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March 30, 2016

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MAR 30 2016

CITY OF BENICIA  
COMMUNITY DEVELOPMENT

VIA EMAIL AND U.S. MAIL

Mayor Patterson and City Council Members  
City of Benicia  
250 East L Street  
Benicia, CA 94510

**Re: March 28, 2016 Letter from Valero to City Council**

Dear Honorable Mayor Patterson and City Council Members:

We write on behalf of **Safe Fuel and Energy Resources California** to respond to Valero's March 28, 2016 letter to the City Council regarding the Valero Crude by Rail Project ("Project"). Valero urges the City to ignore the Project's impacts from crude slate changes. Valero's arguments are unsupported by the facts and the law.

First, Valero's argument that the City should not consider Project impacts from crude slate changes because emissions would not exceed its permit limits has already been rejected by the California Supreme Court. The California Environmental Quality Act ("CEQA")<sup>1</sup> 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*.<sup>2</sup> 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."<sup>3</sup> The Court held that CEQA requires the baseline to reflect "established levels of a particular use," not the "merely hypothetical conditions

<sup>1</sup> Pub. Resources Code § 21000, et seq.

<sup>2</sup> *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310.

<sup>3</sup> *Id.* at 316.

allowable under the permits...”<sup>4</sup> Following the Supreme Court decision, the court in *Communities for a Better Environment v. City of Richmond*<sup>5</sup> 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.’”<sup>6</sup> Thus, Valero’s argument has already been rejected by the California Supreme Court.

Second, Valero’s argument that the City shouldn’t be concerned with crude slate changes, because the “crude must be blended to within the very same operational parameters” currently processed at the refinery, blatantly ignores higher toxic air contaminants (“TAC”), malodorous compounds, vapor pressure and flammability. Valero measures its operational parameters by the weight and sulfur content of crude.<sup>7</sup> Even if crude is blended to the current range of weight and sulfur content, other components in the crude, such as TACs (e.g., benzene), or highly malodorous compounds (e.g., mercaptans), may be present at much higher concentrations than in the crudes they replace.<sup>8</sup> Vapor pressure and flammability may also differ significantly between existing and replacement crudes.<sup>9</sup> The City’s own consultant pointed out that there is no relationship between vapor pressure and crude weight.<sup>10</sup> This distinction is important because “vapor pressure of crude determines to a large extent the amount of [reactive organic gases] (“ROG”) and TAC emissions” from transport, storage and refining of crude.<sup>11</sup> “Thus, a crude slate may have identical sulfur content and weight, but would result in dramatically different ROG and TAC emissions.”<sup>12</sup> Notably, Bakken crudes “have uniquely elevated vapor pressures compared to the light sweet crudes they would replace.”<sup>13</sup> In addition, “the nature of the chemical bonds in crude determines the amount of energy and hydrogen that must be supplied to refine it.”<sup>14</sup> Therefore, even if a new crude slate is blended to the identical sulfur content and weight as the

<sup>4</sup> *Id.* at 322.

<sup>5</sup> *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70.

<sup>6</sup> *Id.* at 89.

<sup>7</sup> DEIR, Appendix C.1, p. 1-3.

<sup>8</sup> Phyllis Fox Comments on DEIR, September 15, 2014, p. 4.

<sup>9</sup> *Id.*

<sup>10</sup> DEIR, p. K-18.

<sup>11</sup> Phyllis Fox Comments on DEIR, September 15, 2014, pp. 5, 11-12.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at pp. 13-14.

<sup>14</sup> *Id.* at p. 5.

March 30, 2016

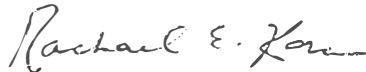
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existing slate, it will have chemical and physical differences that would result in increased emissions and significant on-site air quality impacts.<sup>15</sup> Indeed, the Bay Area Air Quality Management District (“BAAQMD”) urged the City to “evaluate potential changes in emissions associated with handling the new crude as a result of this project.”<sup>16</sup> According to the BAAQMD, “[l]ighter crude generally has a higher content of volatile organic compounds which can result in increased fugitive emissions during transport and storage in comparison to the current crude.”<sup>17</sup>

CEQA requires the City to determine whether the Project would change the existing environment, regardless of Valero’s existing permits. Further, substantial evidence shows that blending new crudes does not address the fact that the 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.

Thank you for your consideration and attention to this important matter.

Sincerely,



Rachael E. Koss

REK:ric

cc: Donald Dean, Chair, Planning Commission (via email)  
Amy Million, Principal Planner (via email)

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<sup>15</sup> *Id.*

<sup>16</sup> Letter from the BAAQMD to Amy Million re: Valero Crude by Rail Project Draft Environmental Impact Report, September 15, 2014, p. 3.

<sup>17</sup> *Id.*