business." AB 3258 directed the Board to adopt regulations "that implement [the legislation] *for refineries*." Labor Code § 7856(b) (emphasis added).

The proposed rulemaking is inconsistent with this legislative history and statutory text. While the scope of the legislation was defined to only include refineries, the proposed rulemaking applies to any processes interconnected with refineries, regardless of whether such facilities and processes include refinery operations. Based upon the discussion draft, this appears to apply to "hydrogen and other plants connected to a refinery," many of which are both operationally and spatially distinct from refinery operations and may have significantly different hazard and risk profiles and processes. While the scope of the legislation was defined to only include refinery processes such as alternative feedstock utilization, redistillation of unfinished petroleum derivatives, and cracking, the proposed rulemaking has exponentially expanded the scope to include "plants or units that are interconnected with a refinery process," with no definition or guidance to the regulated community as to what, exactly, would be considered as covered by the regulation. Further, the proposed rulemaking exceeds the Legislative directive, which was to implement regulatory changes *for refineries* consistent with AB 3258. The proposed rule goes far beyond refineries to potentially impact any type of entity, unit or facility associated with refinery processing. As written, this could apply to facilities and units miles away from the refinery that may service the refinery through providing water, power, hydrogen, or other materials, provided by entities that are fully distinct from refinery operations. Consistent with AB 3258, the regulations should be exclusively focused on refinery activities, as that term is defined by AB 3258.

3. The Proposed Rulemaking Exceeds Cal/OSHA's Statutory Authority

The California Administrative Procedure Act prohibits the enactment of so-called "underground regulations" that exceed the scope of legislative authority delegated by statute. "Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." Gov. Code § 11342.2. Cal/OSHA "has only as much rulemaking power as is invested in it by statute." *Carmel Valley Fire Prot. Dist. v. California*, 25 Cal.4th 287, 300. "[T[here is no agency discretion to promulgate a regulation which is inconsistent with the governing statute." *Id.* (quoting *State Bd. of Education v. Honig*, 13 Cal.App.4th 720, 750-52 (1993)). "Administrative action that is not authorized by, or inconsistent with, acts of the Legislature is void." *Id.* (quoting *Association for Retarded Citizens v. Department of Developmental Servs.*, 38 Cal.3d 384, 393 (1985)). "Regulations that alter or amend the statute or enlarge or impair its scope are void." *Id.* (quoting *Physicians & Surgeons Laboratories, Inc. v. Department of Health Servs.*, 6 Cal.App.4th 968, 982 (1992)); *see also California Water Curtailment Cases*, 83 Cal.App.5th 164, 192 (2022) (holding State Water Resources Control Board did not have enforcement authority that exceeded scope of that provided by statute); *Fipke v. California Horse Racing Bd.*, 55 Cal.App.5th 505, 516 (2020) (Board decision to award double jockey fee void as inconsistent with statutory language); *Pulaski v. California Occupational Safety & Health Standards Bd.*, 75 Cal.App.4th 1315, 1341 (1999) (invalidating Cal/OSHA regulation that impermissibly limited scope of proposed regulations inconsistent with the language of the enabling legislation).

Here, Cal/OSHA's proposed rulemaking goes far beyond the scope provided in the plain language of AB 3258 and its direction to expand Section 5189.1 to apply to *refineries*, as that term has been redefined by AB 3258. It ignores the mandate of Section 7856(a) to limit its regulations to "facilities and areas of facilities where the potential is greatest for preventing severe or catastrophic accidents because of the size or nature of the process or business." The proposed regulations, with the additional "interconnected" language found nowhere within the statutory framework of AB 3258, constitute underground regulations that exceed Cal/OSHA's regulatory authority and are therefore void. Should Cal/OSHA pursue such language, it is likely that the

Office of Administrative Law will reject it on this basis as a violation of the Administrative Procedure Act.

### B. Any Potential Application to Pipelines "Interconnected With" Refineries is Preempted by the Hazardous Liquid Pipeline Safety Act

The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. Sec. 60101 *et seq.*) generally regulates pipelines that distribute hazardous liquids, such as liquified natural gas or hydrogen, and preempts state and local regulation of such pipelines. State regulation may only be authorized pursuant to an agreement between the Pipeline and Hazardous Materials Safety Administration ("PHMSA") and a certified state agency. The certified state agency in California is the Office of the State Fire Marshal ("OSFM"). As noted by OSFM on its website: "USDOT PHMSA grants the OSFM exclusive regulatory authority over intrastate hazardous liquid pipelines." https://osfm.fire.ca.gov/what-we-do/pipeline-safety-and-cupa (accessed 9/24/25); *see also* Gov. Code § 51010 ("It is the intent of the Legislature, in enacting this chapter, that the State Fire Marshal shall exercise exclusive safety regulatory and enforcement authority over intrastate hazardous liquid pipelines and, to the extent authorized by agreement between the State Fire Marshal and the United States Secretary of Transportation, may act as agent for the United States Secretary of Transportation to implement the federal Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. Sec. 60101 et seq.) and federal pipeline safety regulations as to those portions of interstate pipelines located within this state, as necessary to obtain annual federal certification"). Because the applicable state and federal regulations evidence a clear intent to occupy the entire field of safety regulations associated with hazardous liquid pipelines, Cal/OSHA has no authority to enact regulations applicable to such pipelines, and any interpretation which would apply the proposed regulations in such a manner would be preempted.

### C. Regulating Units and Facilities "Interconnected With" Refineries is Ambiguous, Will Result in Greater Confusion, and is Divorced from the Underlying Justification for Enhanced Safety Protocols

One of the primary objectives of Labor Code Section 7856 and 8 CCR 5189.1 is to create a clear and decisive plan of action for refineries in the event of an emergency or hazardous situation to protect onsite employees and others in the immediate vicinity. The proposed regulations, which would apparently apply to other entities and operations that are interconnected with refineries, are not only inconsistent with this objective, but they would impede quick response to emergencies and hazards through creating more confusion and ambiguity. It creates the potential for entities and different components of "interconnected" facilities to have different, and possibly inconsistent, response plans and protocols. It also could create confusion as to which entity is responsible for taking action depending upon the emergency or hazard. In a circumstance where every second counts in responding to emergency situations, any delay associated with who is ultimately responsible for compliance could result in injuries or fatalities to employees and others within a refinery. Labor Code Section 7856 and AB 3258 avoid this ambiguity and confusion by clearly stating that refineries, as that term is amended pursuant to AB 3258, are responsible for compliance with Labor Code Section 7856 and enhanced safety protocols. This issue can be addressed by simply regulating refinery operations, including processes like crude oil refinement, alternative feedstock utilization, redistillation of unfinished petroleum derivatives, and cracking, as intended by AB 3258. Further expansion to facilities or units beyond these requirements is unwarranted.

Further, while the legislative history and Petition 601 provide some support in the administrative record to require enhanced safety protocols to protect employees and others at refineries, the record is devoid of any support to expand such requirements to units or facilities "interconnected with" such refineries. Safety protocols and hazard response plans that protect employees are best handled at the facilities themselves – it is unclear how requiring compliance by "interconnected" facilities, which may be located outside of the geographic footprint of the refinery or even miles away from the refinery location, would service the goals of quickly responding to on-site emergencies. It is similarly unclear how regulation of any such off-site facilities would benefit the on-site refinery employees. There is no record to support that enhanced safety requirements are required to address safety issues associated with any such "interconnected facilities" – the only evidence in the administrative record associated with Petition 601 and legislative history associated with AB 3258 is related to emergencies and responses to hazards at the refineries themselves. There is no analysis, evidence, or support that foisting enhanced safety regulations on "interconnected" plants and facilities would result in safety benefits at the refineries. Many of these facilities are already regulated by Cal/OSHA under 8 CCR § 5189, and there is no evidence in the record that these regulations are not adequately protective for such regulated facilities.

The proposed regulations are also inherently ambiguous. There is no definition of what "interconnected" means. There is no indication what types of units, plants, and facilities would be required to comply. There is no description of the geographic limitations of the proposed regulations, if any, and the level of interconnection with refinery facilities that is required to trigger compliance requirements. Particularly given the complexity of refinery operations and the numerous connections, services, utilities, and providers that service such facilities, it seems almost impossible to define such interconnected facilities that would provide clarity to potentially regulated entities. It would be far clearer, and avoid such ambiguity, to limit the proposed regulations as directed by the Legislature – to limit the scope of the regulation to refineries rather than any processes interconnected with such refineries.

## D. Cal/OSHA Should Comply with AB 3258's Legislative Mandate and Limit the Scope of the Proposed Regulations to Refineries

The above issues can be resolved through a simple revision to the proposed regulations. AB 3258 directed Cal/OSHA to revise 8 CCR 5189.1 to maintain consistency with the Legislature's revisions to Labor Code Section 7856, including its extension of safety protocols and hazard response planning to other types of refineries. The proposed regulations go farther than necessary in expanding regulations to other plants and facilities "interconnected with" refineries. As discussed above, this is not supported by the statutory text, legislative history, or underlying justification for the legislation. Elimination of the proposed language "and interconnected with" in subsection (b) and "plants or other units that are interconnected with a refinery process, and" within subsection (c) would align with the legislative intent and avoid potential violations of the Administrative Procedure Act, Hazardous Liquid Pipeline Safety Act of 1979, and other applicable laws.

## E. Conclusion

We appreciate the opportunity to comment upon the discussion draft. We look forward to continuing to work with Cal/OSHA concerning the proposed regulations and further review of the proposed regulations as they move through the process for regulatory approval. Thank you for your time and consideration.

Yours sincerely,

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RMS

Cc: Dr. Mike Wilson, Cal/OSHA
Dr. Betsey North, Cal/OSGA