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March 5, 2023

Sent via upload to: https://sppr.ecology.commentinput.com/?id=6Mx2s

Ms. Brittany Flittner
Department of Ecology
Spill Prevention, Preparedness, and Response Program
P.O. Box 47600
Olympia, WA 98504-7600

Re: Marathon Comments on WAC 173-180 and WAC 173-184 Amendments

Dear Ms. Flittner,

Tesoro Refining & Marketing Company LLC, a subsidiary of Marathon Petroleum Corporation (Marathon) is hereby providing public comment on the proposed amendments to Chapter 173-180 WAC, Facility oil handling standards and Chapter 173-184 WAC, Vessel oil transfer advance notice and containment requirements, issued on January 4, 2023.

The comments provided below are primarily focused on the proposed amendments to the compliance schedule, design standards, and prevention plan, along with some additional comments for Ecology review. The comments are formatted sequentially in accordance with the rule. Most comments include example rule language enclosed in a text box at the end of each comment, intended to illustrate how the rule can be modified to address the comment.

Comment #1: WAC-173-180-080 Compliance Schedule

The schedule for compliance proposed in this section raises significant concerns as it does not allow sufficient time for a facility to meet the new requirements in the proposed rules. The proposed amendments will apply to numerous facilities in the State and impact a significant number of compliance points – in Marathon alone, our facilities combined have more than 100 storage tanks, and each with associated transfer pipelines. Each of the new or modified requirements will take substantial time and effort to review rule changes, conduct analyses, evaluate design changes, follow responsible project management practices, apply updates to documents, train employees, and prepare agency submittals. Some examples of the challenges posed by the proposed compliance schedule are provided below.

The proposed amended Design Standards in WAC 173-180-330 and WAC 173-180-340 and the proposed amended Prevention Plan Risk Analysis (RA) in WAC 173-180-630(13) require thoughtful review that must coincide with one another. The combined review has the potential outcome to reduce risk by installing physical upgrades to existing equipment to demonstrate the best available protection. Marathon follows a methodical process to safely engineer, budget, and execute physical changes in accordance with all applicable rules and regulations, however, Ecology has not proposed a compliance schedule to

consider the time required to cohesively analyze, design, and implement thoughtful changes. Each change would require a detailed project management process, starting with the RA to final execution.

Additionally, modifications to storage tanks and transfer piping must follow the API Inspection Schedule to prevent unintended consequences (such as unnecessarily increasing emissions that would result from degassing and opening equipment on a shorter timeframe than the normal inspection cycle, which is termed "short-cycling"). It is critical to get this evaluation right the first time and Marathon requests Ecology to provide adequate time in the rule for a facility to conduct a thorough and complete RA, identify risk reduction opportunities, including required seismic upgrades, and design and implement opportunities under a reasonable timeline by adjusting the compliance schedule to align with the API inspection schedule. Furthermore, it is imperative that the seismic evaluation and potential upgrades for the storage tank and associated transfer piping be considered as a system. Marathon recommends that facilities have the option to include the associated transfer piping with the storage tank, to align with the storage tank compliance schedule.

With respect to the Safe and Effective Threshold Determination Report, the additional proposed requirements will require extensive review and updating. After that is complete, the rule requires the Safe and Effective Threshold Determination to be included in the Operations Manual, which also will require time for review and update to incorporate other proposed requirements. Additionally, there are elements that would impact the training and certification programs which in turn will take time to complete. Therefore, Ecology must consider adopting a thoughtful, coordinated compliance schedule that gives the regulated community adequate time after the rule effective date to meet the several interrelated additional requirements.

Under the proposed compliance schedule, modifications and updates to some of the plans and programs are required to be completed on the effective date of the rule, however, this is not feasible, particularly given the interrelatedness of the various plans, programs and requirements. Accordingly, the rules should provide a reasonable timeframe to come into compliance with all the proposed amendments. In addition, some specified plans and programs are required to meet the rules by the current plan's expiration date. This too is not feasible, as certain of those plans/programs' expiration dates may occur shortly after the rule effective date and a facility will not have sufficient time to complete the necessary updates. Further, under the current rules, facilities are required to submit renewal plans and programs to Ecology within 120 days prior to the expiration date, including but not limited to the Safe and Effective Threshold Determination, Operations Manual, the Certification Program and the Prevention Plan. Thus, facilities with plans and programs whose expiration dates are within 120 days of the amended rule's effective date will be out of compliance because the compliance date lands prior to the rule effective date. Ecology must review and ensure that these anomalies are addressed.

It is important to both the regulated facilities and Ecology to have compliance schedules that are reasonably achievable. It is also important for Ecology to acknowledge a case-by-case need for a modified schedule based on unforeseen consequences and individual circumstances. Each facility can have unique situations whereby established compliance deadlines are not possible to achieve, for example additional time could be required to complete the engineering around a new technology. Ecology has worked with the regulated community in the past by offering permit language and rule language that allow facilities to request and Ecology to grant a compliance extension. Ecology has granted conditional extensions in the past, giving facilities the ability to remain in compliance during the execution of requirements taking additional time to complete. So, in addition to defining achievable compliance schedules for the proposed requirements, Marathon requests Ecology to provide rule language to allow for facilities to request and Ecology to grant compliance extensions.

Some proposed revisions to the compliance schedules are offered below.

NEW SECTION

WAC 173-180-080 Compliance schedule.

(1) Owners and operators of all facilities in operation at the time this rule is effective must meet the requirements in this rule within 180 calendar days after ~~on~~ the effective date of this rule, except where specified below.

(a) Within ~~30~~ 60 calendar days from rule effective date, all delivering facilities must meet advance notice requirements in WAC 173-180-215.

(b) Within ~~60~~ 150 calendar days from rule effective date, any delivering facility conducting Rate A transfers must meet prebooming requirements in WAC 173-180-221.

(c) By the current safe and effective threshold determination report's expiration date, any delivering facility conducting Rate A transfers must meet report requirements in WAC 173-180-224, except where the expiration date is within 180 calendar days after the rule effective date, the facility must meet the report requirements by the report's subsequent expiration date.

(d) ~~Within 10 years from rule effective date or by the next scheduled internal API Standard 653 (2014 with Addendum 1 (2018) and 2 (2020)) inspection, whichever is later, a~~Any Class 1 facility storage tank constructed before the effective date of this rule must meet seismic protection measures in WAC 173-180-330 by the next scheduled API Standard 653 (2014 with Addendum 1 (2018) and 2 (2020)) internal inspection except where a storage tank's API 653 internal inspection due date is within 5 years of the effective date, such tanks must meet the seismic protection measures by their subsequent API 653 inspection due date. Facilities have the option to include transfer piping seismic protection measures in a systematic review with the associated storage tank.

(e) Within 10 years from rule effective date or by the next scheduled API Standard 570 (2016 with Addendum 1 (2017) and 2 (2018), and Errata 1 (2018)) inspection, whichever is later, any Class 1 facility transfer pipeline constructed before the effective date of this rule must meet seismic protection measures in WAC 173-180-340, except for transfer pipeline following the provisions in WAC 173-180-080 (d).

(f) Within 5 years of the rule effective date, ~~By the current prevention plan's expiration date,~~ all Class 1 facilities must meet plan requirements in WAC 173-180-630. ~~except where the prevention plan's expiration date is within 3 years of the rule effective date, facilities must meet the plan requirements by the plan's subsequent expiration date.~~

(g) For all other plans and programs not otherwise specified above, including the Operations Manual and the Training and Certification programs, the plans and programs must meet the rule requirements by the current plan or program expiration date, except for those expiration dates that are within 180 days from the rule effective date, facilities must meet the requirements by the relevant plan or programs' subsequent expiration date.

(~~g~~h) Within 12 months from rule effective date, all Class 2 facilities must meet oil transfer response plan requirements in WAC 173-180-730.

(~~hi~~) The triennial cycle of the drill program, as required in WAC 173-180-810 and 173-180-815, will begin once the oil transfer response plan for the Class 2 facility has been approved.

(2) Owners and operators of new facilities must meet requirements in this chapter prior to beginning operations in the state, including submittal deadlines outlined in this chapter.

(3) When there is a change in the owner or operator of a facility, the new owner or operator of the facility must meet the requirements in this chapter prior to beginning operations in the state, including submittal deadlines outlined in this chapter.

(4) A facility requiring additional time for compliance can submit an extension request to Ecology for their review and approval. Such extension request shall be submitted no less than 60 calendar days before the relevant deadline stating the reason for the request and Ecology shall endeavor to reply within 30 calendar days. In granting such extension, Ecology's response shall state the extension conditions. In the event the extension request is denied, the time period for Ecology's reply to the extension request shall be added to the facility's relevant deadline for compliance.

Comment #2: WAC 173-180-330 (1) and (3) Design Standard for Class 1 Facilities
Marathon sees an opportunity to simplify the language of WAC 173-180-330 (1) and (3) to improve readability and reduce redundancy. From Marathon's perspective there is no benefit to include a section related to storage tanks constructed between May 1994 and before the rule effective date (WAC 173-180-330(1)) when the subsequent citation is applicable to facilities constructed before the rule effective date. (WAC 173-180-330(2)).

Please consider if the amended proposed language of WAC 173-180-330 (1) can be deleted, and the proposed amended language of WAC-173-180-330 (3) can be moved to paragraph (1) in its place.

Comment #3: WAC 173-180-330 (2) Design Standard for Class 1 Facilities
Marathon is committed to reduce spill risk from seismic events and in doing so has initiated third-party seismic modeling on a sample set of storage tanks and transfer piping to inform our comments. Marathon has devoted attention to this evaluation because it is imperative that the analysis is conducted in accordance with best industry practice and that potential physical retrofits are designed correctly the first time around, to ensure that the risk reductions we are seeking are effectively and safely achieved.

Seismic modeling is a data-driven, fact-based analysis that allows us to evaluate the current seismic rating of storage tanks and transfer piping. The model will provide the information to determine if a system meets the amended proposed design standards or if a system requires design revisions or operational changes to meet the standard. Therefore, Marathon requests Ecology to include *seismic modeling* as an acceptable system to be included in WAC 173-180-330 (2).

Proposed rule language revisions are offered below.

> (2) Storage tanks constructed before the effective date of this rule must include protective measures that are designed, installed, and maintained to reduce risk from seismic events and that include one or more of the following:
>
> (a) Flexible mechanical device(s) between storage tank and piping or sufficient piping flexibility to protect the tank and pipe connection and prevent the release of product;
>
> (b) Foundation driven pilings;
>
> (c) Anchored storage tanks; ~~or~~
>
> (d) Seismic modeling to compare to API Standard 650 (2020) seismic design requirements, including Annex E and section E.7.3 Piping Flexibility; or
>
> (~~d~~e) Another seismic protection measure proposed by the facility and approved by ecology, as long as such protection measure equals or exceeds those required in this section. This may include demonstrating the storage tank meets API Standard 650 (2020) seismic design requirements, including Annex E and section E.7.3 Piping Flexibility.

Comment #4: WAC 173-180-330 (6) Design Standard for Class 1 Facilities

This comment is to provide Ecology with a reference to an industrial code that is applicable to horizontal storage tanks and that should be included in WAC 173-180-330 (6).

The proposed amended rule allows for tanks to be constructed to UL 142. The UL 142 standard includes construction and design requirements for both vertical and horizontal tanks. API 650 only includes construction and design requirements for vertical tanks. API 653 is an inspection standard that complements tanks constructed to API 650. It is common and acceptable to inspect vertical storage tanks constructed to varying code to the API 653 inspection standard, however API 653 does not provide guidance for the inspection of horizontal storage tanks. To inspect a horizontal storage tank, the industry uses the STI (Steel Tank Institute) SP001 standard "Standard for the Inspection of Aboveground Storage Tanks". Therefore, Marathon requests that Ecology specifically include this standard in the rule language.

Specific rule language revisions are offered below.

> (6) Storage tanks must be maintained, repaired, and inspected in accordance with the requirements of API Standard 653 (2014 with Addendum 1 (2018) and 2 (2020)) or Steel Tank Institute SP001 6th edition September 2018, unless the operator proposes an equivalent inspection strategy which is approved by ecology.

Comment #5: WAC 173-180-340 Design Standard for Class 1 Facilities

Transfer pipeline requirements are addressed under section WAC 173-180-340, and under paragraph (1) of this section, it refers to applicability for transfer pipelines "which are located in areas not controlled by the facility." Ecology added proposed paragraphs (2) through (5) in this section, however it is not clear whether those new requirements are also only applicable to those transfer pipelines that are outside the control of the facility. If the intent is for those provisions to also apply only to pipeline in areas not

controlled by the facility, proposed clarification language is offered in the box below. If this is not the intent, Marathon requests Ecology to consider revised rule language to improve flow and clarity.

Specific rule language revisions are offered below.

> **WAC 173-180-340, Transfer pipeline requirements**
> This section applies to transfer pipelines located in areas not controlled by the facility.
> (1) ...

Comment #6: WAC 173-180-630 (12) Prevention Plan for Class 1 Facilities
The amended proposed changes to WAC 173-180-630 (12) includes a strike-out of the parenthetical phrase *"(one thousand fifty gallons)"* that previously served as a precise conversion of barrels to gallons. Marathon recommends retaining this parenthetical phrase to clearly illustrate the conversion of barrels to gallons. In general, industry has multiple numerical conversions of barrels to gallons depending on the industrial context. In this situation, it is intended that one-barrel equals 42 gallons.

Comment #7: WAC 173-180-630 (13) Prevention Plan for Class 1 Facilities
The Prevention Plan proposed amendments would require a facility to complete a risk analysis (RA) (under WAC 173-180-630) in parallel to completing the Design Standard seismic control evaluation (under WAC 173-180-330 and 173-180-340). However, a more effective method is to start with the RA first, and as part of that process, allow it to direct the priority of the seismic design evaluation in accordance with WAC 173-180-330 and WAC 173-180-340. The outcome of the seismic design evaluation will determine the opportunity to reduce spill risk with seismic design changes. Additionally, the RA will not be limited to only evaluating the seismic design standards but will also look at other opportunities with the goal to cohesively identify the overall best achievable protection.

Collectively, both the RA and the seismic evaluation will require a substantial effort to complete and appropriate time should be allowed to ensure a detailed and thorough review. As noted earlier, within Marathon's facilities alone, there are more than 100 storage tanks and associated transfer piping systems to assess and to identify best achievable protection. Marathon suggests that a reasonable time to complete the initial RA is 5 years with subsequent seismic analyses following the API inspection schedule set forth in WAC-173-180-080.

Comment #8: WAC 173-180-630 (13)(b)(ii) Prevention Plan for Class 1 Facilities
Marathon is requesting clarity on WAC 173-180-630(13)(b) (ii) to determine if Ecology intended for it to be applicable to the "system" instead of "facility".

Under a related citation, WAC 173-180-630(10)(g)(ii), which was recently updated, the term "facility" was changed to "system." If it is Ecology's intent to focus on the "system," please consider the following rule language change.

> **WAC 173-180-630 (13)(b)(ii)**
>
> Evaluate spill minimization and containment systems within the facility for a discharge of one percent and one hundred percent of the worse case spill volume for the ~~facility.~~ system.

Comment #9: WAC 173-180-630 (10) and (13) Prevention Plan for Class 1 Facilities
The proposed revisions in these sections regarding the Prevention Plan speak to concerns regarding permeability of secondary containment and preventing oil from reaching waters of the state. One measure that can provide a barrier to reduce or eliminate contact and permeability of oil to soil is the presence of stormwater in the containment basin (which is not uncommon). Additionally, facilities can add water to the basin to purposefully float the oil to provide a barrier between the oil and soil, and subsequently clean up the oil through skimming and other recovery and clean-up techniques. Marathon requests Ecology to examine if these types of tertiary protections need to be specifically listed in the rule, or if facilities should simply include this in their RA as a statement of additional safeguard and recommendation per WAC 173-180-630 (13)(a)(v).

Comment #10: WAC 173-180-910 (b)(iv) Class 1 facility—Out of service requirements.
In Ecology's amended proposed rule, WAC 173-180-910(b)(iv) requires facilities to "air-gap" lines to out-of-service tanks. However, in WAC 173-180-910(c), the rule provides that storage tanks meeting the definition of permanently closed in 40 CFR 112 will be considered decommissioned. Under 40 CFR 112, tanks are required to be disconnected and blanked and valves closed and locked, but lines are not required to be air-gapped. Air-gapping will require modification of the piping that will inhibit returning a tank to service. Marathon supports adopting language consistent with 40 CFR 112 to avoid conflicting requirements in the rules, and to avoid the unnecessary piping revisions and inhibition of taking a tank in and out of service.

Please remove the following language below.

WAC 173-180-910 (b)(iv)

~~(iv) All oil piping connected to the storage tank must be airgapped from the storage tank; and~~

Marathon appreciates the opportunity to provide comments on this important proposed regulation. If you have any questions regarding this submittal, please contact Chad Tuttle via email at mctuttle@marathonpetroleum.com or by phone at 618-553-0586.

Sincerely,

Amber Larsen
Environmental Regional Manager-West Coast New Regulations

cc:

Chad Tuttle – Senior Environmental Specialist