February 5, 2020

VIA E-MAIL

Office of Chief Counsel
Division of Corporate Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: HollyFrontier Corporation
Stockholder Proposal submitted by the United Steel Workers Union
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

On December 23, 2019, we submitted a letter to inform you that HollyFrontier Corporation intends to exclude from its proxy statement and form of proxy for its 2020 Annual Meeting of Shareholders a stockholder proposal and statements in support thereof (the “Proposal”) received from the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the “Proponent”).

On February 4, 2020, the Proponent informed us via electronic mail that they have withdrawn the Proposal. Copies of the Proponent’s correspondence are attached to this letter as Exhibit A. For ease of reference, a copy of our December 23, 2019 no-action request, excluding exhibits, is attached as Exhibit B.

Because the Proposal has been withdrawn, we now withdraw our December 23, 2019 no-action request relating to the Proposal. Correspondence regarding this letter should be sent to abogdanow@velaw.com, and if we can be of further assistance in this matter, please feel free to call me at 214-220-7857 or Sarah Fortt at 512-542-8438. Thank you for your attention to this matter.

Sincerely,

/s/ Alan J. Bogdanow

Alan J. Bogdanow
cc: Sabrina Yow-chyi Liu, United Steelworkers
    Vaishali S. Bhatia, HollyFrontier Corporation
    Gillian Hobson, Vinson & Elkins LLP
    Sarah Fortt, Vinson & Elkins LLP

Enclosures
Exhibit A

[The Proponent’s Correspondence]
From: Liu, Sabrina <[redacted]>
Sent: Tuesday, February 4, 2020 10:41 AM
To: Bhatia, Vaishali <[redacted]>
Cc: Keck, Becky <[redacted]>

Subject: Withdrawal

CAUTION: This email originated from outside of the HollyFrontier organization. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Bhatia:

The United Steelworkers would like to withdraw our shareholder proposal submitted in November 2019. The USW desires to exchange our views in further dialogue with HollyFrontier Corporation and engage with the company in the future.

Sabrina Yow-chyi Liu
United Steelworkers
Office: [redacted]
Cell: [redacted]

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Dear Ms. Liu:

Thank you for your note. We appreciate the USW withdrawing the proposal, and we look forward to continued dialogue.

Can you please confirm that the attached proposal regarding the Tier 1 process safety events and environmental violations report, submitted in November 2019, is the proposal that the USW is withdrawing?

Thanks,
Vaishali

Vaishali Shah Bhatia
Senior Vice President and General Counsel
The HollyFrontier Companies
2828 N. Harwood St., Suite 1300
Dallas, Texas 75201
Tel.: 
Email:

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From: Liu, Sabrina <sabrina.liu@usw.org>
Sent: Tuesday, February 4, 2020 1:58 PM
To: Bhatia, Vaishali <vaishali.bhatia@usw.org>
Cc: Keck, Becky <becky.keck@usw.org>; Fortt, Sarah <sarah.fortt@usw.org>; Bogdanow, Alan <alan.bogdanow@usw.org>; Hobson, Gillian <gillian.hobson@usw.org>

Subject: RE: Withdrawal

[EXTERNAL]

Yes, the USW is withdrawing the proposal you referred to, which was initially filed on November 6, 2019 and later on modified on December 2, 2019.

Sabrina Yow-chyi Liu
United Steelworkers
Office: [Redacted]
Cell: [Redacted]
Exhibit B

[No-action Request]
December 23, 2019

Via Email

shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: HollyFrontier Corporation
Stockholder Proposal Submitted by United Steelworkers
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, HollyFrontier Corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Stockholders (collectively, the “2020 Proxy Materials”) a stockholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) submitted by United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if they elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.
THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders of HollyFrontier Corporation (the “Company”) urge the board of directors to prepare a report to shareholders by the 2021 annual meeting, at reasonable cost and excluding confidential information, on Tier 1 Process Safety Events as reported to American Petroleum Institute Recommended Practice 754 and environmental violations as defined by the Environmental Protection Agency.

The Supporting Statement includes the following:

- In the past five years, HollyFrontier has suffered costly outages and been fined over $2.5 million by the Environmental Protection Agency and Occupational Safety and Health Administration.

- On March 6, 2019, a propane line exploded at HollyFrontier El Dorado Refinery shutting down the facility for weeks. At the same refinery on September 4, 2017 an explosion in the Pug Unit resulted in the fatality of operator Tim Underwood, extensive damage, and costly liabilities.

- On March 13, 2018, a fire erupted at HollyFrontier Woods Cross Refinery, causing extensive damage to the Crude Unit and reducing operations.

- The threat of health, safety or environmental incidents presents a significant and material risk for shareholders and therefore requires a higher level of transparency.

A copy of the Proposal and its Supporting Statement, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

For the reasons discussed below, we believe that the Proposal may properly be excluded from the 2020 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal relates to the Company’s ordinary business operations within the meaning of Rule 14a-8(i)(7); and

- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite within the meaning of Rule 14a-8(i)(3).
ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Involves Matters Related To The Company’s Ordinary Business Operations.

A. Background.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a stockholder proposal that relates to the company’s “ordinary business operations.” According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” “refers to matters that are not necessarily ‘ordinary’ in the common meaning of the word,” but instead the term “is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”).

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. The first is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The second consideration is related to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” Id. (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues.” Id. (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). Note 4 of Staff Legal Bulletin 14E (Oct. 27, 2009) states that “[i]n those cases in which a proposal’s underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.” The Staff reaffirmed this position in Note 32 of Staff Legal Bulletin 14H (Oct. 22, 2015), explaining “[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company’s business operations.” In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. See Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”)
A stockholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. See Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, the Staff has indicated that “[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).” Johnson Controls, Inc. (avail. Oct. 26, 1999).

B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Primary Focus Of The Proposal Is Workplace Safety.

The Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because its primary focus is workplace safety, and the Staff has repeatedly recognized that a proposal relating to a company’s workplace safety is excludable under Rule 14a-8(i)(7) as a component of “ordinary business.”

The Proposal requests a report on the Company’s “Tier 1 Process Safety Events as reported to American Petroleum Institute Recommended Practice 754,” and the Supporting Statement indicates that “[t]he threat of health, safety or environmental incidents . . . requires a higher level of transparency” and, therefore, the Company’s investors should be provided with a detailed report regarding the Company’s “safety and environmental record” to help the Company “better mitigate future incidents.” The Supporting Statement also describes alleged workplace accidents in support of the Proposal, and references fines imposed by the Occupational Safety and Health Administration (“OSHA”).

The Company is committed to continuous efforts to identify and manage workplace safety risks associated with its operations. However, the report requested by the Proposal is not appropriate for stockholder action at an annual meeting. Workplace safety is a significant component of the design and operation of the Company’s production facilities, decisions with respect to which are central to the Company’s core business operations. As such, the Proposal relates to the Company’s ordinary business operations.

American Petroleum Institute Recommended Practice 754 sets forth highly detailed process safety performance indicators instituted in response to the U.S. Chemical Safety and Hazard Investigation Board’s investigation of the 2005 BP Texas City incident,¹ and involves recommendations on maintaining and reporting metrics regarding process safety. It is worth noting that the American Petroleum Institute Recommended Practice 754 is not a regulation or standard with which the Company or its peers are obligated to comply, however it does include a complex series of reporting metrics. The Proposal does

not provide details regarding which of the many metrics set forth in the American Petroleum Institute
Recommended Practice 754 the Proponent expects the Company to report on, as discussed in more detail
below, and so the Company’s stockholders are unlikely to know exactly what they are being asked to
approve.

The Staff has regularly concurred that a company’s safety initiatives, including those relating to
workplace safety, are a matter of ordinary business and has permitted companies to omit proposals relating
to the fundamental business function of designing and operating production facilities. Notably, in The
Chemours Company (avail. Jan. 17, 2017), the proposal requested that the company publish a report
describing the steps the company had taken to reduce the risk of accidents and the Board’s oversight of
process safety management. Similar to the Proposal, the supporting statement referenced workplace
accidents and fines imposed by OSHA, and included concepts nearly identical to the Proposal, stating that
“the threat of another catastrophic event . . . requires a higher level of transparency.” The workplace
accidents referenced by the proposal also included environmental matters, such as an accidental leak of
methyl gas and a burst gas line. The company argued, among other reasons, that the proposal was
excludable under Rule 14a-8(i)(7) because the proposal dealt with workplace safety, and the Staff stated,
in concurring with exclusion of the proposal under Rule 14a-8(i)(7), that the “proposal relates to workplace
safety.”

In addition, in Pilgrim’s Pride Corp. (avail. Feb. 25, 2016), the proposal requested that the
corporation publish a report describing the company’s policies, practices, performance and improvement
targets related to occupational health and safety. The supporting statement in Pilgrim’s Pride also cited
OSHA violations. The company argued, among other reasons, that the proposal was excludable under
Rule 14a-8(i)(7) because the proposal related to the company’s safety efforts in its ordinary business
operations. The Staff concurred with the omission of the proposal in Pilgrim’s Pride, stating that the
proposal related to “ordinary business operations. In this regard, we note that the proposal relates to
workplace safety.”

The Staff has also concurred with exclusion of similar proposals in Kansas City Southern (avail.
Feb. 24, 2014) (concurring in the exclusion of a proposal as ordinary business because it related to safety
and security initiatives); Union Pacific Corp. (avail. Feb. 25, 2008) (concurring in the exclusion of a
proposal requesting disclosures of the company’s efforts to safeguard the company’s operations from
terrorist attacks and other homeland security incidents); CNF Transportation, Inc. (avail. Jan. 26, 1998)
(concurring in the exclusion of a proposal requesting that the board of directors develop and publish a
safety policy accompanied by a report analyzing the long-term impact of the policy on the company’s
competitiveness and stockholder value because “disclosing safety data and claims history” was a matter
of the company’s ordinary business); Chevron Corp. (avail. Feb. 22, 1988) (concurring in the exclusion
of a proposal as ordinary business because it related to the protection and safety of company employees);
and AMR Corp. (Farquhar) (avail. Apr. 2, 1987) (concluding that a proposal requesting that the board of directors review and issue a report regarding the safety of the company’s airline operations was excludable because “determining the nature and extent of review of the safety” of AMR’s airline operations was a matter of the company’s ordinary business).

The Company’s oversight of workplace safety involves detailed policies, procedures and standards that guide the Company’s operations and conduct at its facilities, as well as its trainings of employees, risk management policies and efforts to promote occupational health and safety. These are fundamentally management functions, and not activities that can be practically overseen by stockholders. As the focus of the Proposal, like the proposals in the precedent mentioned above, is on workplace safety, the Proposal relates to the Company’s ordinary business operations.

C. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Addresses Legal and Regulatory Compliance.

The Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because it deals with legal and regulatory compliance, and the Staff has repeatedly recognized that a proposal relating to a company’s legal and regulatory compliance is excludable under Rule 14a-8(i)(7) as a component of “ordinary business.”

The Proposal attempts to impose on the Company an obligation to re-examine its compliance with applicable laws and regulations, particularly those relating to workplace safety and environmental laws. The subject matter of the requested report therefore involves “ordinary business” and is not appropriate for stockholder action at an annual meeting. The Proposal requests that the Company issue a report addressing recommended metrics set forth in the American Petroleum Institute Recommended Practice 754, and also requests that the report address the Company’s “environmental violations as defined by the Environmental Protection Agency.” Further, the Proposal references the Company’s past compliance with the laws and regulations of the Environmental Protection Agency and OSHA in supporting its position that stockholders should be provided with a detailed report of the Company’s “record” in order to help the Company “better mitigate future incidents.” The organizations mentioned by the Proposal, including the Environmental Protection Agency and OSHA, establish and enforce regulatory standards promoting the safety and healthful working conditions for workers, including standards that apply to the Company and its facilities. The report sought by the Proposal, therefore, would necessarily address the Company’s compliance with laws and regulations which, in the Company’s view, renders the Proposal excludable, as compliance with applicable laws and regulations is essential to the Company’s day-to-day management and cannot, as a practical matter, be subject to direct stockholder oversight.

In a long line of no-action letters, the Staff has consistently concurred that proposals relating to compliance with laws and regulations involve ordinary business and are excludable under Rule 14a-
8(i)(7). In *Halliburton Co.* (avail. Mar. 10, 2006), for example, the Staff concurred in the exclusion of a proposal requesting a report evaluating the potential impact of certain violations and investigations on the company’s reputation and stock price, as well as the company’s plan to prevent further violations, “as relating to [the company’s] ordinary business operations (i.e., general conduct of a legal compliance program).” *See also Raytheon Co.* (avail. Mar. 25, 2013) (concurring in the exclusion of a proposal requesting a report on the board’s oversight of the company’s efforts to implement the provisions of the Americans with Disabilities Act, the Fair Labor Standards Act, and the Age Discrimination in Employment Act because “[p]roposals that concern a company’s legal compliance program are generally excludable under rule 14a-8(i)(7)”); *Sprint Nextel Corp.* (avail. Mar. 16, 2010) (concurring in the exclusion of a proposal requesting an explanation as to why the company had not adopted an ethics code that would promote ethical conduct and compliance with securities laws on the basis that the proposal concerned “adherence to ethical business practices and the conduct of legal compliance programs”); *ConocoPhillips* (avail. Feb. 23, 2006) (concurring in the exclusion of a proposal requesting the board investigate whether the company and its franchisees are in compliance with applicable laws regarding sales of cigarettes to minors); *Xerox Corp.* (avail. Feb. 29, 1996) (concurring in the exclusion of a proposal requesting the board appoint a committee to review and report on the company’s adherence to human rights and environmental standards with respect to its overseas business); and *AT&T Inc.* (avail. Jan. 16, 1996) (concurring in the exclusion of a proposal requesting the board initiate a review of the company’s maquiladora operations, including the adequacy of wage levels and environmental standards and practices and make the summary report available to stockholders).

As a company in the energy industry, the Company and its operations are subject to the regulatory jurisdiction of various agencies at the federal, state and local level. These laws and regulations, particularly relating to workplace safety and environmental regulations applicable to the Company’s core operations, significantly affect the way the Company does business. Compliance with these laws and regulations is fundamental to management’s ability to run the Company on a day-to-day basis that compliance cannot, as a practical matter, be subject to direct stockholder oversight, especially for a company operating in a highly regulated industry, such as the Company.

The Company has dedicated compliance and legal professionals whose focus is on the Company’s legal obligations, including staff devoted exclusively to the environmental and health and safety component of the Company’s legal compliance program. Compliance teams work closely with senior management to provide independent review and oversight of the Company’s operations, with a focus on compliance with applicable local, state and federal laws and regulations. The Company’s lawyers provide legal advice to assist in efforts to comply with all applicable laws and regulations and the Company’s compliance and ethics programs.
Here, as in the no-action letters cited above, the Proposal specifically requests information concerning compliance with laws and regulations in areas that fall squarely within management’s purview and the scope of the ordinary business exclusion. The Company’s establishes practices to comply with the laws and regulations governing the Company’s business, which are fundamental to management’s responsibility for the day-to-day operation of the Company’s business and cannot, as a practical matter, be subject to direct stockholder oversight, especially for a company operating in a highly regulated industry, such as the Company.


The Company does not believe that the Proposal focuses on a significant policy issue that transcends the Company’s ordinary business or its day-to-day operations. The fact that the Proposal mentions environmental matters does not remove it from the scope of Rule 14a-8(i)(7) because the Proposal’s focus is not on matters that “transcend the day-to-day business matters.” The Proposal’s focus is on (i) the implications of safety incidents and compliance violations at Company facilities, (ii) the Company’s reporting of any such incidents to the appropriate governmental and regulatory bodies and trade organizations and (iii) the potential effects on stockholders and the ability to mitigate future incidents, not any broader social policy issue. Moreover, the Proposal’s references to environmental matters are solely made in the context of the Proposal’s focus on these matters.

The Staff has allowed the exclusion of proposals if their overall focus is not on a significant policy issue or other matter that is outside of ordinary business. For example, in Exxon Mobil Corp. (avail. Mar. 6, 2012), the Staff allowed for the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the possible short- and long-term risks to the company’s finances and operations posed by the environmental, social and economic challenges associated with the oil sands. In its no-action letter response, the Staff noted that the proposal “addresses the ‘economic challenges’ associated with the oil sands and does not, in our view, focus on a significant policy issue.” See also JPMorgan Chase & Co. (avail. Mar. 12, 2010) (concurring in the exclusion of a proposal requesting the adoption of a policy barring future financing of companies engaged in a particular practice impacting the environment because the proposal addressed “matters beyond the environmental impact of JPMorgan Chase’s project finance decisions”); Bank of America Corp. (avail. Feb. 24, 2010) (same); General Electric Co. (avail. Jan. 9, 2009) (concurring in the exclusion of a proposal requesting a report addressing the potential costs and benefits to the company of divesting its nuclear energy investment in the near future and investing instead in renewable energy as relating to the company’s ordinary business operations).

Similar to the proposals described above, the Proposal is concerned with matters that do not transcend the Company’s ordinary business or its day-to-day operations. The Proposal is focused on the Company’s policies and practices for reporting on workplace safety and compliance with applicable
environmental laws and regulations, and this focus is enforced by the Supporting Statement. In fact, the Proposal only discusses environmental matters in the context of the Company’s workplace safety efforts and compliance with relevant laws and regulations. It is also important to note that the American Petroleum Institute Recommended Practice 754 states “[c]omparisons among companies and industries are only statistically valid on a rate basis; therefore, Company [process safety event] counts should not be reported publicly” (emphasis added). The Proposal is requesting that the Company do the exact opposite of what is set forth in the Recommended Practice. Further, it is important to note that the Company reports its Tier 1 and Tier 2 incident rates publicly in its annual Corporate Citizenship Report, which is posted on the Company’s website.²

As discussed above, the Company’s workplace safety efforts and compliance with applicable laws and regulations are core to the Company’s day-to-day business and operations, and the Proposal does not focus on a significant policy issue that transcends the Company’s ordinary business or its day-to-day operations. Accordingly, the Company believes that the Proposal relates to its ordinary business operations, and, therefore, the Proposal may be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(7).


Finally, even if the Proposal’s request for disclosure is deemed to encompass issues relating to a significant policy issue, the Proposal can be properly excluded under Rule 14a-8(i)(7) because it also encompasses ordinary business matters. The Staff consistently has concurred in the exclusion of proposals that touch upon a significant policy matter but that also encompass ordinary business matters. This position prevents proponents from circumventing the standards of Rule 14a-8(i)(7) by combining ordinary business matters with a significant policy issue. For example, in Union Pacific Corp. (avail. Feb. 25, 2008), the Staff concurred with the exclusion of a proposal requesting disclosure of the company’s efforts to safeguard the company’s operations from terrorist attacks and other homeland security incidents. The company argued that the proposal was excludable because it related to securing the company’s operations from both extraordinary incidents, such as terrorism, and ordinary incidents, such as earthquakes, floods, and counterfeit merchandise. The Staff concurred that the proposal was excludable because it implicated matters relating to the company’s ordinary business operations. See also Apache Corp. (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on principles specified in the proposal prohibiting discrimination based on

sexual orientation and gender identity because “some of the principles” related to the company’s ordinary business operations).

As in Union Pacific and Apache, where companies were permitted to exclude proposals as broad in nature despite touching upon significant policy issues, the Proposal encompasses many aspects of the Company’s ordinary business decisions regarding the Company’s policies and practices for reporting on workplace safety and compliance with applicable environmental laws and regulations. Thus, the Proposal is not focused on a significant policy issue and therefore may be excluded under Rule 14a-8(i)(7).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague and Indefinite.

Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal if the proposal or supporting statement is contrary to any of the Commission’s proxy rules or regulations, including

Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite stockholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because “neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Staff Legal Bulletin No. 14B (Sept. 15, 2004); see also Dyer v. SEC, 287 F.2d 773, 781 (8th Cir. 1961) (“[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.”).

We note in particular that the Staff has permitted companies to exclude proposals requesting that a company adopt a particular definition or set of guidelines from an external source when the proposal or supporting statement failed to describe the substantive provisions of the referenced definition or set of guidelines. The Staff has concurred with the exclusion of such proposals where companies have asserted that the lack of a sufficient description of the substantive provisions of that external source leaves stockholders unaware of what they are voting on. For example, in Smithfield Foods Inc. (avail. Jul. 13, 2003), the proposal requested a report “based upon the Global Reporting Initiative guidelines.” The company argued that the proposal lacked a description of the substantive provisions of these guidelines and that it provided no background information on these guidelines to the stockholders to allow stockholders to understand what they were considering, and the Staff granted no-action relief under Rule 14a-8(i)(3). In Johnson & Johnson (avail. Feb. 7, 2003), the proposal requested a report containing information regarding the company’s “progress concerning the Glass Ceiling Commission’s business recommendations.” The company argued that stockholders would not understand what they are being asked to consider since the proposal lacked a description of the substantive provisions of the Glass Ceiling
Report or the recommendations flowing from it, and the Staff again granted no-action relief under Rule 14a-8(i)(3). In AT&T Inc. (avail. Feb. 16, 2010), the proposal requested a report containing various information about the company’s political contributions and expenditures, including “[p]ayments ... used for grassroots lobbying communications as defined in 26 CFR § 56.4911-2.” The company argued that “grassroots lobbying communications” was a material element of the proposal yet was not described in the proposal, and the Staff granted no-action relief under Rule 14a-8(i)(3). See also Boeing Co. (avail. Feb. 10, 2004) (concurring in the exclusion of a proposal requesting a bylaw amendment requiring an independent director as defined by the 2003 Council of Institutional Investors definition to serve as chairman); Kohl’s Corp. (avail. Mar. 13, 2001) (concurring with the exclusion of a proposal requesting implementation of “the SA8000 Social Accountability Standards” from the Council of Economic Priorities).

Similar to the precedent cited above, the Proposal references an external recommended practice: “Tier 1 Process Safety Events as reported to American Petroleum Institute Recommended Practice 754.” The Recommended Practice is central to the Proposal since it purports to dictate a standard the Company should cover with its review and in the report that the Proposal requests, yet the Proposal does not provide details regarding which of the many metrics set forth in the American Petroleum Institute Recommended Practice 754 the Proponent expects the Company to report on and does not provide for how detailed reporting on such metrics would help the Company “better mitigate future safety and environmental incidents.” Moreover, the full Recommended Practice 754 is only available for purchase, which means that investors cannot actually even access it for free to try to determine what it provides. Without a proper description of this Recommended Practice, stockholders will not know what they are voting on.

The Proposal also references “environmental violations as defined by the Environmental Protection Agency” as matters that the Company should cover with its review and in the report that the Proposal requests, yet the Proposal fails to describe this definition or how it should apply to the Company’s report. For example, even if we assume that by “environmental violations” the Proponent means “violations of environmental law,” the Environmental Protection Agency makes an important distinction between violations of environmental law that could be an immediate threat to public safety or do immediate and substantial harm to the environment and violations that may not have an immediate or substantial effect on public health or the environment. Because the Proposal does not provide clarity on this external definition, neither the Company nor its stockholders can know exactly what is meant by “environmental violations as defined by the Environmental Protection Agency.”

The Proposal is distinguishable from those stockholder proposals that have referred to external sources where the Staff did not concur that the proposals were impermissibly vague and indefinite. In these cases, the reference to the external source was not a prominent feature of the proposal. For example, in Allegheny Energy, Inc. (avail. Feb. 12, 2010), the Staff did not concur with the exclusion of a proposal
under Rule 14a-8(i)(3) where the proposal requested that the chairman be an independent director (by the standard of the New York Stock Exchange) who had not previously served as an executive officer of the company. Although the proposal referenced the independent director standard of the New York Stock Exchange, the supporting statement in the Allegheny Energy proposal focused extensively on the chairman being an individual who was not concurrently serving, and had not previously served, as the chief executive officer of the company.

In contrast, in the current instance, the Proposal fails to provide any information about what aspects of the Tier 1 Process Safety Events or “environmental violations” the Company is expected to report on. The Proposal fails to provide sufficient information about the American Petroleum Institute or about its Recommended Practice 754 such that stockholders would be informed of what they are voting on. The reporting metrics for the Tier 1 Process Safety Events promulgated by American Petroleum Institute Recommended Practice 754, which are available at https://www.api.org, are a very detailed set of recommendations and questions and responses, and yet, the Proposal does not describe, or even suggest the existence of, the numerous factors that comprise the Tier 1 Process Safety Events. Moreover, the Proposal asks the Company to report on metrics not included in the Recommended Practice, does not identify whether it expects the Company to report on all the recommendations or merely a subset of the recommendations, and with respect to those recommendations that the Company does report on, how the Company is expected to report, as some of the recommendations have various options.

The same is true for the use of “environmental violations as defined by the Environmental Protection Agency.” There is no clear definition of “environmental violations” promulgated by the Environmental Protection Agency, and the Agency has different classifications and types of potential breaches, violations and threats such that neither the Company nor its stockholders can be sure of exactly what is intended by the Proposal.

Just as the proposals in the precedent set forth above, the Proposal fails to adequately describe the substance of what the Company is being asked to report. Accordingly, we believe the Proposal is impermissibly vague and indefinite and may be excluded pursuant to Rule 14a8(i)(3).

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2020 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to
abogdanow@velaw.com, and if we can be of further assistance in this matter, please feel free to call me at 214-220-7857 or Sarah Fortt at 512-542-8438. Thank you for your attention to this matter.

Sincerely,

/s/ Alan J. Bogdanow

Alan J. Bogdanow

cc: Sabrina Yow-chyi Liu, United Steelworkers
    Vaishali S. Bhatia, HollyFrontier Corporation
    Gillian Hobson, Vinson & Elkins LLP
    Sarah Fortt, Vinson & Elkins LLP

Enclosure
December 23, 2019

Via Email

shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: HollyFrontier Corporation
Stockholder Proposal Submitted by United Steelworkers
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, HollyFrontier Corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2020 Annual Meeting of Stockholders (collectively, the “2020 Proxy Materials”) a stockholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) submitted by United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if they elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.
THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders of HollyFrontier Corporation (the "Company") urge the board of directors to prepare a report to shareholders by the 2021 annual meeting, at reasonable cost and excluding confidential information, on Tier 1 Process Safety Events as reported to American Petroleum Institute Recommended Practice 754 and environmental violations as defined by the Environmental Protection Agency.

The Supporting Statement includes the following:

- In the past five years, HollyFrontier has suffered costly outages and been fined over $2.5 million by the Environmental Protection Agency and Occupational Safety and Health Administration.

- On March 6, 2019, a propane line exploded at HollyFrontier El Dorado Refinery shutting down the facility for weeks. At the same refinery on September 4, 2017 an explosion in the Pug Unit resulted in the fatality of operator Tim Underwood, extensive damage, and costly liabilities.

- On March 13, 2018, a fire erupted at HollyFrontier Woods Cross Refinery, causing extensive damage to the Crude Unit and reducing operations.

- The threat of health, safety or environmental incidents presents a significant and material risk for shareholders and therefore requires a higher level of transparency.

A copy of the Proposal and its Supporting Statement, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

For the reasons discussed below, we believe that the Proposal may properly be excluded from the 2020 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations within the meaning of Rule 14a-8(i)(7); and

- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite within the meaning of Rule 14a-8(i)(3).
ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Involves Matters Related To The Company’s Ordinary Business Operations.

A. Background.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a stockholder proposal that relates to the company’s “ordinary business operations.” According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” “refers to matters that are not necessarily ‘ordinary’ in the common meaning of the word,” but instead the term “is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”).

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. The first is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The second consideration is related to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” Id. (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues.” Id. (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). Note 4 of Staff Legal Bulletin 14E (Oct. 27, 2009) states that “[i]n those cases in which a proposal’s underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.” The Staff reaffirmed this position in Note 32 of Staff Legal Bulletin 14H (Oct. 22, 2015), explaining “[w]hether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company’s business operations.” In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. See Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”)
A stockholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. See Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, the Staff has indicated that “[w]here the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).” Johnson Controls, Inc. (avail. Oct. 26, 1999).

B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Primary Focus Of The Proposal Is Workplace Safety.

The Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because its primary focus is workplace safety, and the Staff has repeatedly recognized that a proposal relating to a company’s workplace safety is excludable under Rule 14a-8(i)(7) as a component of “ordinary business.”

The Proposal requests a report on the Company’s “Tier 1 Process Safety Events as reported to American Petroleum Institute Recommended Practice 754,” and the Supporting Statement indicates that “[t]he threat of health, safety or environmental incidents . . . requires a higher level of transparency” and, therefore, the Company’s investors should be provided with a detailed report regarding the Company’s “safety and environmental record” to help the Company “better mitigate future incidents.” The Supporting Statement also describes alleged workplace accidents in support of the Proposal, and references fines imposed by the Occupational Safety and Health Administration (“OSHA”).

The Company is committed to continuous efforts to identify and manage workplace safety risks associated with its operations. However, the report requested by the Proposal is not appropriate for stockholder action at an annual meeting. Workplace safety is a significant component of the design and operation of the Company’s production facilities, decisions with respect to which are central to the Company’s core business operations. As such, the Proposal relates to the Company’s ordinary business operations.

American Petroleum Institute Recommended Practice 754 sets forth highly detailed process safety performance indicators instituted in response to the U.S. Chemical Safety and Hazard Investigation Board’s investigation of the 2005 BP Texas City incident,¹ and involves recommendations on maintaining and reporting metrics regarding process safety. It is worth noting that the American Petroleum Institute Recommended Practice 754 is not a regulation or standard with which the Company or its peers are obligated to comply, however it does include a complex series of reporting metrics. The Proposal does

not provide details regarding which of the many metrics set forth in the American Petroleum Institute Recommended Practice 754 the Proponent expects the Company to report on, as discussed in more detail below, and so the Company’s stockholders are unlikely to know exactly what they are being asked to approve.

The Staff has regularly concurred that a company’s safety initiatives, including those relating to workplace safety, are a matter of ordinary business and has permitted companies to omit proposals relating to the fundamental business function of designing and operating production facilities. Notably, in *The Chemours Company* (avail. Jan. 17, 2017), the proposal requested that the company publish a report describing the steps the company had taken to reduce the risk of accidents and the Board’s oversight of process safety management. Similar to the Proposal, the supporting statement referenced workplace accidents and fines imposed by OSHA, and included concepts nearly identical to the Proposal, stating that “the threat of another catastrophic event . . . requires a higher level of transparency.” The workplace accidents referenced by the proposal also included environmental matters, such as an accidental leak of methyl gas and a burst gas line. The company argued, among other reasons, that the proposal was excludable under Rule 14a-8(i)(7) because the proposal dealt with workplace safety, and the Staff stated, in concurring with exclusion of the proposal under Rule 14a-8(i)(7), that the “proposal relates to workplace safety.”

In addition, in *Pilgrim’s Pride Corp.* (avail. Feb. 25, 2016), the proposal requested that the company publish a report describing the company’s policies, practices, performance and improvement targets related to occupational health and safety. The supporting statement in *Pilgrim’s Pride* also cited OSHA violations. The company argued, among other reasons, that the proposal was excludable under Rule 14a-8(i)(7) because the proposal related to the company’s safety efforts in its ordinary business operations. The Staff concurred with the omission of the proposal in *Pilgrim’s Pride*, stating that the proposal related to “ordinary business operations. In this regard, we note that the proposal relates to workplace safety.”

The Staff has also concurred with exclusion of similar proposals in *Kansas City Southern* (avail. Feb. 24, 2014) (concurring in the exclusion of a proposal as ordinary business because it related to safety and security initiatives); *Union Pacific Corp.* (avail. Feb. 25, 2008) (concurring in the exclusion of a proposal requesting disclosures of the company’s efforts to safeguard the company’s operations from terrorist attacks and other homeland security incidents); *CNF Transportation, Inc.* (avail. Jan. 26, 1998) (concurring in the exclusion of a proposal requesting that the board of directors develop and publish a safety policy accompanied by a report analyzing the long-term impact of the policy on the company’s competitiveness and stockholder value because “disclosing safety data and claims history” was a matter of the company’s ordinary business); *Chevron Corp.* (avail. Feb. 22, 1988) (concurring in the exclusion of a proposal as ordinary business because it related to the protection and safety of company employees);
and AMR Corp. (Farquhar) (avail. Apr. 2, 1987) (concluding that a proposal requesting that the board of directors review and issue a report regarding the safety of the company’s airline operations was excludable because “determining the nature and extent of review of the safety” of AMR’s airline operations was a matter of the company’s ordinary business).

The Company’s oversight of workplace safety involves detailed policies, procedures and standards that guide the Company’s operations and conduct at its facilities, as well as its trainings of employees, risk management policies and efforts to promote occupational health and safety. These are fundamentally management functions, and not activities that can be practically overseen by stockholders. As the focus of the Proposal, like the proposals in the precedent mentioned above, is on workplace safety, the Proposal relates to the Company’s ordinary business operations.

C. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Addresses Legal and Regulatory Compliance.

The Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because it deals with legal and regulatory compliance, and the Staff has repeatedly recognized that a proposal relating to a company’s legal and regulatory compliance is excludable under Rule 14a-8(i)(7) as a component of “ordinary business.”

The Proposal attempts to impose on the Company an obligation to re-examine its compliance with applicable laws and regulations, particularly those relating to workplace safety and environmental laws. The subject matter of the requested report therefore involves “ordinary business” and is not appropriate for stockholder action at an annual meeting. The Proposal requests that the Company issue a report addressing recommended metrics set forth in the American Petroleum Institute Recommended Practice 754, and also requests that the report address the Company’s “environmental violations as defined by the Environmental Protection Agency.” Further, the Proposal references the Company’s past compliance with the laws and regulations of the Environmental Protection Agency and OSHA in supporting its position that stockholders should be provided with a detailed report of the Company’s “record” in order to help the Company “better mitigate future incidents.” The organizations mentioned by the Proposal, including the Environmental Protection Agency and OSHA, establish and enforce regulatory standards promoting the safety and healthful working conditions for workers, including standards that apply to the Company and its facilities. The report sought by the Proposal, therefore, would necessarily address the Company’s compliance with laws and regulations which, in the Company’s view, renders the Proposal excludable, as compliance with applicable laws and regulations is essential to the Company’s day-to-day management and cannot, as a practical matter, be subject to direct stockholder oversight.

In a long line of no-action letters, the Staff has consistently concurred that proposals relating to compliance with laws and regulations involve ordinary business and are excludable under Rule 14a-
8(i)(7). In Halliburton Co. (avail. Mar. 10, 2006), for example, the Staff concurred in the exclusion of a proposal requesting a report evaluating the potential impact of certain violations and investigations on the company’s reputation and stock price, as well as the company’s plan to prevent further violations, “as relating to [the company’s] ordinary business operations (i.e., general conduct of a legal compliance program).” See also Raytheon Co. (avail. Mar. 25, 2013) (concurring in the exclusion of a proposal requesting a report on the board’s oversight of the company’s efforts to implement the provisions of the Americans with Disabilities Act, the Fair Labor Standards Act, and the Age Discrimination in Employment Act because “[p]roposals that concern a company’s legal compliance program are generally excludable under rule 14a-8(i)(7)”); Sprint Nextel Corp. (avail. Mar. 16, 2010) (concurring in the exclusion of a proposal requesting an explanation as to why the company had not adopted an ethics code that would promote ethical conduct and compliance with securities laws on the basis that the proposal concerned “adherence to ethical business practices and the conduct of legal compliance programs”); ConocoPhillips (avail. Feb. 23, 2006) (concurring in the exclusion of a proposal requesting a report on the policies and procedures adopted to reduce or eliminate the recurrence of certain violations and investigations); Crown Central Petroleum Corp. (avail. Feb. 19, 1997) (concurring in the exclusion of a proposal requesting the board investigate whether the company and its franchisees are in compliance with applicable laws regarding sales of cigarettes to minors); Xerox Corp. (avail. Feb. 29, 1996) (concurring in the exclusion of a proposal requesting the board appoint a committee to review and report on the company’s adherence to human rights and environmental standards with respect to its overseas business); and AT&T Inc. (avail. Jan. 16, 1996) (concurring in the exclusion of a proposal requesting the board initiate a review of the company’s maquiladora operations, including the adequacy of wage levels and environmental standards and practices and make the summary report available to stockholders).

As a company in the energy industry, the Company and its operations are subject to the regulatory jurisdiction of various agencies at the federal, state and local level. These laws and regulations, particularly relating to workplace safety and environmental regulations applicable to the Company’s core operations, significantly affect the way the Company does business. Compliance with these laws and regulations is fundamental to management’s ability to run the Company on a day-to-day basis that compliance cannot, as a practical matter, be subject to direct stockholder oversight, especially for a company operating in a highly regulated industry, such as the Company.

The Company has dedicated compliance and legal professionals whose focus is on the Company’s legal obligations, including staff devoted exclusively to the environmental and health and safety component of the Company’s legal compliance program. Compliance teams work closely with senior management to provide independent review and oversight of the Company’s operations, with a focus on compliance with applicable local, state and federal laws and regulations. The Company’s lawyers provide legal advice to assist in efforts to comply with all applicable laws and regulations and the Company’s compliance and ethics programs.
Here, as in the no-action letters cited above, the Proposal specifically requests information concerning compliance with laws and regulations in areas that fall squarely within management’s purview and the scope of the ordinary business exclusion. The Company’s establishes practices to comply with the laws and regulations governing the Company’s business, which are fundamental to management’s responsibility for the day-to-day operation of the Company’s business and cannot, as a practical matter, be subject to direct stockholder oversight, especially for a company operating in a highly regulated industry, such as the Company.

**D. The Proposal Does Not Focus On A Significant Policy Issue.**

The Company does not believe that the Proposal focuses on a significant policy issue that transcends the Company’s ordinary business or its day-to-day operations. The fact that the Proposal mentions environmental matters does not remove it from the scope of Rule 14a-8(i)(7) because the Proposal’s focus is not on matters that “transcend the day-to-day business matters.” The Proposal’s focus is on (i) the implications of safety incidents and compliance violations at Company facilities, (ii) the Company’s reporting of any such incidents to the appropriate governmental and regulatory bodies and trade organizations and (iii) the potential effects on stockholders and the ability to mitigate future incidents, not any broader social policy issue. Moreover, the Proposal’s references to environmental matters are solely made in the context of the Proposal’s focus on these matters.

The Staff has allowed the exclusion of proposals if their overall focus is not on a significant policy issue or other matter that is outside of ordinary business. For example, in *Exxon Mobil Corp.* (avail. Mar. 6, 2012), the Staff allowed for the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the possible short- and long-term risks to the company’s finances and operations posed by the environmental, social and economic challenges associated with the oil sands. In its no-action letter response, the Staff noted that the proposal “addresses the ‘economic challenges’ associated with the oil sands and does not, in our view, focus on a significant policy issue.” See also *JPMorgan Chase & Co.* (avail. Mar. 12, 2010) (concurring in the exclusion of a proposal requesting the adoption of a policy barring future financing of companies engaged in a particular practice impacting the environment because the proposal addressed “matters beyond the environmental impact of JPMorgan Chase’s project finance decisions”); *Bank of America Corp.* (avail. Feb. 24, 2010) (same); *General Electric Co.* (avail. Jan. 9, 2009) (concurring in the exclusion of a proposal requesting a report addressing the potential costs and benefits to the company of divesting its nuclear energy investment in the near future and investing instead in renewable energy as relating to the company’s ordinary business operations).

Similar to the proposals described above, the Proposal is concerned with matters that do not transcend the Company’s ordinary business or its day-to-day operations. The Proposal is focused on the Company’s policies and practices for reporting on workplace safety and compliance with applicable
environmental laws and regulations, and this focus is enforced by the Supporting Statement. In fact, the Proposal only discusses environmental matters in the context of the Company’s workplace safety efforts and compliance with relevant laws and regulations. It is also important to note that the American Petroleum Institute Recommended Practice 754 states “[c]omparisons among companies and industries are only statistically valid on a rate basis; therefore, Company [process safety event] counts should not be reported publicly” (emphasis added). The Proposal is requesting that the Company do the exact opposite of what is set forth in the Recommended Practice. Further, it is important to note that the Company reports its Tier 1 and Tier 2 incident rates publicly in its annual Corporate Citizenship Report, which is posted on the Company’s website.\(^2\)

As discussed above, the Company’s workplace safety efforts and compliance with applicable laws and regulations are core to the Company’s day-to-day business and operations, and the Proposal does not focus on a significant policy issue that transcends the Company’s ordinary business or its day-to-day operations. Accordingly, the Company believes that the Proposal relates to its ordinary business operations, and, therefore, the Proposal may be excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(7).

E. **Even if the Proposal Touches Upon a Significant Policy Issue, The Entire Proposal Is Excludable Because It Addresses Ordinary Business Matters.**

Finally, even if the Proposal’s request for disclosure is deemed to encompass issues relating to a significant policy issue, the Proposal can be properly excluded under Rule 14a-8(i)(7) because it also encompasses ordinary business matters. The Staff consistently has concurred in the exclusion of proposals that touch upon a significant policy matter but that also encompass ordinary business matters. This position prevents proponents from circumventing the standards of Rule 14a-8(i)(7) by combining ordinary business matters with a significant policy issue. For example, in *Union Pacific Corp.* (avail. Feb. 25, 2008), the Staff concurred with the exclusion of a proposal requesting disclosure of the company’s efforts to safeguard the company’s operations from terrorist attacks and other homeland security incidents. The company argued that the proposal was excludable because it related to securing the company’s operations from both extraordinary incidents, such as terrorism, and ordinary incidents, such as earthquakes, floods, and counterfeit merchandise. The Staff concurred that the proposal was excludable because it implicated matters relating to the company’s ordinary business operations. See also *Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on principles specified in the proposal prohibiting discrimination based on

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sexual orientation and gender identity because “some of the principles” related to the company’s ordinary business operations).

As in Union Pacific and Apache, where companies were permitted to exclude proposals as broad in nature despite touching upon significant policy issues, the Proposal encompasses many aspects of the Company’s ordinary business decisions regarding the Company’s policies and practices for reporting on workplace safety and compliance with applicable environmental laws and regulations. Thus, the Proposal is not focused on a significant policy issue and therefore may be excluded under Rule 14a-8(i)(7).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague and Indefinite.

Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal if the proposal or supporting statement is contrary to any of the Commission’s proxy rules or regulations, including

Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite stockholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because “neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Staff Legal Bulletin No. 14B (Sept. 15, 2004); see also Dyer v. SEC, 287 F.2d 773, 781 (8th Cir. 1961) (“[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.”).

We note in particular that the Staff has permitted companies to exclude proposals requesting that a company adopt a particular definition or set of guidelines from an external source when the proposal or supporting statement failed to describe the substantive provisions of the referenced definition or set of guidelines. The Staff has concurred with the exclusion of such proposals where companies have asserted that the lack of a sufficient description of the substantive provisions of that external source leaves stockholders unaware of what they are voting on. For example, in Smithfield Foods Inc. (avail. Jul. 13, 2003), the proposal requested a report “based upon the Global Reporting Initiative guidelines.” The company argued that the proposal lacked a description of the substantive provisions of these guidelines and that it provided no background information on these guidelines to the stockholders to allow stockholders to understand what they were considering, and the Staff granted no-action relief under Rule 14a-8(i)(3). In Johnson & Johnson (avail. Feb. 7, 2003), the proposal requested a report containing information regarding the company’s “progress concerning the Glass Ceiling Commission’s business recommendations.” The company argued that stockholders would not understand what they are being asked to consider since the proposal lacked a description of the substantive provisions of the Glass Ceiling
Report or the recommendations flowing from it, and the Staff again granted no-action relief under Rule 14a-8(i)(3). In *AT&T Inc.* (avail. Feb. 16, 2010), the proposal requested a report containing various information about the company’s political contributions and expenditures, including “[p]ayments ... used for grassroots lobbying communications as defined in 26 CFR § 56.4911-2.” The company argued that “grassroots lobbying communications” was a material element of the proposal yet was not described in the proposal, and the Staff granted no-action relief under Rule 14a-8(i)(3). See also *Boeing Co.* (avail. Feb. 10, 2004) (concurring in the exclusion of a proposal requesting a bylaw amendment requiring an independent director as defined by the 2003 Council of Institutional Investors definition to serve as chairman); *Kohl’s Corp.* (avail. Mar. 13, 2001) (concurring with the exclusion of a proposal requesting implementation of “the SA8000 Social Accountability Standards” from the Council of Economic Priorities).

Similar to the precedent cited above, the Proposal references an external recommended practice: “Tier 1 Process Safety Events as reported to American Petroleum Institute Recommended Practice 754.” The Recommended Practice is central to the Proposal since it purports to dictate a standard the Company should cover with its review and in the report that the Proposal requests, yet the Proposal does not provide details regarding which of the many metrics set forth in the American Petroleum Institute Recommended Practice 754 the Proponent expects the Company to report on and does not provide for how detailed reporting on such metrics would help the Company “better mitigate future safety and environmental incidents.” Moreover, the full Recommended Practice 754 is only available for purchase, which means that investors cannot actually even access it for free to try to determine what it provides. Without a proper description of this Recommended Practice, stockholders will not know what they are voting on.

The Proposal also references “environmental violations as defined by the Environmental Protection Agency” as matters that the Company should cover with its review and in the report that the Proposal requests, yet the Proposal fails to describe this definition or how it should apply to the Company’s report. For example, even if we assume that by “environmental violations” the Proponent means “violations of environmental law,” the Environmental Protection Agency makes an important distinction between violations of environmental law that could be an immediate threat to public safety or do immediate and substantial harm to the environment and violations that may not have an immediate or substantial effect on public health or the environment. Because the Proposal does not provide clarity on this external definition, neither the Company nor its stockholders can know exactly what is meant by “environmental violations as defined by the Environmental Protection Agency.”

The Proposal is distinguishable from those stockholder proposals that have referred to external sources where the Staff did not concur that the proposals were impermissibly vague and indefinite. In these cases, the reference to the external source was not a prominent feature of the proposal. For example, in *Allegheny Energy, Inc.* (avail. Feb. 12, 2010), the Staff did not concur with the exclusion of a proposal
under Rule 14a-8(i)(3) where the proposal requested that the chairman be an independent director (by the standard of the New York Stock Exchange) who had not previously served as an executive officer of the company. Although the proposal referenced the independent director standard of the New York Stock Exchange, the supporting statement in the Allegheny Energy proposal focused extensively on the chairman being an individual who was not concurrently serving, and had not previously served, as the chief executive officer of the company.

In contrast, in the current instance, the Proposal fails to provide any information about what aspects of the Tier 1 Process Safety Events or “environmental violations” the Company is expected to report on. The Proposal fails to provide sufficient information about the American Petroleum Institute or about its Recommended Practice 754 such that stockholders would be informed of what they are voting on. The reporting metrics for the Tier 1 Process Safety Events promulgated by American Petroleum Institute Recommended Practice 754, which are available at https://www.api.org, are a very detailed set of recommendations and questions and responses, and yet, the Proposal does not describe, or even suggest the existence of, the numerous factors that comprise the Tier 1 Process Safety Events. Moreover, the Proposal asks the Company to report on metrics not included in the Recommended Practice, does not identify whether it expects the Company to report on all the recommendations or merely a subset of the recommendations, and with respect to those recommendations that the Company does report on, how the Company is expected to report, as some of the recommendations have various options.

The same is true for the use of “environmental violations as defined by the Environmental Protection Agency.” There is no clear definition of “environmental violations” promulgated by the Environmental Protection Agency, and the Agency has different classifications and types of potential breaches, violations and threats such that neither the Company nor its stockholders can be sure of exactly what is intended by the Proposal.

Just as the proposals in the precedent set forth above, the Proposal fails to adequately describe the substance of what the Company is being asked to report. Accordingly, we believe the Proposal is impermissibly vague and indefinite and may be excluded pursuant to Rule 14a8(i)(3).

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2020 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to
abogdanow@velaw.com, and if we can be of further assistance in this matter, please feel free to call me at 214-220-7857 or Sarah Fortt at 512-542-8438. Thank you for your attention to this matter.

Sincerely,

[Signature]

Alan J. Bogdanow

cc: Sabrina Yow-chyi Liu, United Steelworkers
Vaishali S. Bhatia, HollyFrontier Corporation
Gillian Hobson, Vinson & Elkins LLP
Sarah Fortt, Vinson & Elkins LLP

Enclosure
EXHIBIT A

Proposal, Supporting Statements and Related Correspondence
Dear Ms. Bhatia,

I’m writing in response to your notice of deficiency.

1. Proof of continuous ownership

Graystone Consulting is a wholly-owned affiliate of Morgan Stanley and Morgan Stanley is a DTC participant (DTC # 0015). Morgan Stanley verifies that the USW have continuously held the requisite number of shares for the one-year period preceding and including November 6, 2019, the date the proposal was submitted.

I’m attaching an updated proof of ownership letter.

2. Word Count

I’m attaching a revised proposal.

Please let me know at your earliest convenience whether these documents satisfy the two points you brought forward in the notice.

Thank you,
Sabrina

Sabrina Yow-chyi Liu
Strategic Campaigns Department
United Steelworkers
Office: [REDACTED]
Cell: [REDACTED]

From: Keck, Becky [REDACTED]
Sent: Friday, November 22, 2019 3:02 PM
To: Liu, Sabrina
Subject: USW shareholder proposal submitted to HollyFrontier Corporation

Ms. Liu,
Attached is HollyFrontier Corporation’s notice of deficiency with respect to the referenced shareholder proposal. The original will follow via Federal Express.

Thanks.

Becky Keck
Paralegal
The HollyFrontier Companies
2828 N. Harwood, Suite 1300
Dallas, TX 75201

CONFIDENTIALITY NOTICE: This e-mail, and any attachments, may contain information that is privileged and confidential. If you received this message in error, please advise the sender immediately by reply e-mail and do not retain any paper or electronic copies of this message or any attachments. Unless expressly stated, nothing contained in this message should be construed as a digital or electronic signature or a commitment to a binding agreement.
RESOLVED: Shareholders of HollyFrontier Corporation (the “Company”) urge the board of directors to prepare a report to shareholders by the 2021 annual meeting, at reasonable cost and excluding confidential information, on Tier 1 Process Safety Events as reported to American Petroleum Institute Recommended Practice 754 and environmental violations as defined by the Environmental Protection Agency.

Supporting Statement:

In recent years accidents at U.S. refineries have resulted in worker fatalities and billions of dollars in losses. The 2005 BP Texas City Refinery accident killed 15 workers and injured 180 and the 2012 Chevron Richmond Refinery explosion resulted in 15,000 people seeking medical attention. A 2017 Chemical Safety and Hazard Investigation Board report stated these incidents cost approximately $1.95 billion.(1)

A Journal of Environmental Economics and Management study analyzed 64 explosions in plants and refineries between 1990 and 2005 and found that on average the market value of each company dropped by 1.3% in the two days after the accidents. They determined that each casualty corresponds to a $164 million loss and each toxic release cost $1 billion in value.(2)

In the past five years, HollyFrontier has suffered costly outages and been fined over $2.5 million by the Environmental Protection Agency and Occupational Safety and Health Administration.

On March 6, 2019, a propane line exploded at HollyFrontier El Dorado Refinery shutting down the facility for weeks. At the same refinery on September 4, 2017 an explosion in the Pug Unit resulted in the fatality of operator Tim Underwood, extensive damage, and costly liabilities.(4)

On March 13, 2018, a fire erupted at HollyFrontier Woods Cross Refinery, causing extensive damage to the Crude Unit and reducing operations.(3)

The threat of health, safety or environmental incidents presents a significant and material risk for shareholders and therefore requires a higher level of transparency.

We believe shareholders should be provided with a detailed report on the Company’s safety and environmental record for the previous year at each annual meeting to make informed investment decisions and help the company better mitigate future incidents.

For these reasons, we urge shareholders to vote FOR this resolution.


November 6, 2019

Denise C. McWatters  
Secretary of the Company  
HollyFrontier Corporation  
2828 N. Harwood, Suite 1300  
Dallas, Texas 75201

Sent via mail

Re: Verification of USW Ownership of HFC Common Stock

Dear Ms. McWatters:

Please let this letter serve to document that the United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), are owner of 77 shares of HollyFrontier Corporation common stock. Graystone Consulting is a wholly-owned affiliate of Morgan Stanley and Morgan Stanley is a DTC participant (DTC # 0015). Morgan Stanley verifies that the USW have continuously held the requisite number of shares for the one-year period preceding and including November 6, 2019, the date the proposal was submitted. Also, the USW meet the Rule 14a-8 requirement regarding shareholder proposals as the market value of their continuously held position has been in excess of $2,000 in market value. The common stock, CUSIP 436106108, is held in custody account ***.

Please direct all questions or correspondence regarding the verification of the common stock to the attention of Anthony Smulski at 724-933-1486.

Regards,

Gregory K. Simakas, CIMA®  
Executive Director  
Institutional Consulting Director  
Graystone Consulting

1603 Carmody Court, Suite 301  
Sewickley, PA 15143  
(p) 724 933 1484  
(e) gregory.k.simakas@msgraystone.com
November 22, 2019

VIA OVERNIGHT MAIL AND EMAIL
United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW")
c/o Sabrina Liu
60 Boulevard of the Allies
Pittsburgh, Pennsylvania 15222
sliu@usw.org

Dear Ms. Liu:

I am writing on behalf of HollyFrontier Corporation (the "Company"), which received on November 18, 2019, USW’s shareholder proposal submitted pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company’s 2020 Annual Meeting of Shareholders (the "Proposal").

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention.

1. Proof of Continuous Ownership

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of a company’s shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. The Company’s stock records do not indicate that you are the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received adequate proof that you have satisfied Rule 14a-8’s ownership requirements as of the date that the Proposal was submitted to the Company. The November 6, 2019 letter from Graystone Consulting that you provided is insufficient because it is not from a Depository Trust Company participant, as described below.

To remedy this defect, you must submit sufficient proof of your continuous ownership of the required number or amount of Company shares for the one-year period preceding and including November 6, 2019, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

(1) a written statement from the “record” holder of your shares (usually a broker or a bank) verifying that you continuously held the required number or amount of Company shares for the one-year period preceding and including November 6, 2019; or
(2) If you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the required number or amount of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the required number or amount of Company shares for the one-year period.

If you intend to demonstrate ownership by submitting a written statement from the “record” holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC’s participant list, which is available at http://www.dtc.com/~media/Files/Downloads/client-center/DTC/alpha.aspx. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

(1) If your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the required number or amount of Company shares for the one-year period preceding and including November 6, 2019.

(2) If your broker or bank is not a DTC participant (note that Graystone Consulting is not a DTC participant), then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the required number or amount of Company shares for the one-year period preceding and including November 6, 2019. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including November 6, 2019, the required number or amount of Company shares were continuously held: (i) one from your broker or bank confirming your ownership, and (ii) the other from the DTC participant confirming the broker or bank’s ownership.

2. Word Count

Rule 14a-8(d) of the Exchange Act requires that any shareholder proposal, including any accompanying supporting statement, not exceed 500 words. The Proposal, including the supporting statement, exceeds 500 words. In reaching this conclusion, we have counted dollar
Sabrina Liu  
November 22, 2019  
Page 3

and percent symbols as words and have counted acronyms and hyphenated terms and dates as multiple words (See SEC No-Action Letter Responses in General Electric Company (avail. Dec. 30, 2014) and Intel Corporation (avail. Mar. 8, 2010)). To remedy this defect, you must revise the Proposal so that it does not exceed 500 words.

The SEC’s rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at [REDACTED]. Alternatively, you may transmit any response by email to me at [REDACTED].

If you have any questions with respect to the foregoing, please contact me at [REDACTED]. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,

[Signature]

Vaishali S. Bhatia  
Senior Vice President, General Counsel and Secretary

Enclosures
November 6, 2019

Denise C. McWatters  
Secretary of the Company  
HollyFrontier Corporation  
2828 N. Harwood, Suite 1300  
Dallas, Texas 75201

Dear Ms. McWatters:

On behalf of the United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), owner of 77 shares of HollyFrontier Corporation common stock, I write to give notice that pursuant to the 2019 proxy statement of HollyFrontier Corporation (the “Company”), USW intends to present the attached proposal (the “Proposal”) at the 2020 annual meeting of shareholders (the “Annual Meeting”). USW requests that the Company include the Proposal in the Company’s proxy statement for the Annual Meeting.

A letter from USW’s custodian banks documenting USW’s continuous ownership of the requisite amount of the Company stock for at least one year prior to the date of this letter is attached. USW also intends to continue its ownership of at least the minimum number of shares required by the SEC regulations through the date of the annual meeting.

I represent that USW or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Fund has no “material interest” other than that believed to be shared by stockholders of the Company generally. I can be reached at 412-562-2325. Please direct all questions or correspondence regarding the Proposal to the attention of Sabrina Liu at sliu@usw.org or 412-417-3125.

Sincerely,

[Signature]

John E. Shinn  
USW Secretary-Treasurer
RESOLVED: Shareholders of HollyFrontier Corporation (the “Company”) urge the board of directors to prepare a report to shareholders by the 2021 annual meeting, at reasonable cost and excluding confidential information, on Tier 1 Process Safety Events as reported to American Petroleum Institute Recommended Practice 754 and environmental violations as defined by the Environmental Protection Agency.

Supporting Statement:

Over the last few decades there have been numerous accidents at U.S. refineries resulting in the deaths of many workers and costing billions of dollars. The 2005 BP Texas City Refinery accident killed 15 workers and injured 180 others and the 2012 Chevron Richmond Refinery explosion resulted in 15,000 people seeking medical attention. According to a 2017 Chemical Safety and Hazard Investigation Board report, these two incidents alone cost approximately $1.95 billion.(1)

A study published in the Journal of Environmental Economics and Management analyzed 64 explosions in plants and refineries between 1990 and 2005 and found that on average the market value of each company dropped by 1.3% in the two days after the accidents. Additionally, they determined that each casualty corresponds to a loss of $164 million and each toxic release to a loss of $1 billion in value.(2)

In just the past five years, HollyFrontier has incurred over $2.5 million in fines from the Environmental Protection Agency and Occupational Safety and Health Administration and suffered costly and unexpected outages.

On March 6, 2019, a propane line exploded at HollyFrontier El Dorado Refinery shutting down the entire facility for weeks.

On March 13, 2018, a fire erupted in the Crude Unit at the HollyFrontier Woods Cross Refinery. It caused extensive damage to the unit, put the four operators on duty at great risk, and reduced operations at the facility.(3)

On September 4, 2017 an explosion in the “Pug” Unit at the company’s El Dorado Refinery resulted in the fatality of operator Tim Underwood, extensive damage to the refinery, and costly liabilities for the company.(4)

The threat of future health, safety or environmental incidents presents a significant and material risk for shareholders and therefore requires a higher level of transparency than currently exists.

We believe that shareholders should be provided with a detailed report on the Company’s safety and environmental record for the previous year at each Annual General Meeting so they can make more informed decisions about investment. Additionally, we believe the company can better mitigate future safety and environmental incidents if a detailed report of past incidents is prepared.

For these reasons, we urge shareholders to vote FOR this resolution.
https://www.csb.gov/assets/1/6/csb_business_case_for_safety.pdf


November 6, 2019

Denise C. McWatters
Secretary of the Company
HollyFrontier Corporation
2828 N. Harwood, Suite 1300
Dallas, Texas 75201

Sent via mail

Re: Verification of USW Ownership of HFC Common Stock

Dear Ms. McWatters:

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Regards,

Gregory K. Simakas, CIMA®
Executive Director
Institutional Consulting Director
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