

**Environmental Law and Justice Clinic**

January 19, 2017

Nicholas Maiden  
Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA. 94105

Re: Additional Comments on Pacific Steel Casting's Proposed SMOP Revision

Dear Mr. Maiden:

The Environmental Law and Justice Clinic ("ELJC") of Golden Gate University School of Law submits the following comments regarding the proposed revision of Pacific Steel Casting Company's ("PSC") Synthetic Minor Operating Permit ("SMOP") on behalf of the West Berkeley Alliance for Clean Air and Safe Jobs ("the Alliance") to supplement our written comments of September 15, 2016 and oral comments made during the public meeting of December 14, 2016.

ELJC and the Alliance appreciate the opportunity to submit both written and oral comments. We reiterate we are not opposed to the SMOP revision; rather, we seek to improve it by requiring action to prevent the continued excessive emissions of odors and pollutants into the air of West Berkeley and beyond.

## **COMMENTS ON THE PROPOSED SMOP**

### **I. Odor Management Plan (OMP)**

Paragraph 54 of the SMOP conditions<sup>1</sup> requires that PSC comply with Sections 1-6 of its October 3, 2008 OMP. Without explanation, however, Section 7 of the OMP ("Complaint Response Procedures"), detailing the actions to be taken when odor complaints are made, is excluded from this requirement. The Complaint Response Procedures ought not to be mere suggestions; BAAQMD should require PSC to comply with Section 7 so as to ensure odor complaints are investigated properly and thoroughly.

In addition, the 2008 OMP referred to in SMOP condition 54 is outdated. PSC should be required to make and keep the OMP current by requiring annual updates.

Incredibly, the Complaint Response Procedures are in effect only until either PSC stops receiving odor complaints from BAAQMD or **April 1, 2009**, "whichever

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<sup>1</sup> Where these comments refer to the SMOP or its "conditions," "paragraphs" or "parts" we are referring to the numbered paragraphs, 1-60, contained on pages 21-35 of the June 2016 Engineering Evaluation Report ("Evaluation").

occurs first.”<sup>2</sup> It is self-evident that a provision that sunsets on April Fools’ Day 2009 does not apply to the present time, six-plus years later, rendering the Complaint Response Procedures meaningless. It is irrational and indefensible for an odor-complaint procedure to terminate years before it even starts. It is equally indefensible that the Complaint Response Procedures *ever* expire; as long as steel castings are being manufactured, there is the potential for noxious odors to be created and for complaints to be forthcoming. Thus, there is no justification for the Complaint Response Procedures to expire when “the Company ceases receiving complaint notifications from BAAQMD.”<sup>3</sup>

The OMP’s Complaint Response Procedures should be mandatory, not meaningless, and they should never expire under any circumstances.

The OMP requires investigation of odors if “found immediately outside the facility buildings.”<sup>4</sup> PSC personnel should be required to respond to a complainant’s location in the community, not just in the areas “immediately outside” of PSC. They should also be required to inquire whether complainants have any negative reactions to noxious odors, including listing symptoms, if any. These deficiencies in the OMP should be rectified.

The SMOP should also require PSC to affirmatively report the results of odor-complaint investigations to BAAQMD and those reports should be available to the public.

Although PSC’s current Permit to Operate (“PTO”) requires odor testing of the carbon adsorption systems,<sup>5</sup> the OMP is silent about odor testing in the areas “immediately outside” PSC or at the locations complainants perceive noxious odors. The OMP should include provisions for odor testing in response to complaints. It should also specify the threshold, expressed in odor units, beyond which PSC is required to take action to abate the odors, such as ceasing operations, as called for in PSC’s existing permit.<sup>6</sup>

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<sup>2</sup> Odor Management Plan at 13 (emphasis added).

<sup>3</sup> Odor Management Plan at 13.

<sup>4</sup> Odor Management Plan at 14.

<sup>5</sup> PTO, paragraph 3, at 9.

<sup>6</sup> For example, as to Source 49 at Plant #2, the PTO states: “Should the operation of Source 49 and any or all associated equipment (Sources 44-48) be determined by the District to cause nuisance odors, *the permit holder shall immediately cease operation of the entire sand recycling system* (Sources 44 - 49). In the event that this occurs, the operation of the sources shall be prohibited until all odor problems are resolved by the permit holder. Resolution of any odor problems *may require the permanent shut down of sources 44-48* or the permanent venting of all emissions to existing carbon

In order to prevent noxious odors, the District should require “the permanent venting of all emissions to existing carbon adsorption units,”<sup>7</sup> as contemplated by the PTO, paragraph 9.

The OMP calls for identified personnel (though their names are redacted) to investigate odor complaints.<sup>8</sup> There is no justification for keeping these names confidential. Names and contact information should be a matter of public record so residents who are affected by odors know how to contact responsible PSC personnel in addition to filing complaints with BAAQMD. The names and contact information should also be up-to-date, not from 2008, as is now the case. In addition, the OMP should describe the minimum training required for any PSC personnel to be tasked with investigating odor complaints.

Finally, the current PTO identifies both Sources 44-49 (the Sand Thermal Recycling system) and Sources 22 and 23 (Shell Molding machines) in Plant 2 as sources which can cause odorous emissions. As noted in footnote 6, PSC may be required to shut down operation of the Sand Thermal Recycling system in the event of repeated odors. However, no similar provision applies to the Shell Molding machines. All sources known to be associated with emission of noxious odors should be subject to the same permit condition as Sources 44-49, that is, containing provisions for ceasing operations until odor complaints are resolved. The PTO also calls for emissions from Sources 22 and 23 to “be collected, to the maximum extent possible” and vented to the carbon adsorption system.<sup>9</sup> However, the permit does not define “to the maximum extent possible.” Such vagueness renders this provision practically unenforceable and should be corrected.

## **II. Carbon Adsorption Systems/Flame Ionization Detectors (FIDs)**

PSC should be required to employ continuous emissions monitoring (CEM) using flame ionization detectors (FIDs) at all three plants at all times of operation.

The preamble to Part 6 of the proposed SMOP conditions states, “The following Parts 6 through 17 *require* the installation and operation of an organic vapor-analyzer-flame ionization detector (FID) system for each carbon adsorption system in Plants 1, 2 and 3 as the parametric monitoring and recording system to demonstrate compliance with the Synthetic Minor Operating Permit . . . .”<sup>10</sup>

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adsorption units located at Pacific Steel Casting. (Regulation 7).” PTO, paragraph 9, at 13-14 (emphasis added).

<sup>7</sup> PTO, Paragraph 9, at 13.

<sup>8</sup> Evaluation, Appendix H, at 1.

<sup>9</sup> PTO, Condition #4292, paragraph 1, at 11.

<sup>10</sup> Evaluation at 22 (emphasis added).

Why then does the SMOP delay installation of FID systems in Plants 1 and 2 until after the plants exceed an output of 4500 tons of steel each “or an indication” thereof? The truth is that FIDs are *not* required, as the preamble claims, until and unless the 4500 ton threshold is met. Neither the SMOP nor any of its supporting documents even attempts to justify this FID-installation trigger-level.

There is no explanation, for example, for why the trigger output should be 4500 tons, versus 4000 or 3500. The Engineering Evaluation Report states that the FIDs will be required at Plants 1 and 2 “once production or a contract for production exceeds 50 percent of the maximum allowable production.”<sup>11</sup> If it is the intention to trigger FID installation upon reaching 50% of total output capacity, why? Furthermore, Appendix A to the Engineering Evaluation Report indicates that the SMOP will limit total steel output in Plants 1 and 2 to 6950 tons a piece.<sup>12</sup> Even if there was a rational basis for requiring FIDs on reaching 50% of maximum output, the arithmetic is wrong: 50% of 6950 tons is not 4500 tons; it is 3475. Why don’t the FID requirements kick in at that level of production?

The carbon adsorption systems in the three plants are the primary mechanism for controlling the noxious odors PSC’s neighbors have complained about. CEM is the best way to assure the adsorption systems are functioning adequately and insure compliance with the SMOP. It may be that odors impacting neighbors could be correlated with the efficiency (or lack thereof) of the carbon adsorption systems. FIDs can provide the continuous monitoring data necessary to establish a correlation or, in the alternative, demonstrate there is no correlation.

FIDs should be required for Plants 1 and 2 immediately, regardless of the level of steel output, to assure PSC is doing everything possible to prevent noxious odors from being emitted. While constructing and testing FID systems, PSC should be required to do daily hydrocarbon sampling at the inlet and outlet of each carbon bed, and analyze those samples. Results should be reported to BAAQMD and be made available to the public.

### **III. Fence-Line Monitoring**

PSC’s Odor Management Plan refers to “alleged offsite odors,” and flatly denies “that the Company has, at any time created, or is creating, offsite odors that have or may have impacted the community in any respect . . . .”

People who live downwind of PSC don’t smell “alleged” odors, they smell real ones. Horrible ones. In some cases, sickening ones.

Continuous fence-line monitoring of emissions is the best way to demonstrate that complaints about PSC’s odors aren’t deniable or frivolous; they have a real

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<sup>11</sup> Evaluation at 13.

<sup>12</sup> Evaluation, Appendix A, at 1-2.

negative impact. Fence-line monitoring can provide data to bridge the gap between what the community smells and what PSC disputes. And, if PSC is correct in its blanket denial, fence-line monitoring may be able to clear PSC of responsibility for some odors, providing the District an opportunity to investigate others' responsibility.

Fence-line monitoring should be an added condition of the SMOP.

#### **IV. Real-Time, Internet Data Reporting**

All emissions-related data should be made available to the public in real time.

FID and fence-line monitoring data are the best options for both BAAQMD and the general public to monitor PSC's compliance. Once those systems are generating continuous monitoring results, it will be possible for real-time reporting of the results via the internet. Real-time internet reporting of FID data should be required to monitor the efficacy of the carbon adsorption systems, as should the results of daily hydrocarbon sampling and analysis prior to installation of FIDs.

Real-time internet reporting of fence-line monitoring data will help identify emissions from PSC and spur corrective action, if necessary.

These are not radical ideas. FID and fence-line monitoring technologies are well established. And real-time internet reporting systems, as BAAQMD well knows, already operate at some Bay Area oil refineries.<sup>13</sup>

The nature and extent of pollutants emitted by PSC, together with the long-term odor problems experienced by the community, call for the best available mechanisms to ensure PSC is doing everything in its power to prevent pollution from emanating from its three plants and preventing noxious odors from negatively impacting the community.

#### **V. Delayed Source Testing Requirements**

Paragraphs 33 through 44 of the proposed SMOP conditions impose source testing requirements for: 1) each baghouse abating an Electric Arc Furnace; 2) shakeout stations; and 3) pouring and cooling areas at each of PSC's three plants.<sup>14</sup> As stated in the Engineering Report, this source testing is intended "to determine initial compliance" with PM, CO, and HAP limits contained in the permit, and to "characterize" emissions from pouring, cooling, and shakeout operations.<sup>15</sup> Without basis, however, Paragraphs 33 through 44 allow anywhere from 120 days to *three years* from the time of permit issuance for such source testing to occur.

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<sup>13</sup> See [www.fenceline.org](http://www.fenceline.org) for an example of real-time fence-line monitoring results made available on the internet.

<sup>14</sup> Evaluation at 27-30.

<sup>15</sup> Evaluation at 27-30.

Most notably, Paragraphs 42-44 require source testing for carbon monoxide within three years of permit issuance to “characterize carbon monoxide emissions from pouring, cooling, and shakeout operations at . . .” Plants 1, 2, and 3.<sup>16</sup> That is, PSC is given up to three years to fulfill carbon monoxide source testing requirements despite the fact that, in the District’s own words, “In 2015, the District became aware that PSC’s pouring, cooling, and shake out operations could potentially be large sources of carbon monoxide emissions, which were previously unknown.”<sup>17</sup> It is unreasonable to allow three years to perform source testing for carbon monoxide when emissions levels from pouring, cooling, and shakeout are unknown to the District, especially when the proposed CO emissions are so close to exceeding the synthetic minor threshold.<sup>18</sup> In the absence of up-to-date source test data the District cannot conclusively state current emissions levels at the facilities, nor that the proposed permit conditions are adequate for ensuring compliance with synthetic minor limits.

Furthermore, delaying source testing for 120 days to three years is inconsistent with BAAQMD’s own permitting guidance document. BAAQMD’s Permit Handbook recommends that permit conditions require District approved source testing to occur “not later than 60 days” from the date of startup.<sup>19</sup>

Source testing is the most accurate method for determining actual source emissions at the facility and as a result is critical for establishing permit conditions that ensure PSC operates as a synthetic minor source. BAAQMD should follow the guidance set forth in its permitting handbook and, at minimum, require source testing for all sources to occur no later than 60 days from the date of permit issuance.

## **VI. Applicability of New Source Review Requirements<sup>20</sup>**

Page 4 of the Engineering Evaluation Report notes that PSC’s Plant 3 began operations in 1981, some four years after the adoption of the 1977 Clean Air Act Amendments and the revised New Source Review (“NSR”) program.<sup>21</sup> With regard to NSR requirements the Evaluation states, in the section titled Statement of Compliance, that “[n]one of PSC sources is considered new or modified with *this* application.

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<sup>16</sup> Evaluation at 29-30.

<sup>17</sup> Evaluation at 5.

<sup>18</sup> Evaluation, Table 5, at 9 (showing proposed facility-wide CO emissions of 89.24 T/PY).

<sup>19</sup> BAAQMD Permit Handbook (July 18, 2006) at 88.

<sup>20</sup> While this comment focuses generally on NSR requirements under the federal Clean Air Act it is equally important to include a full statement of compliance with BAAQMD NSR requirements, including the extent to which additional regulatory requirements are incorporated in PSC’s permit conditions.

<sup>21</sup> Evaluation at 4; 42 U.S.C. § 7470 *et seq.*

Therefore, Regulation 2, Rule 2 does not apply.”<sup>22</sup> Importantly, however, the Evaluation Report includes no discussion whatsoever as to whether Plant 3 was ever subject to NSR for past permits, or whether required emissions controls (i.e., Lowest Achievable Emissions Rate/Best Available Control Technology [“LAER/BACT”]) have been incorporated in the facility’s permit conditions.

Emissions of carbon monoxide (“CO”), one of the federal criteria pollutants, are of particular concern at the PSC facility. The Evaluation shows that the PTE for CO surpasses the NSR major facility threshold of 100 tons per year,<sup>23</sup> and when Plant 3 came on-line in 1981 the Bay Area was designated as a nonattainment area for CO.<sup>24</sup> Although BAAQMD concedes it only recently discovered PSC’s operations may be a large source of CO,<sup>25</sup> if the PTE CO was in fact the same in 1981 – the Engineering Report includes no discussion of major modifications – Plant 3 should have been subject to the LAER for CO since operations began. Conversely, if PSC’s operations only recently began emitting large quantities of CO, an appropriate modification analysis should be included.

A clear description of the full scope of regulatory requirements applicable to PSC, including NSR determinations, is paramount for the public’s understanding of all applicable regulatory requirements and the ability to hold PSC accountable. Further, given the immense complexity of the regulatory landscape, with both EPA and BAAQMD responsible for regulation at times, attempting to piece together an understanding of all applicable regulatory requirements is hopeless for the general public. In an effort to better inform the public’s understanding of BAAQMD’s regulation of PSC, the permit documents should detail the full scope of applicable legal requirements, including all mandated emission controls under federal, state, and Air District law.

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<sup>22</sup> Evaluation at 15 (emphasis added).

<sup>23</sup> Evaluation at 9. As a facility engaged in the production of steel castings (metal products) from recycled scrap steel and other metal, PSC’s operations fall within the scope of a secondary metal production plant subject to the 100 tons per year threshold. *See* 40 C.F.R § 52.21(b)(1)(i)(a); *see also* United States Environmental Protection Agency letter from Thomas W. Devine, Director, Air and Hazardous Materials Division, Region IV, to State and Local Air Directors on policy determinations regarding PSD questions (March 11, 1981) (stating that an iron foundry is considered “a secondary metal production plant, if it uses scrap metal to produce iron, even if the metal is poured into molds”).

<sup>24</sup> *See* 43 FR 8973 (1978).

<sup>25</sup> “In 2015, the District became aware that PSC’s . . . operations could potentially be large sources of carbon monoxide emissions, which were previously unknown.” Evaluation at 5.

## **VII. BAAQMD Procedures**

### **A. Compliance with the Public Records Act (PRA)**

BAAQMD has a history of late disclosure of documents sought under California's PRA. In PSC's case, ELJC made PRA requests for PSC's PTOs and permit applications in April 2016. Those requests were repeated in August. Yet the documents weren't produced until November. No sufficient explanation for the delay was offered. This delay negatively impacted ELJC's ability to review the highly-technical documents prior to the public-comment meeting in mid-December.

The law requires BAAQMD to respond within ten (10) calendar days to an information request.<sup>26</sup> BAAQMD needs to take its obligation to produce public records more seriously, so that it complies with the law.

Documents should also be released well in advance of public-comment periods so that commenters have sufficient time to review and analyze them.

### **B. Trade Secrets**

BAAQMD withheld certain documents sought under the PRA on the ground that they were "trade secrets," and thus confidential. BAAQMD's procedures suggest the District plays only a ministerial-messenger role in disputes over trade secrets. The District's procedures should call for BAAQMD to actively protect the public-disclosure rights of interested information seekers, not simply acquiesce when a regulated party asserts trade secret confidentiality. A mere assertion of confidentiality is insufficient. It must be backed up by convincing evidence that the documents in question qualify as trade secrets under the law. All documents concerning the "nature, extent, quantity, or degree of air contaminants or other pollution" are public records subject to disclosure.<sup>27</sup> The community has a right to these documents; BAAQMD should actively litigate if necessary to defend that right.

### **C. Complaint Procedure**

From the community's perspective, BAAQMD's odor-complaint system is broken. Less than positive interactions with BAAQMD's complaint hotline dispatchers and inspectors, as well as the lack of changes in PSC's noxious odors, result in complainants deciding to stop making odor complaints, as it seems useless.

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<sup>26</sup> Cal. Gov't Code § 6253(c).

<sup>27</sup> Cal. Gov't Code § 6254.7(a).

An ongoing problem is that while PSC can operate around the clock, BAAQMD inspectors don't. It's rare for an inspector to respond to odor complaints before or after regular business hours, or on weekends and holidays. In our experience, after-hour complaints are met by an answering service; an inspector almost never comes out to investigate. Or an inspector will come out the next business day but the odor will have long since dissipated. Complainants give up in frustration and anger.

BAAQMD's complaint line should be staffed 24 hours a day, seven days a week. Inspectors should be able to respond, in a timely manner, to odor complaints 24 hours a day every day of the year.

### **VIII. Conclusion**

In sum, the Alliance supports the issuance of a revised SMOP but believes conditions can be strengthened and made more practically enforceable with the addition of the suggested improvements contained herein.

Sincerely,



Steve Castleman  
Collin McCarthy  
Tai Yamanaka\*  
Matthew Tyler Sullivan\*

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\*Tai Yamanaka and Matthew Tyler Sullivan are students certified under the Practical Training of Law Students rules, supervised by Steve Castleman.