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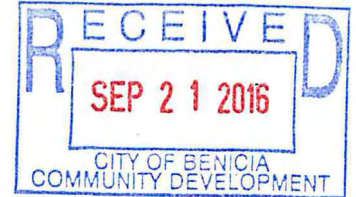
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September 20, 2016

By Email and Overnight Mail

Honorable Mayor Patterson
and City Council Members
City of Benicia
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Re: Valero Crude by Rail Project (12PLN-00063)

Dear Honorable Mayor Patterson and City Council Members:

We are writing on behalf of **Safe Fuel and Energy Resources California** (“**SAFER California**”) to provide additional information for the City Council’s consideration of Valero’s appeal of the Planning Commission’s unanimous decision to deny the Use Permit Application for the Valero Crude by Rail Project. SAFER California has submitted numerous comments on the Project’s significant, unmitigated impacts throughout the City of Benicia’s review of the Project. On September 15, 2016, City staff issued its report for tonight’s City Council hearing on Valero’s appeal. Included as an attachment to staff’s report is a September 13, 2016 letter from Valero responding to some of SAFER California’s expert’s (Dr. Phyllis Fox) analyses of the Project’s significant, unmitigated air quality and public health impacts. We reviewed the letter with Dr. Fox and found that it not only fails to remedy the Final Environmental Impact Report’s numerous errors and omissions identified in our previous comments, but also misstates the law and the facts. Dr. Fox’s detailed responses to Valero’s letter are attached¹ and summarized below. We are also providing new information regarding significant hazards risks from the Project’s import and storage of tar sands dilbits crudes.

¹ **Attachment A:** Letter form Phyllis Fox to Rachael Koss re: Review of September 13, 2016 Letter from Donald Cuffel, September 20, 2016.

A. Valero Misstates the Law and the Facts Regarding the Project's Air Quality and Public Health Impacts from Crude Slate Changes

In a March 28, 2016 letter to the City Council, Valero urged the City to ignore the Project's impacts from crude slate changes. SAFER California's March 30, 2016 response clearly showed why Valero's argument was unsupported by the facts and the law. Yet, at the eleventh hour, Valero makes similar, erroneous arguments again. Valero's arguments are still unsupported by the facts and the law.

Valero argues that the City need not consider the Project's impacts from crude slate changes because "Valero **already** has the legal right to store and process any crudes available on the market, as long as it does so consistent with its rights and obligations as established by the City and BAAQMD approvals of" the Valero Improvement Project ("VIP").² Valero also argues that the City should not consider impacts from crude slate changes because "Valero has already processed Bakken crude."³ Valero is wrong for four reasons.

First, as we previously explained, the California Environmental Quality Act ("CEQA")⁴ requires the City to determine whether a project would change the existing environment by increasing emissions as compared to actual existing emissions -- not whether the Project will change the environment by exceeding hypothetical emissions allowed under permit limits. This was precisely the issue before the California Supreme Court in *Communities for a Better Environment v. South Coast Air Quality Management District*.⁵ The Court rejected the argument that "the analytical baseline for a project employing existing equipment should be the maximum permitted operating capacity of the equipment, even if the equipment is operating below those levels at the time the environmental analysis is begun."⁶

² Letter from Donald Cuffel, Valero Benicia Refinery, to Mayor Elizabeth Patterson and City Council, September 13, 2016 ("Valero Letter"), pp. 1-2 (emphasis in original).

³ *Id.*, p. 1.

⁴ Pub. Resources Code § 21000, et seq.

⁵ *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310.

⁶ *Id.* at 316.

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The Court held that CEQA requires the baseline to reflect “established levels of a particular use,” not the “merely hypothetical conditions allowable under the permits...”⁷ Following the Supreme Court decision, the court in *Communities for a Better Environment v. City of Richmond*⁸ similarly rejected the city’s use of a hypothetical baseline, which failed to reflect actual operational conditions. “The [Supreme Court] stated that using hypothetical, allowable conditions as a baseline ‘will not inform decision makers and the public of the project’s significant environmental impacts, as CEQA mandates.’”⁹ Thus, Valero’s argument has already been rejected by the California Supreme Court.

Second, there is zero evidence that any prior approvals by the City or BAAQMD allow Valero to replace up to 70,000 barrels per day of crude oil currently delivered by marine vessel from Alaska and various foreign sources with an equivalent amount of North-American sourced crude oil transported by rail. Indeed, Valero fails to point to any evidence that a crude slate change was evaluated for the VIP. In fact, the crudes Valero now proposes to import via rail (Bakken and tar sands) were not available on the west coast prior to 2002, which was the environmental baseline period for the VIP.¹⁰ As Dr. Fox previously explained,

[t]he crudes available by ship in 2002 are chemically and physically different from the crudes available by rail in 2014, over a decade later. The oil markets have changed dramatically due to the advent of fracking and the development of tar sands, all of which occurred long after the VIP EIR analyses were performed.”¹¹

Thus, the Project’s impacts from crude slate change could not have been analyzed in the VIP.

Third, the record shows that Valero processed Bakken crude one time from one barge. There is no evidence that Valero regularly imports Bakken crude, and certainly no evidence that it has imported up to 70,000 barrels per day of Bakken (which would be 42% of the refinery’s total crude throughput).

⁷ *Id.* at 322.

⁸ *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70.

⁹ *Id.* at 89.

¹⁰ See Fox Comments on IS/MND, July 1, 2013.

¹¹ See Fox Comments on DEIR, Comment I.

Finally, Valero's argument that the City shouldn't be concerned with crude slate changes blatantly ignores North American-sourced crudes' "unique chemical and physical compositions that affect the relative amounts of specific chemicals in the emissions,"¹² which CEQA requires the City to evaluate in its EIR. For example, Bakken and tar sands crudes have higher levels of benzene which will cause increased benzene emissions.¹³ Also, for example, Bakken crudes have much higher vapor pressures, which increases volatile organic compounds ("VOC") and hazardous air pollutants emissions from storage tanks.

In short, CEQA requires the City to determine whether the Project would change the existing environment, regardless of Valero's existing permits. Further, the record is replete with substantial evidence showing that crude slate changes would result in significant, on-site air quality and public health impacts. Therefore, the City Council must reject Valero's arguments to the contrary.

B. Substantial Evidence Shows that the Project Would Result in Significant Air Quality and Public Health Impacts from Tank Emissions

Dr. Fox previously showed that the Project's crude storage tank emissions exceed BAAQMD's VOC annual and daily CEQA significance thresholds.¹⁴ Valero attempts to rebut this evidence by arguing that Dr. Fox's conclusions "are based on radically erroneous assumptions about Valero's operations"¹⁵ and "tank emissions are not relevant, since tanks are being neither added nor modified for the CBR Project, and Valero is not proposing to store any crudes it is not already authorized to store."¹⁶ Valero is wrong. As Dr. Fox previously explained, her conclusions were based on information contained in Valero's own application to BAAQMD for the Project, as well as measured data and BAAQMD Regulation 8-5-301.¹⁷ Further, the record shows that the Project includes storing light Bakken crude oils with vapor

¹² Attachment A, p. 5.

¹³ *Id.*

¹⁴ See Fox Comments on DEIR, September 15, 2014, Comment II.B and Fox Appeal Comments, April 4, 2016, Comment II.C.

¹⁵ Valero Letter, p. 2.

¹⁶ *Id.*, p. 4.

¹⁷ See Fox Appeal Comments, Comment II.C; see also DEIR, Appendices E.3 and E.4.

pressures up to 13 psi in tanks currently permitted to store heavy crudes with vapor pressures of 0.3 to 4 psi.¹⁸ Thus, Valero's argument fails.

C. Substantial Evidence Shows that the Project Would Result in Significant Air Quality and Public Health Impacts from Rail Car Fugitive Emissions

Dr. Fox previously showed that the Project's rail car fugitive VOC emissions from unloading at the proposed unloading rack would be significant.¹⁹ In response, Valero now argues that the City "has no authority to regulate rail operations because of federal preemption."²⁰ Valero's argument is completely baseless. These emissions are not from rail operations. Rather, these emissions are fugitive emissions from rail car components which occur (1) when a rail car is completely under Valero's control at the refinery unloading rack, and (2) while Valero pipes the crude from the rail car to the tanks. Thus, federal preemption is irrelevant and Valero's argument fails.

D. Substantial Evidence Shows that the Project's Import of Tar Sands Dilbits Would Result in Significant, Unmitigated Impacts

The Project would allow Valero to import North American-sourced crude oil, including Canadian tar sands crudes blended with diluents, or "dilbits," and light fracked shale oil crudes, by rail. It is widely known that light fracked shale oil crudes, such as Bakken, are highly volatile and, therefore, pose substantial hazards risks from accidents. Tar sands crudes prior to blending have generally been considered less hazardous. However, recent studies show that tar sands dilbits (a blend of bitumen with a lighter petroleum product) are equally as hazardous as Bakken. Specifically, it has been determined that dilbit flammability and explosivity impacts are similar to, or greater than, those of Bakken crudes.²¹ This is

¹⁸ Attachment A, p. 17.

¹⁹ See Fox Appeal Comments, April 4, 2016, Comment II.A.

²⁰ Valero Letter, p. 6.

²¹ Attachment A, p. 20.

because diluent (which is highly flammable and explosive) is added to the make bitumen flow in and out of tank cars easily.²² As a result, tar sands dilbits pose a significant risk of fires and explosion “in the event of a rail accident during transit or on-site during idling and unloading.”²³ Dr. Fox explains that, for example, spills into the sump “could ignite and explode if the vapors encountered heat, sparks or a flame, such as could be generated by the locomotive, locomotive/rail car wheels on the tracks, maintenance work, coupling/decoupling of railcars, etc.”²⁴ In Dr. Fox’s opinion, “dilbits may present a greater fire and explosion risk and result in higher tank VOC emissions than light fracked shale crudes, such as Bakken crude oil.”²⁵

In addition, Dr. Fox explains that dilbits pose a significant hazard risk to Sulphur Springs Creek. Specifically, “[a] dilbit does not behave the same as a conventional crude when spilled in a waterway” because “[t]he blended lighter diluent generally evaporates readily when exposed to ambient conditions, leaving behind the heavy ends, the bitumen.”²⁶ Thus, a dilbit release creates “a difficult to cleanup spill as the heavier bitumen will be left behind.”²⁷ Tellingly, a major dilbit pipeline release into the Kalamazoo River in 2010 is still being remediated.²⁸

According to Dr. Fox, “tar sands dilbits may represent a worst case for air quality, risk of upset, biology and other impacts.”²⁹ Yet, the City completely failed to analyze the Project’s impacts from importing, unloading and storing dilbits at the refinery, as required by CEQA.

E. Conclusion

Valero’s last-ditch effort to sweep the Project’s significant, on-site air quality, public health and hazards impacts under the rug is unavailing. The record is replete with substantial evidence showing that the Project would result in significant, unmitigated on-site impacts which are clearly outside the bounds of

²² *Id.*, pp. 20-21.

²³ *Id.*, p. 21.

²⁴ *Id.*

²⁵ *Id.*, p. 22.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*, p. 20.

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federal preemption. Therefore, we urge the City Council to deny Valero's appeal and uphold the Planning Commission's decision.

Sincerely,

A handwritten signature in blue ink that reads "Rachael E. Koss". The signature is written in a cursive style with a large initial 'R'.

Rachael Koss

REK:ljl

cc: Teresa Olson tolson@ci.benicia.ca.us