



**LOCAL 5**  
AFL-CIO, CLC

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Honorary Board Chair Dave Thompson, via email to [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov)  
Occupational Safety and Health Standards Board  
2520 Venture Oaks Way, Suite 350  
Sacramento, California 95833

### **Emergency Rulemaking under Section 5189.1, Process Safety Management for Petroleum Refineries**

Dear Mr. Thompson and Board Members,

The USW represents just under a million members in North America, including California's refinery workers, with the exception of the two non-union Valero refineries. I serve as president of Local 5, representing 1,000 workers in the Bay Area refineries.

I am writing to urge your consideration of an emergency temporary standard (ETS) to expand the scope of section 5189.1, *Process Safety Management (PSM) for Petroleum Refineries*, to include refineries that are now processing renewable feedstocks in place of petroleum.

The 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. Both types of feedstock are processed into highly flammable gasoline, jet fuel, diesel and industrial chemicals.

Section 5189.1 is California's groundbreaking process safety regulation for oil refineries that the Standards Board adopted unanimously in 2017. To this day, it stands as the most far-reaching and protective process safety standard worldwide. We know from first-hand experience that 5189.1 has made California's refineries substantially safer. Washington State adopted section 5189.1 in December 2023.

However, because the scope of 5189.1 does not explicitly include refineries that process renewables, Marathon's management has exempted the plant from 5189.1. They have decided to revert to the antiquated 1992 PSM standard, section 5189. Cal/OSHA adopted 5189 from federal OSHA in 1992, and it has not been updated since then. It covers the state's non-refinery chemical plants.

Section 5189 is ineffective. In 2013-2014, the reports of the U.S. Chemical Safety and Hazard Investigation Board (CSB) and Governor's Working Group on Refinery Safety (attached) determined that the weaknesses of section 5189 contributed substantially to the deferred maintenance, poor safety culture, and lack of accountability on the part of Chevron management that ultimately led to the catastrophic pipe failure at the Richmond, Chevron plant in August 2012.<sup>1</sup> That incident endangered the lives of 19 workers who were caught in the flammable vapor cloud, and it caused some 15,000 residents to seek medical attention for

symptoms related to smoke exposure, according to the CSB's report. Please take a moment to view the CSB's animation of this incident here: <https://www.csb.gov/videos/chevron-richmond-refinery-fire-animation/>.

USW and USW Local 5 are calling for an ETS to correct this flaw in Cal/OSHA's refinery safety regulations after one of our members, brother Jerome Serrano, was critically burned at the Marathon refinery from a loss of containment of flammable liquids.

Brother Serrano has been at the UC Davis Burn Center since he was flown by helicopter there on the morning of November 19<sup>th</sup>, 2023. He has 3<sup>rd</sup> degree burns over 80% of his body, 2<sup>nd</sup> degree burns over 5% of his body, and 1<sup>st</sup> degree burns over 5% of his body.

Jerome received a tracheotomy because he suffered inhalation burns to his esophagus and trachea and could not speak until he was taught how to do so through a valve in his tracheotomy. He lost the soft tissue on his ears and eyelids, and he severely burned his hands from protecting his face and using them to find his way out of the epicenter during the loss of containment under the furnace. He lost his pinky fingers on both hands and could potentially lose more of his fingers.

Jerome has had three surgeries so far: one to apply a skin graft to his head, a second to apply a graft to his chest and stomach, and a third on January 12 to have grafts applied to his hands. His wife told me that the latest surgery lasted 4 hours. He has another surgery scheduled that will involve grafting harvested skin onto his back and shoulders. This will require him to be in a prone position for approximately 3-4 weeks, which his doctors have indicated will substantially increase his chances of developing pneumonia, which occurs because the prone position makes it hard for the lungs to dispel fluids.

Jerome will never be the same, and it is not certain he will survive this workplace injury. Jerome's ability to support his wife and family have been destroyed by what will be a lifetime of severe disfigurement and disability, if he lives.

I am telling you about brother Serrano because we saw something like this coming for the last few years. This was not a freak accident—it was an inevitable result of shoddy management and poor maintenance at the Marathon refinery, which began when Marathon managers decided that the plant was exempted from section 5189.1. This went unchallenged by Cal/OSHA and DIR.

At Marathon, we've lost everything we had fought for under section 5189.1. Both Cal/OSHA and my Union have been disarmed under section 5189, and brother Serrano is paying the price.

And make no mistake: under section 5189, this refinery is on the path to a catastrophic loss of containment that could injure or kill many workers and could threaten the safety and health of thousands of nearby residents. Brother Serrano's incident and the many flaring events and other problems we've witnessed at this plant are indicators of Marathon's disinvestment in safety, and it is only a matter of time before the plant experiences a major industrial disaster.

The bottom line is that Cal/OSHA and DIR have allowed one of the state's largest refineries that produces millions of gallons of highly flammable liquids to escape coverage under 5189.1, our state's hard-won refinery PSM regulation.

To be clear, Marathon is using most of the same equipment it used when it processed petroleum feedstock, with the addition of some specialized equipment to process the renewable feedstock. All of the equipment is still used to do the same thing, which is to change the physical properties of the feedstock by refining and processing of the fats, oils and greases to produce

diesel & in future production jet fuel and bi products of Naphtha and Propane, just like they did and could with petroleum feedstock.

And yet Cal/OSHA and DIR have allowed them to sidestep 5189.1, the regulation that is intended exactly for this industry. This two-tier approach must be corrected immediately. Marathon and all renewable refineries must be covered under 5189.1.

While Governor Newsom's shift in energy policy has created the opportunity for the oil industry to take advantage of renewables during the transition anticipated for fossil fuels, we do not believe the Governor or Legislature intended to create a massive gap in worker and community safety by quietly ignoring our state's refinery safety regulation, section 5189.1.

Why have Cal/OSHA, DIR and the California Occupational Safety and Health Standards Board allowed renewable refineries such as Marathon to begin operations without first ensuring that these facilities were covered by 5189.1?

Make no mistake, 5189.1 is not about slips, trips, and falls. It is about maintaining safe containment of millions of gallons of highly hazardous materials in these complex processing plants. When those materials are released in an uncontrolled manner, they threaten the lives of workers and residents alike.

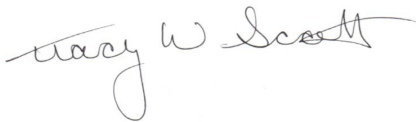
Section 5189 does not provide sufficient protection to workers or residents from refinery hazards, and yet at California's renewable refineries, this is what Cal/OSHA and DIR have allowed, on your watch.

As president of USW local 5 and on behalf of Jerome Serrano, his family, and my members, I respectfully request that the Board authorize emergency rulemaking to ensure that the scope of section 5189.1 is immediately expanded to cover Marathon and all of our state's renewable fuels refineries.

Further, we respectfully request that Cal/OSHA's Research and Standards unit, not the Board staff, be directed to undertake this emergency rulemaking effort.

I look forward to your response.

Respectfully submitted,



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ATTACHMENTS: U.S. Chemical Safety Board Chevron Investigation Report and Governor's Report of the Interagency Working Group on Refinery Safety (Feb 2014)

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<sup>i</sup> See U.S. Chemical Safety and Hazard Investigation Board (April 2013). *CSB Draft Interim Report on 2012 Chevron Fire Notes Company Failed to Apply Inherently Safer Design That Could Have Prevented the Accident*. <https://www.csb.gov/csb-draft-interim-report-on-2012-chevron-fire-notes-company-failed-to-apply-inherently-safer-design/>.