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VIA ONLINE SUBMISSION <https://tceq/commentinput.com>

Gwen Ricco
MC 205
Office of Legal Services
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Chapter 338, Aboveground Storage Vessel Safety Program
Rule Project No. 2022-015-338-CE

Dear Ms. Ricco,

On behalf of Caring for Pasadena Communities, Lone Star Legal Aid submits the following comments regarding Rule Project Number 2022-015-338-CE proposed by the Texas Commission on Environmental Quality (TCEQ) to implement Senate Bill (SB) 900, which amends the Texas Water Code (TWC) by establishing a new Aboveground Storage Vessel Safety (ASVS) Program, to provide for the protection of groundwater and surface water resources in the event of an accident or natural disaster, identifying new safety elements that the TCEQ must include in the ASVS Program, and defining the universe of regulated entities.

Caring for Pasadena Communities (CPC or Commenter) is a community-based nonprofit organization committed to raising awareness of environmental issues affecting residents of Pasadena and nearby communities along the Houston Ship Channel, where many of its members live and work. CPC is organized to advocate for these communities, improve public education on environmental issues, and to ensure equal treatment for low-income residents in environmental matters. This work has entailed direct involvement in the public participation process of numerous projects by highlighting environmental justice concerns for various permitting agencies that would otherwise go unnoticed and unaccounted for. In the past several years, Commenter CPC has submitted written comments to TCEQ (a) regarding the aboveground storage vessel (ASV) failures at the Valero Houston Refinery in Manchester, Houston, Texas

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during Hurricane Harvey in the Fall of 2017 in connection with the renewal of Federal Operating Permit O3784, and (b) related to the March 2019 fire at the ITC Deer Park Facility in Harris County, Texas in connection with the renewal of its Federal Operating Permit O1061. Both sets of comments raised concerns about the current regulation of ASVs at these facilities by TCEQ that are applicable to this rulemaking.

SB 900 requires that the TCEQ must promulgate rules and establish the ASVS Program by September 1, 2023. The bill requires the ASVS Program to include all critical safety elements applicable to a ASV and that TCEQ determines to be critical for the protection of ground water and surface water resources following federal statutes/regulations and national consensus standards identified in the bill. As counsel for CPC, we have attended the public hearing held in Houston on March 29, 2023, at the Magnolia Multi-Service Center (Houston Public Hearing) and reviewed the agency's proposed rulemaking to implement SB900 identified as Rule Project No. 2022-015-338-CE (Proposed Rulemaking). With this information, CPC provides the following comments related to the Proposed Rulemaking.

I. INTRODUCTION REGARDING RECENT IMPACTS FROM ASVs OF CONCERN

The state experienced some horrific ASV-related incidents in recent years, including a massive fire at Arkema's chemical storage facility during Hurricane Harvey in 2017, a 2019 petrochemical fire at Intercontinental Terminals Company's tank farm in Deer Park (2019 ITC Deer Park Fire), and a December 2020 oil storage tank fire that led to an explosion at a Corpus Christi refinery. In addition, during Hurricane Harvey, a leak from a storage tank with a floating roof at Valero's Houston Refinery in Manchester resulted in a huge release of volatile organic compounds (VOCs), including benzene, into the neighboring community. At the Houston Public Hearing, TCEQ frankly acknowledged and confirmed that SB 900 resulted from the fire and related release from ASVs during the 2019 ITC Deer Park Fire and other similar events involving ASVs in recent years.

On March 17, 2019, a petrochemical storage tank at the ITC Deer Park petrochemical storage site (1943 Independence Parkway South near La Porte, Texas 77571) caught fire before quickly spreading to other tanks. The ITC site is 265 acres in size and situated on the south side of the Houston Ship Channel. ITC operates the Site as an independent, for-hire terminal that receives, stores, blends, and transfers petroleum products and segregated chemicals owned by numerous external customers. The Site consists of approximately 242 tanks that store various petrochemical liquids and gases. ITC reported that the fire was caused by a leak in a pipe that contained naphtha. The first shelter-in-place was issued on March 17 and lifted the following morning. On March 18, 2019, there was reportedly a total of eight tanks on fire. That same day a number of school districts began to close and would do so off and on over the next several days. *See Figure 1 below:*

RELATED SCHOOL CLOSURES AND SHELTER IN PLACE						
Impacted	March 18 MONDAY	March 19 TUESDAY	March 20 WED.	March 21 THURS.	March 22 FRIDAY	March 30 SATURDAY
Deer Park ISD	X		X	X		
LaPorte ISD	X		X	X		
Channelview ISD			X	X		
Sheldon ISD			X	X		
Galena Park ISD			X	X		
Pasadena ISD				X		
Industrial Neighbors	X			X	X	X

Figure 1: Detailing School Closures During ITC Disaster

On March 19 at least ten tanks were reportedly on fire. Up to this point, the tanks that were ablaze contained naphtha and xylene, toluene, pyrolysis gas and blended oils. Continuous air monitoring stations in the area detected elevated levels of volatile organic compounds (VOCs) at various times and with varying concentrations since the fire began. According to ITC, air emissions tests even detected the presence of VOCs some six miles away from the Site. The Air Quality Index for March 19 indicated a moderate Air Quality day, which carried with it an advisory for unusually sensitive people to reduce prolonged or heavy exertion. *See* Figure 2 below.

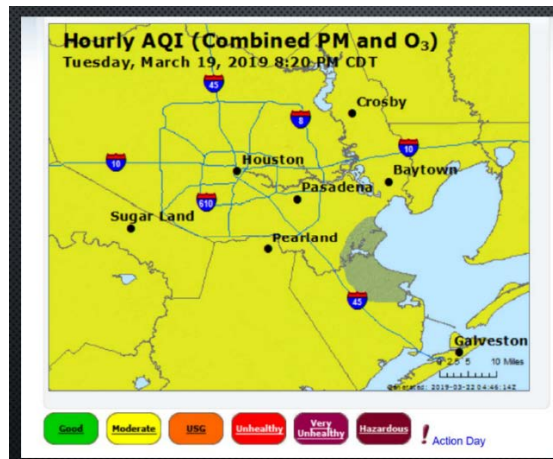


Figure 2: Showing a Moderate Air Quality Day on March 19, 2019 for the Houston Brazoria Area

Then, on March 20, there was a flash fire on a manifold at the site when insulation on a charged steam line caught fire. The fire was quickly extinguished. The Air Quality Index for that day carried with it a health warning that the air was unhealthy for sensitive groups. Specifically, active children and adults, as well as people with lung disease such as asthma, were advised to reduce prolonged or heavy exertion outdoors. Figure 3 below demonstrates that the City of Pasadena was experiencing this reduced air quality.

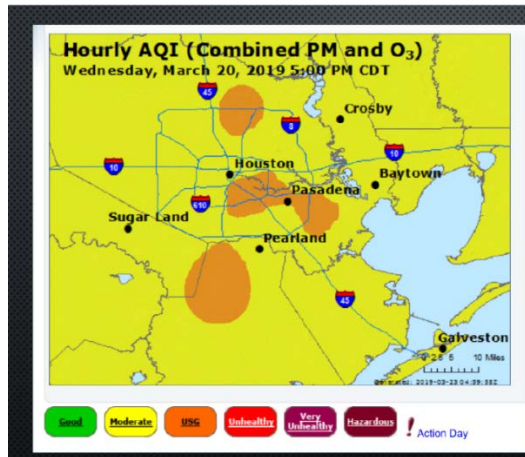


Figure 3: Showing Reduced Air Quality on March 20, 2019 for the Houston Brazoria Area

On March 20, TCEQ documented that the benzene levels in the air where firefighting wastewater and foam discharge had entered Tucker Bayou were measured at 1.5 parts per million. Elevated levels of VOCs resulted in the issuance of the second shelter-in-place on March 21. That same day, ITC issued an industrial shelter-in-place due to the elevated benzene readings.

On March 22, the secondary containment area-which had collected a mixture of firefighting foam, wastewater, and petrochemicals including toluene, xylene, and naphthalene-collapsed and resulted in a release of wastewater from the Site. The release eventually reached the Houston Ship Channel and is estimated to have been between 1,680,000 to 3,360,000 gallons.

On March 22, multiple tanks at the ITC re-ignited. Shortly thereafter, the drainage ditch at the Site caught fire, with the TCEQ reporting elevated levels of total VOCs. Benzene was measured at 207 parts per billion, and total VOCs were measured at 35 parts per million near the Jacinto International Terminals across the Houston Ship Channel from the Site. The fires at the Site were extinguished around 5 p.m. on March 22.

The air contaminants that were released by the five day ordeal included, but were not limited to PM_{2.5}, PM₁₀, benzene, NO_x, toluene, and xylene. This emission event and the associated contaminants were not authorized by any permits or TCEQ rules or regulations. The large emissions plume could be seen in the skies above neighboring Pasadena before making its way farther west over the City of Houston.

As mentioned above, CPC has been interested in the renewal of ITC Deer Park facility's Title V permit. Since there is still corrective action needed at this facility to prevent another such disaster in the future, Commenter is particularly interested in ensuring that the full intent of SB 900 is actualized in this rulemaking to prevent these sorts of events in Harris County and across the Gulf Coast of Texas.

From talking to TCEQ at the informational session before the Houston Public Hearing, understand that TCEQ has taken all the federal regulations applicable to ASVs that are “already

on the books” and integrated them into the ASVS Program which will require registration of storage vessels, payments of fees, and maintenance of records. The ASVS Program really doesn’t add any new regulations on the safety of these ASVs. The rulemaking defines what ASVs are included in the program and which are not, recites their current obligations for maintenance, inspection, and record keeping from applicable laws that they are required to follow, and sets up structure for TCEQ having access to ASVs and records as necessary to verify compliance.

II. SPECIFIC COMMENTS ON RULEMAKING RELATED TO SECTION 338.3(B) OF PROPOSED RULE

After reviewing the Proposed Rulemaking, Caring for Pasadena Communities would like to ensure that the Executive Director (ED) is not able to exempt ASVs from this program that should be covered to ensure public safety within the intent of SB 900. Of concern is Section 338.3(b) which would allow the ED to exclude ASVs from the program at industry request without any public notice or opportunity to comment. The proposed language of Section 338.3(b) of the Proposed Rulemaking states:

The owner or operator of an affected storage vessel may submit a written request to the executive director for a specific storage vessel to be exempted from the requirements of this chapter. The request must provide a demonstration that the storage vessel presents a sufficiently low risk of floods, storm surges, hurricanes, accidents, fires, explosions, or other hazards so that it does not warrant regulation under this chapter. The executive director must provide written approval before the storage vessel is considered to be exempt from the requirements of this chapter.

In its accompanying memorandum on the Proposed Rulemaking, TCEQ provided further explanation regarding Section 338.3(b):

Proposed subsection (b) provides that the owner or operator of an affected storage vessel may submit a request for a specific storage vessel to be exempted from the requirements of this chapter. The request must be submitted in written form to the executive director or to whomever they designate. The request must demonstrate that the storage vessel presents a sufficiently low risk of floods, storm surges, hurricanes, accidents, fires explosions, or other hazards such that it does not warrant regulation under this chapter. If an exemption request is submitted, the storage vessel is considered subject to any applicable requirements until the executive director has provided written approval for the requested exemption. The executive director will determine what is a “sufficiently low risk” and does not foresee this type of exemption being widely requested or approved.

Although the explanation is appreciated, CPC still has concerns over the scope of the criteria listed and the implementation of Section 338.3(b) for the reasons described below.

A. SCOPE OF THE CRITERIA FOR EXEMPTIONS IDENTIFIED IN SECTION 338.3(B).

If a facility is operating appropriately, there should not be any need to exempt their ASVs from the ASVS Program. The point of the ASVS Program is to track ASVs, ensure registration and that the agency has access to records, etc. as explained in more detail above. There should be very limited circumstances in which an exemption would be needed. The Proposed Rulemaking is silent as to what that need should be. ASVs that are not a fit for the ASVS Program are not included and have their own specific exemptions in the Proposed Rulemaking; however, the remaining ASVs that should be subject to the ASVS Program to actualize the intent of SB 900 should not be exemption unless extremely good reason is demonstrated. As the comments below suggest, the criteria stated in Section 338.3(b) are inadequate to capture such good cause as the assessment of “significantly low risk” for the proposed exemption by the ED cannot ensure that the public is adequately notified of this request or can provide input that the exemption is warranted. Instead of finding ways to exempt industry, SB 900’s intent was to make sure that these sorts of failures (be they accidental or negligent) do not happen again and pose harm to neighboring communities or other public assets. A broad, discretionary exemption not subject of public comment undermines this intent.

1. Section 338.3(b)’s criteria is overbroad.

The criteria specified for determining “sufficiently low risk” in Section 338.3(b) are overbroad. The Proposed Rulemaking would allow the ED, on request, to authorize an exemption for an ASV with a “sufficiently low risk” of:

- floods,
- storm surges,
- hurricanes,
- accidents,
- fires,
- explosions, or
- other hazards.

As a starting point, the risk of accidents, fires, and explosions depends largely on the owner of the storage vessel keeping up with maintenance and inspections of its ASVs. That’s exactly what this legislation was intended to prevent. Allowing owners to opt out based on a current “no accident” status does not ensure the protections that SB900 was trying to prevent. Past history is not a guarantee that no accidents, fires, and explosions will occur in the future. Because the TCEQ often does not fairly evaluate a facility’s compliance history after such events, the ED may or may not have complete data to evaluate the facility’s previous occurrences of accidents, fires or explosions or predict the future based on compliance history along.

As to accidents specifically, how can the ED accurately assess the risk of an accident? Accidents are by their very nature accidental and unexpected. An accident is defined as an unfortunate incident that happens unexpectedly and unintentionally, typically resulting in damage or injury. Thus, this proposed criteria would be inappropriately included in this

exemption by its very definition. The ED cannot know, nor can an operator or owner of the ASV, that there will not be a future accident involving that ASV.

Fires and explosions usually occur due to flammable or volatile chemicals being stored at a facility. Most of the ASVs covered by this Proposed Rulemaking are designed to hold these types of chemicals or petrochemicals. These regulations cited in the Proposed Rulemaking are specifically designed to reduce the risk of these chemicals stored in ASVs causing issues like the 2019 ITC Deer Park Fire. Again, it seems difficult for the ED to assess these risks as typically industry claims that these types of events, when they do occur, are accidental in nature, which reverts to our initial point regarding “accidents” not being an appropriate criteria.

Any facility that has aboveground storage vessels that have had any accidents, fires or explosions during the lifetime of the facility should not be eligible for this exemption regardless of the number, frequency or duration of such events. The TCEQ should not just review compliance history for the facility in making this determination.

For these reasons, Commenter strongly urges the TCEQ to remove accidents, fires, and explosions from the language of potential criteria to justify this exemption under Section 338.3(b) entirely as inappropriate and undermining the intent of SB900 to ensure public safety from these exact type of events.

2. Section 338.3(b)'s criteria need to be limited by location.

With respect to the proposed criteria to assess risk of floods, storm surges, and hurricanes in granting an exemption under Section 338.3(b), many of these risks occur in the Gulf Coast region where most of the ASVs are located. Commenter would propose that the following limitations be included to reduce the potential scope of this exemption that can be granted by the ED:

1. Any aboveground storage vessel on the Gulf Coast of Texas, which was included as at risk in forecasted meteorological event(s) such as hurricanes or storm surges, should not be granted any exemption. Such a location is not at “low risk” for hurricanes or storm surges; and
2. Any aboveground storage vessel in an area receiving an average rain fall in excess of 80” per year and experience multiple flash flooding events (more than 3 per year), such as Harris County, Texas, should not be allowed an exemption as this location is not at “low risk” for flooding.

Valero’s Houston Refinery in Manchester during Hurricane Harvey provides an important example of why hurricanes and accumulated rainfall amounts are significant risks to ASVs with floating roofs on the tanks.

TCEQ guidance has made clear that ASV emissions can be quite significant and affect air quality. A December 5, 2006 TCEQ memo from Dan Eden titled “Air Emissions During Tank Floating Roof Landings” explained the following regarding tank floating roof landings: “If the liquid level in [a tank with a floating roof] is lowered to below the level of the floating roof support legs, the roof will rest (land) on the legs, or supports, rather than on the liquid, severely limiting the control efficiency of the floating roof. Air emissions from tanks are greater while the tank roof is landed and remain so until the tank is either completely emptied and purged of organics or the tank is refilled, and the roof is again floating.”¹ That same memo also emphasizes that underreporting emissions from roof landings is “of particular importance” in the Houston region because “it may play a role in demonstrating attainment.” *Id.*

Valero Houston Refinery’s spikes in VOC emissions, such as benzene, in the wake of Hurricane Harvey have caused increased concern about health impacts for community residents. Valero contributed to a “second storm” of air pollution that local neighborhoods experienced during and after Hurricane Harvey due to inadequate toxic release prevention measures from storm impacts.² The *Houston Chronicle* reported that the Commission cited Valero for benzene and other air pollution releases and brought an enforcement action for at least one Harvey-related incident.³ Environmental Integrity Project found that the Valero Houston Refinery is one of the “plants that released the most storm-related pollution in the Houston area” and provided specific recommendations, consistent with the guidance from the U.S. Chemical Safety Board that TCEQ should implement.⁴

Natural disasters like Hurricane Harvey will only become more extreme, leading to potentially more devastating spikes in emissions. To be precise, in the wake of Hurricane Harvey, industry self-reported to TCEQ 15 floating roof storage tanks that failed during the record-setting storm, allowing a combined 3.1 million pounds of volatile chemicals to spew into the air across the region.⁵ This series of failures, along with the breakdown of drainage systems designed to funnel water off the roofs, exposed the vulnerabilities of floating roof tanks even as climatologists warn that future storms will carry more rain as global temperatures rise and ocean waters warm.⁶ These roof failures, like the ones during Harvey, could expose nearby residents to high levels of harmful emissions.⁷ A floating roof tank can manage about 10 inches of rain. Harvey brought over 50 inches in some areas.⁸

¹ TCEQ, *TCEQ Memo re: Air Emissions During Tank Floating Roof Landings* 1 (Dec. 5, 2006), https://www.tceq.texas.gov/assets/public/permitting/air/memos/tank_landing_final.pdf.

² L. Olsen, *After Harvey, a ‘second storm’ of air pollution, state reports show*, HOUSTON CHRON. (Mar. 31, 2018), <https://www.houstonchronicle.com/news/houston-texas/houston/article/After-Harvey-a-second-storm-of-air-12795260.php> (quoting Juan Parras, t.e.j.a.s.).

³ L. Olsen, *A year later, Texas regulators start to act against Harvey’s polluters*, HOUSTON CHRON. (Aug. 31, 2018), <https://www.houstonchronicle.com/news/investigations/article/A-year-later-Texas-regulators-start-to-act-13196572.php>.

⁴ Env’tl. Integrity Project, *Preparing for the Next Storm, Learning from the Man-Made Environmental Disasters that Followed Hurricane Harvey* (Aug. 16, 2018) (“*Preparing for the Next Storm*”) <https://www.environmentalintegrity.org/wp-content/uploads/2018/08/Hurricane-Harvey-Report-Final.pdf>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

Valero Energy Partners and TCEQ referred the related Enforcement Case 55902 for this release during Hurricane Harvey to the Texas Attorney General.⁹ In January 2020, the State of Texas initiated a civil suit against Valero Energy Partners, LP to enforce the Texas Clean Air Act for unauthorized emissions events that occurred at the Valero Houston Refinery.¹⁰ The petition in that lawsuit complains of the “poor operating condition” of Tank 3, used to store crude oil delivered to the Valero Houston Refinery, which Valero operates under PBR registration 106017.¹¹ The petition further alleges that there had been no internal operating inspection of Tank 3 in over 20 years in violation of American Petroleum Institute 653 standards.¹² The petition then details the specific conditions that contributed to Tank 3’s failures during Hurricane Harvey, releasing 315 barrels of crude oil into a secondary containment area between August 26-27, 2017.¹³ Valero self-reported 240,050 pounds of VOCs emitted from Tank 3 during this emissions event which lasted from August 27, 2017 to September 14, 2017 (a duration of 440 hours and 30 minutes, or 19 days).¹⁴ In late 2020, Texas requested entry of an agreed judgment to resolve the civil suit, assessing a penalty of \$245,000. As the petition details, the serious release from Tank 3 during Hurricane Harvey demonstrates the importance of requirements for internal inspections pursuant to American Petroleum Institute 653 standards, to assure compliance with emission limits and to prevent future unauthorized releases of pollution due to poor tank maintenance. Commenter is glad to see that these types of regulations are being included in the ASVS Program.

However, based on this particular failure in extreme weather, Commenter would further recommend to TCEQ that any ASV with a floating roof not be entitled to an exemption under Section 338.3(b) as there is a significant risk of similar failures of floating roof tanks as seen as during Hurricane Harvey during higher rainfall events.

Finally, ASVs that are less than two miles from a region’s source of potable water should not be granted an exemption. Such an exemption would increase the risk of contaminating water supplies for local communities. As the agency is aware, due to firefighting efforts for the 2019 ITC Deer Park Fire, per- and polyfluoroalkyl substances (PFAS) in the fire-fighting foam used to extinguish the fire and the chemicals stored in the ASVs made their way into nearby water resources that feed Galveston Bay.

B. IMPLEMENTATION OF EXEMPTIONS IDENTIFIED IN SECTION 338.3(B).

The Commenter also takes issue with the Proposed Rulemaking’s process for the ED’s allowance of an exemption under Section 338.3(b). Proposed Section 338.3(b) provides that “the owner or operator of an affected storage vessel may submit a written request to the executive director for a specific storage vessel to be exempted from the requirements of this chapter.” The

⁹ See TCEQ Case No. 55902 Listing on TCEQ Website, Status of Enforcement Action Selected (as of March 10, 2019).

¹⁰ Original Petition by State of Texas against Valero Energy Partners, LP, No. D-1-GN-20-000516 in the 459th Judicial District of Travis County, Texas.

¹¹ *Id.* at 6.

¹² *Id.* at 6.

¹³ *Id.* at 6-8.

¹⁴ *Id.* at 8.

Proposed Rulemaking suggests that the ED would be empowered to approve this written request without public comment or input, such as the concerns expressed in these comments. Commenter is further concerned that industry will use this Section 338.3(b) exemption as an opportunity to exempt ASVs intended to be covered by this regulation to avoid regulation and related fees. For example, the owner and operator may seek to exempt ASVs from regulation that are inappropriate. Because of this concern, CPC offers the following comments.

1. The agency should give the public notice of the requested exemption with an opportunity to provide input to the ED.

The public should have an opportunity to review these written requests and provide input to the ED before a final decision is made or approval of the exemption is issued. Before such an exemption should be granted under Section 338.3(b), the ED should allow an opportunity for comment on the exemption after publication in the Texas Register to provide opportunity for the community to comment on the relative “low risk” posed by ASVs at the facility. The public comment period should not be less than 30 days after publication of the request for exemption with the supporting information provided to the agency made available to the public. At a minimum, these notices could be published in the Texas Register for public comment and review without delaying the consideration of such a request significantly.

If the public is not notified of the request for an exemption, then there is no opportunity for the nearby community to weigh in on its experience with the facility or comment on the documentation provided by owner and operator to the TCEQ.

Without public notice, the proposed process also lacks transparency as it is conceivable that approvals for exemptions might be given to some facilities (and not others) or that the public would never know what the basis for the exemptions were even if granted. The only way to ensure that there is public oversight and that this Proposed Rulemaking is being complied with the original intent of the legislature is to ensure transparency in its implementation. Providing for an exemption that is at the sole discretion of the ED without allowing for public input or review of the written request is not a good practice for the agency given the recent cited impacts these ASVs have had on communities.

2. Will there be a method to reverse the exemption granted under Section 338.3(b) should the facility be shown not to be “low risk”?

By creating this exemption under Section 338.3(b), TCEQ has potentially created a situation for grandfathering some ASVs from having to comply with the requirements of the ASVS Program if the written request for an exemption is approved. The Proposed Rulemaking is silent as to whether this approval could be subject to reversal by the agency or ED if subsequent events occur that warrant a reconsideration of the relative risk. Because neither the owner or operator submitting the written request for an exemption nor the ED have a crystal ball as to what risks there are in the future, it is conceivable that there could be some risks not assessed at the time the exemption request is presented or that risk levels for a facility could change based

on operations of the facility, maintenance, changes in management, changes in ownership, or other unforeseen climate-based events.

For example, what areas could be assessed as “low risk” could dramatically change with effects of climate change. Ten years ago, no one would have predicted the rainfall amounts seen in Harris and Jefferson Counties during Hurricane Harvey; however, it happened to the detriment of those living near Arkema and Valero in Manchester who had to worry about air pollution and evacuations at the the same time that their neighborhoods were flooding. Moreover, what if an accident, fire or explosion occurs at an ASV at that facility that contradicts the initial “low risk” determination by the ED. Is there a process to automatically revoke the exemption in such a case? Overall, Commenter is concerned that by not providing a procedure to reverse the exemption that there is a risk of “grandfathering” facilities from having to comply with this program which may end up increasing the risk to the public in the future based on meteorological risks or operational risks that may be outside the ED’s purview at the time the exemption is granted.

III. CONCLUSION

Commenter Caring for Pasadena Communities respectfully requests that TCEQ consider these specific comments regarding proposed Section 338.3(b) exemption in the Proposed Rulemaking and the need to narrow this exemption to avoid undercutting the legislative intent of SB900. Given the issues profiled regarding recent catastrophic failures at ASVs at least three facilities in Harris County in the last six years, TCEQ needs to make sure that the ASVS Program serves its intended purpose to improve regulation and access to these types of facilities for the surrounding communities’ benefit. Please contact the undersigned counsel if you have any questions or need clarification regarding the comments contained herein.

Respectfully submitted,



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