

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. MESSING

Of Counsel

MARC D. JOSEPH
DANIEL L. CARDOZO

*Not admitted in California.
Licensed in Colorado.

October 28, 2021

Via Email Only:

Board of Harbor Commissioners
City of Long Beach
Matthew Arms
Email: bhc@polb.com; ceqa@polb.com

Re: Agenda Item No. 1H: World Oil Tank Installation Project (SCH: 2020100119)

Dear Commissioners, Mr. Arms:

On behalf of **Safe Fuel and Energy Resources California ("SAFER CA")**, we submit these comments on Agenda Item No. 1H in response to the Staff Report and the Port's responses to our comments on the Initial Study/Negative Declaration ("IS/ND") for the World Oil Tank Installation Project ("Project") prepared pursuant to the California Environmental Quality Act ("CEQA")¹ by the Port of Long Beach ("Port"). The Project is proposed by Ribost Terminal, LLC dba World Oil Terminals ("Applicant") and seeks to construct two new 25,000-barrel petroleum storage tanks at the existing World Oil Terminal located at the Port.²

The terminal is 261,000 square feet (about 6 acres) and contains seven existing petroleum tanks of various sizes totaling a capacity of 502,000 barrels.³ Three tanks contain crude oil and serve World Oil Refinery through the terminal loading rack, while the other four tanks are leased to Marathon Petroleum and Glencore for the purpose of storing fuel oil received and shipped via pipeline.⁴ The new tanks would be installed in the northwest corner of the existing petroleum bulk

¹ Pub. Res. Code § 21000 *et seq.*; 14 Cal. Code Regs. ("C.C.R.") §§ 15000 *et seq.*

² IS/ND, p. 2-1.

³ IS/ND, p. 1-1.

⁴ IS/ND, p. 2-3.
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station and terminal.⁵ Construction is estimated to start in September 2021 and last approximately 10 months.⁶

The two tanks would provide additional storage capacity of petroleum for refining and distribution and would make two of its existing larger tanks available for lease by third-party vendors.⁷ The IS/ND estimates a 10 percent increase in truck trips, as well as an increase in average barrel throughput of fuel oil, but not of crude oil, over existing operations at the facility.⁸

This letter contains the rebuttal comments of SAFER CA and its technical consultant based on review of the revised Final IS/ND and responses to our comments submitted for the Draft IS/ND. Based on our review of the IS/ND and responses to comments, we have concluded that the Project as it stands fails to comply with CEQA. The majority of our original comments remain outstanding, as the Port failed to respond meaningfully to nearly all of our concerns. The Project continues to pose significant impacts to air quality, and the Port has inappropriately attempted to avoid its duty to prepare a legally adequate environmental impact report (“EIR”) that analyzes and mitigates all potentially significant impacts likely to result from the Project. Furthermore, it relies on reports and analyses that have not been disclosed to the public, prohibiting independent review of its evaluations and conclusions and frustrating the purpose of CEQA.

These comments were prepared with the assistance of environmental health and air pollution expert Phyllis Fox, Ph.D., P.E. Comments and curriculum vitae of Dr. Fox are attached to this letter as Exhibit A.⁹

⁵ IS/ND, p. 2-1.

⁶ IS/ND, p. 2-1.

⁷ IS/ND, p. 2-4.

⁸ IS/ND, p. 2-6.

⁹ **Exhibit A:** Rebuttal to Responses to Comments on the Initial Study & Negative Declaration for the World Oil Tank Installation Project by Phyllis Fox (October 27, 2021) (“Fox Comments”). Dr. Fox’s prior comments from November 20, 2020 are cited at “Fox 11/20/20 Comments.”

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For the reasons discussed herein, and in the attached expert comments, SAFER CA urges the Port to reject the Final IS/ND and remedy its deficiencies by preparing a legally adequate EIR to be circulated for public review and comment.¹⁰

I. STATEMENT OF INTEREST

SAFER CA advocates for safe processes at California refineries and fuel transport and distribution facilities to protect the health, safety, standard of life and economic interests of its members. For this reason, SAFER CA has a strong interest in enforcing environmental laws, such as CEQA, which require the disclosure of potential environmental impacts of, and ensure safe operations and processes for, California's fuel production, storage, and transport projects. Failure to adequately address the environmental impacts of renewable or traditional fuel and other refinery product transport, storage, and refining processes poses a substantial threat to the environment, worker health, surrounding communities and the local economy.

Refineries and fuel transport, storage, and distribution facilities are uniquely dangerous and capable of generating significant fires and the emission of hazardous and toxic substances that adversely impact air quality, water quality, biological resources, and public health and safety. Absent adequate disclosure and mitigation of hazardous materials and processes, refinery and fuel terminal workers and surrounding communities may be subject to chronic health problems and the risk of bodily injury and death. Additionally, rail transport of fuel and other refinery products has been involved in major explosions, causing vast economic damage, significant emissions of air contaminants and carcinogens and, in some cases, severe injuries and fatalities.

SAFER CA supports the sustainable development of fuel resources in California. However, poorly planned refinery and fuel distribution facility projects can adversely impact the economic wellbeing of people who perform construction

¹⁰ We reserve the right to supplement these comments at later hearings related to this Project. (Gov. Code § 65009(b); Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199–1203 (explaining exhaustion of administrative remedies under CEQA); see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121 (“As we read section 21177, any alleged grounds for noncompliance with CEQA provisions may be raised by any person prior to the close of the public hearing on the project before the issuance of the notice of determination.”).)

and maintenance work in refineries, port terminals, fuel distribution facilities, and the surrounding communities. Plant and terminal shutdowns caused by accidental toxic releases and infrastructure breakdowns have caused prolonged work stoppages. Such nuisance conditions and catastrophic events impact local communities and the natural environment and can jeopardize future jobs by making it more difficult and more expensive for businesses to locate and people to live in the area. The participants in SAFER CA are also concerned about projects that carry serious environmental risks and public service infrastructure demands without providing countervailing employment and economic benefits to local workers and communities.

Individual members of SAFER CA include City of Long Beach residents Nicholas Garcia, Sopha Sum, and Sophall Sum. The members represented by the participants in SAFER CA live, work, recreate and raise their families in Los Angeles County, including the City of Long Beach. Accordingly, these people would be directly affected by the Project's adverse environmental impacts. The members of SAFER CA's participating unions may also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants, and other health and safety hazards, that exist onsite.

II. THE PORT'S RESPONSES TO COMMENTS ARE WHOLLY INADEQUATE AND FAIL TO COMPLY WITH CEQA

CEQA requires that a lead agency evaluate and prepare written responses to comments in a final EIR or MND.¹¹ Agencies are required to provide "detailed written response to comments . . . to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and the public participation in the environmental review process is meaningful."¹² Comments raising significant environmental issues must be addressed in detail.¹³ Failure of a lead agency to respond to comments before approving a project frustrates CEQA's informational purpose, rendering an EIR legally inadequate.¹⁴ "There must be good faith, reasoned

¹¹ Pub. Res. Code § 21091(d); 14 Cal. Code Regs §§ 15088(a), 15132.

¹² *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.4th 889, 904.

¹³ 14 Cal. Code Regs § 15088(c).

¹⁴ *Flanders Found. v. City of Carmel-by-the-Sea* (2012) 202 Cal.4th 603, 615; *Rural Landowners Ass'n v. City Council* (1983) 143 Cal.3d 1013, 1020.

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analysis in response. Conclusory statements unsupported by factual information will not suffice.”¹⁵

The Port failed to respond to the vast majority of comments submitted by SAFER CA and Dr. Fox. Many of its responses merely direct the reader to responses it provided to other commenters, ignoring the substantive disparities between comments. Dr. Fox’s comments, for example, contain extensive technical explanations supporting her discussion. The Port’s responses to her comments, however, fail to address any of the specific, technical evidence cited by Dr. Fox and instead simply direct the reader to its responses to other comments, most of which do not contain the same level of technical detail. The Port, therefore, violated its duty under CEQA to “address in detail” comments raising significant environmental detail and to provide “good faith, reasoned analysis in response” to these comments.¹⁶

For example, nearly all of Dr. Fox’s comments regarding the Project’s construction and operational emissions—labeled for reference as SFERCA-38, SFERCA-39, SFERCA-40, SFERCA-41, and SFERCA-42—are completely overlooked. Each is followed by the same statement, but with reference to a different corresponding SAFER CA comment: “This comment is from the attached Technical Appendix to the Comment Letter and provides additional details to support Comment SFERCA-26. Please see Response to Comment SFERCA-26.”¹⁷ Apart from the confusion created by referring the reader to several different locations in search of a response to the comment, it is also non-responsive and a clear violation of CEQA’s requirement to make a “good faith, reasoned analysis in response” to comments. Though portions of Dr. Fox’s technical analyses were summarized in SAFER CA’s comment letter, the bulk of her letter contains detailed examinations evaluating the agency’s findings, as well as comprehensive analyses of her own regarding Project impacts. The IS/ND, perhaps attempting to appear to engage in an innocent consolidation of similar comments, manages to ignore altogether the entirety of Dr. Fox’s comment letter, including all of its substantial evidence supporting her detailed technical conclusions.

¹⁵ CEQA Guidelines, § 15088, subd. (c); *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; see *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124.

¹⁶ *Id.*

¹⁷ Responses to Comments, IS/ND, p. 8-220.
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In failing to respond directly to our comments, the Port violated the clear requirements of CEQA. Even if other commenters discussed the same issues or topics in their comment letters, the Port's improper attempt to consolidate comments and presumably save itself time answering all comments is a clear breach of its duties as the lead agency.

III. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT'S AIR QUALITY IMPACTS WILL BE SIGNIFICANT

A "negative declaration" is "a written statement by the lead agency briefly describing the reasons that a proposed project . . . will not have a significant effect on the environment and therefore does not require the preparation of an EIR."¹⁸ However, a negative declaration is inappropriate and an EIR must be prepared where there is a fair argument supported by substantial evidence that a project may result in potentially significant impacts.¹⁹ Even if other substantial evidence supports the opposite conclusion, the agency must prepare an EIR.²⁰ Here, the IS/ND itself provides substantial evidence supporting a fair argument of a significant air quality impact from Project VOC emissions and the Port is required to prepare an EIR. The comments of Dr. Fox provide additional substantial evidence supporting a fair argument that the Project has significant, unmitigated air quality impacts that require an EIR.

An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.²¹ The failure to provide information required by CEQA is a failure to proceed in the manner required by law.²²

As explained below, the IS/ND failed to disclose potentially significant air quality impacts likely to result from the Project. Furthermore, it used flawed methodology to analyze potential impacts, leading to underestimated impacts. Therefore, the Port's conclusions that there will be no significant environmental impacts are unsupported. An EIR must be prepared to fully and accurately analyze the Project's impacts.

¹⁸ CEQA Guidelines, § 15371.

¹⁹ CEQA Guidelines § 15064 subd. (f), (h).

²⁰ *See No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.

²¹ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732.

²² *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

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A. Substantial Evidence Supports a Fair Argument that the Project Will Produce Significant Construction Emissions

The IS/ND concludes that construction emissions will be less than significant.²³ However, the Port reaches this determination using CalEEMod modeling that assumes the use of Tier Final 4 engines, the most stringent low-emission construction equipment available, without including a mitigation measure or binding condition requiring the Applicant to use this equipment for the Project and without disclosing how high emissions would be if less efficient equipment is used.²⁴ As a result, the IS/ND discloses only mitigated construction emissions, and does not disclose unmitigated emissions, in violation of CEQA.

Under CEQA, it is improper to attempt to disguise mitigation measures as part of the project's design if this obfuscates the potential significance of environmental impacts.²⁵ In *Lotus v. Department of Transportation*, an EIR prepared by the California Department of Transportation ("CalTrans") contained measures to help minimize potential stress on redwood trees during highway construction, such as restorative planting, invasive plant removal, watering, and use of an arborist and specialized excavation equipment.²⁶ The Court of Appeal held that the EIR improperly compressed the analysis of impacts and mitigation measures into a single issue because the EIR did not designate the measures as mitigation and concluded that because of the measures, no significant impacts were anticipated.²⁷ The Court explained that a significance determination must be made independent of mitigation first, then mitigation can be incorporated, and the effectiveness of those measures can be evaluated.²⁸ "Absent a determination regarding the significance of the impacts to the root systems of the old growth redwood trees, it is impossible to determine whether mitigation measures are

²³ IS/ND, pp. 4-8-4-9.

²⁴ Pages 1 and 13 of the document "20180914_RIBOST_CalEEMod_ALL_ATT 1.PDF" provided to us by the Port in response to our records requests state that the Port requires Tier 4 engines for off-road equipment, but the CalEEMod Air Quality Analysis in Appendix A of the IS/ND contains no such language.

²⁵ *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 658 (compression of mitigation measures into project design without acknowledging potentially significant impact if effects were not mitigated violates CEQA)

²⁶ *Id.* at 650.

²⁷ *Id.* at 656.

²⁸ *Id.* at 654-656.

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required or to evaluate whether other more effective measures than those proposed should be considered.”²⁹

By contrast, in *Mission Bay Alliance v. Office of Community Investment & Infrastructure*, the Court of Appeal distinguished *Lotus* and held that certain project features are inherent in the project design and need not be identified as mitigation measures.³⁰ In *Mission Bay Alliance*, the court concluded that the characterization of the TSP as part of the project rather than as a mitigation measure did not interfere with the identification of significant impacts or analysis of measures to mitigate those consequences, as was the case in *Lotus*.³¹ The court explained that, “[u]nlike the situation in *Lotus*, the environmental impacts of the project on vehicle traffic and transit are fully disclosed in the FSEIR.”³² Because the FSEIR included analysis of transit impacts both with and without the TSP, the FSEIR was upheld.³³

Here, as in *Lotus*, the IS/ND relies on mitigation to reduce impacts to less-than-significant levels, thereby avoiding full disclosure and analysis of the severity of the impacts prior to mitigation, as required by CEQA. The IS/ND then concludes that construction emissions will be less than significant.³⁴ However, the Port reaches this determination using CalEEMod modeling that assumes the use of Tier Final 4 engines, the most stringent low-emission construction equipment available, without disclosing the severity of the Project’s unmitigated emissions, and without a binding commitment to use this equipment for the Project and without disclosing how high emissions would be if less efficient equipment is used.³⁵ The use of Tier 4 Final equipment in estimates of construction emissions results in calculations demonstrating less-than-significant impacts. These emissions would be higher, however, were they calculated using lower-tier equipment. Without including mitigation measures mandating the use of Tier 4 construction equipment, the

²⁹ *Id.* at 656.

³⁰ *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 185.

³¹ *Id.* at 185.

³² *Id.*

³³ *Id.*

³⁴ IS/ND, pp. 4-8-4-9.

³⁵ Pages 1 and 13 of the document “20180914_RIBOST_CalEEMod_ALL_ATT 1.PDF” provided to us by the Port in response to our records requests state that the Port requires Tier 4 engines for off-road equipment, but the CalEEMod Air Quality Analysis in Appendix A of the IS/ND contains no such language.

Applicant is free to use cheaper, highest-emitting low-tier construction equipment that is currently available in the market to build the Project.³⁶ Emissions calculated using Tier 4 Final equipment therefore represent fictional project impacts that will not be achieved unless the applicant has committed to using equipment that will produce those results or better.

In response to our assertion that emissions estimates were incorrectly calculated using Tier 4 Final equipment, the Port claims that “[c]onstruction emissions for the proposed Project were calculated assuming CalEEMod fleet average offroad equipment and fleet average on-road vehicles. The “fleet average” is the unmitigated case assumed by CalEEMod.”³⁷ “Fleet average,” the response continues, is understood as approximately equivalent to Tier 3 equipment.³⁸ However, the IS/ND does not provide any citation in support of this assertion, and, as Dr. Fox points out, a search of the two most-recent CalEEMod user manuals turns up no mention of “fleet average” nor does either reference indicate that Tier 3 is the “unmitigated case assumed by CalEEMod.” Furthermore, the claim that Tier 3, or “fleet average” equipment was used in construction emissions calculations contradicts information provided by the Port in response to our request for records of CalEEMod calculations of Project construction emissions, as well as documents contained in the CalEEMod reports, both of which indicated that Tier 4 equipment was assumed.³⁹

As Dr. Fox explains, Tier 4 Final “is universally considered to be mitigation. Applicants generally would not voluntarily select Tier 4 Final engines as they are less available and more expensive than lower tier equivalents.”⁴⁰ By failing to make a significance determination about air quality impacts independent of mitigation before incorporating emissions reductions measures into the calculations, the IS/ND

³⁶ CARB regulations are currently phasing in Tier 4 engines in over several years. Under the CARB regulations, lower tiered (more polluting) equipment may remain in construction fleets for almost ten more years. For example, Tier 0 and Tier 1 (highest polluting equipment) may constitute up to half of small construction fleets in 2022, and will not be phase out until 2029. Large construction fleets are not required to phase out older equipment until 2023. See https://www.arb.ca.gov/msprog/offroadzone/pdfs/offroad_booklet.pdf at pp. 7-10)

³⁷ Response to Comments, IS/ND, p. 8-215.

³⁸ *Id.*

³⁹ CalEEMod Input File Excel Spreadsheet; Pages 1 and 13 of the document “20180914_RIBOST_CalEEMod_ALL_ATT 1.PDF” provided to us by the Port in response to our records requests state that the Port requires Tier 4 engines for off-road equipment.

⁴⁰ Fox Comments, p. 4.

commits the same fatal error critiqued by the Court of Appeal in *Lotus*. The Port's failure to acknowledge the higher levels of construction emissions without the mitigation measures obscures the significance of air quality impacts and prevents the public from properly evaluating the effectiveness of the mitigation measures proposed.⁴¹

The Final IS/ND contains confusing, circular, and unsupported reasoning to stand by its original conclusion that construction emissions will be insignificant and do not require any mitigation. Responses to comments insist that emissions calculations assumed a "fleet average," or Tier 3.⁴² The documents obtained through public records requests, however, indicate that Tier 4 Final equipment was assumed in those calculations. The Final IS/ND revised its table summarizing construction emissions to indicate that the listed emissions are unmitigated.⁴³ The proposed Project's unmitigated construction emissions, the IS/ND claims, are estimated to be "well below the SCAQMD daily emissions significance thresholds."⁴⁴ This conclusion is entirely unsupported because the use of Tier 4 equipment is not guaranteed.

Apparently recognizing its error, the Port added a mitigation measure to the Final IS/ND:

Special Condition AQ-1. Non-Road Engine Emission Standards. Permittee shall ensure that all construction equipment meet the United States Environmental Protection Agency Tier 4 non-road engine standards. Prior to construction, Permittee shall instruct construction crews on the implementation of Special Conditions. Special Condition AQ-1 would further reduce the off-road equipment engine emissions, particularly the NOX and particulate matter (PM10 and PM2.5) emissions. However, since the unmitigated emissions are below the SCAQMD emissions significance thresholds no emissions mitigation is required and Special Condition AQ-1 is not identified as a CEQA mitigation measure, and its implementation has not been assumed to determine the construction emissions significance findings.⁴⁵

⁴¹ *Lotus*, at 654–656.

⁴² Responses to Comments, IS/ND, p. 8-215.

⁴³ IS/ND, p. 4-9.

⁴⁴ IS/ND, p. 4-9.

⁴⁵ *Id.*

The Final IS/ND attempts to claim that Special Condition AQ-1 is not mitigation because the Project's unmitigated emissions are below SCAQMD thresholds. However, this argument is both circular and specious because the emissions that the IS/ND claims are below SCAQMD thresholds of significance were calculated using the same Tier 4 Final equipment that the condition mandates. This is precisely the problem that the court adjudicated in *Lotus*. Moreover, any measure designed to reduce impact to less than significant levels is, by definition, a mitigation measure.⁴⁶ Mitigation measures cannot be applied to an IS/ND, because they are based on the premise that a project has no significant impacts which require mitigation. An EIR, or at a minimum, an MND, must be prepared to require the use of Tier 4 construction equipment.

The IS/ND fails to “foster informed decisionmaking and public participation.”⁴⁷ The Port must prepare an EIR that adequately, accurately, and clearly analyzes all impacts and required mitigation.

B. Analysis of Underestimated and Potentially Significant Operational Emissions Relies on Hidden Studies

The IS/ND's revised calculations are based largely on data and information found in the new application for Permit to Construct/Permit to Operate (“Permit”). However, the Port failed to attach the Permit or any of the evidence supporting its conclusions regarding Project impacts in the IS/ND, and failed to provide these documents upon request. As a result, the Port has improperly deprived the public of its right to review its analyses of the Project's environmental effects. Instead, the public, precluded from independent review, is left to take the Port at its word that Project impacts are less than significant. This is violation of CEQA's public participation requirement. It also, Dr. Fox points out, ignores the reality of human error, particularly when working with highly complicated areas of scientific concern. “Permitting agencies are not infallible. They sometimes make calculation errors and misinterpret their own regulations, especially in the case of tanks, which are one of the most complex emission sources.”⁴⁸ The public has a right under CEQA to review and consider the calculations relied upon in the IS/ND to determine whether

⁴⁶ PRC §§ 21002.1(a), (b); 21100(b)(3).

⁴⁷ 14 C.C.R. § 15126.6(a).

⁴⁸ Fox Comments, p. 7.

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they are accurate and supported by substantial evidence, or whether the Port's calculations are erroneous or merely unsupported assumptions.

In response to comments that the IS/ND's use of the EPA TANKS 4.0.9d model to estimate tank VOC emissions was inappropriate because the model was outdated and known to underestimate emissions from storage tanks, SCAQMD revised Project emissions using EPA's AP-42 Section 7.1 Organic Liquid Storage Tanks methodology.⁴⁹ Conspicuously absent from the revised IS/ND, however, are any of the calculations or criteria supporting what SCAQMD concludes are insignificant Project emissions—reviewers are left to accept, categorically and without question, the agency's conclusory and unsupported statements.

Estimating emissions with AP-42, however, involves defining a specific set of complex assumptions, according to Dr. Fox, and without access to SCAQMD's calculations and details of estimation parameters, it is impossible to gauge how accurate and complete such estimations were. Dr. Fox points out that numerous sources of emissions, such as roof landing emissions, cleaning emissions, losses from equipment leaks associated with the tanks, and the impact of high velocity wind events on tank emissions,⁵⁰ were previously omitted from analyses of Project impacts.⁵¹ Withholding critical information from public view, such as the Permit application and criteria included in emission calculations, prevents independent evaluation of an agency's findings and excludes the public from participating in the CEQA process. "It is absolutely essential that the calculations that support tank VOC emissions be provided to the public for review," Dr. Fox explains. "It is simply not acceptable to assert that just because SCAQMD has endorsed them that they comply with CEQA and are adequate."⁵²

Moreover, the AP-42 methodology is not from a regulatory agency. It was developed by the American Petroleum Institute, widely known for underestimating tank emissions, with dozens of studies going back decades demonstrating consistently underestimated tank emissions.⁵³ Its use in calculating daily emissions to determine, as SCAQMD did here, compliance with daily CEQA significance thresholds, is inappropriate because, according to EPA guidance, the use of annual

⁴⁹ IS/ND, p. 4-10.

⁵⁰ See, e.g., AP-42, Chapter 7, p. 7.1-3.

⁵¹ Fox Comments, p. 9.

⁵² Fox Comments, p. 9.

⁵³ Fox Comments, fns.32, 33.

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averages in some equations leads to greater inaccuracy in calculations of less than a year in duration.⁵⁴

CEQA requires public participation in projects affecting the environment for a reason. ... Projects adversely affecting the environment have the potential to impact everyone, and CEQA therefore provides a mechanism by which to scrutinize the work done by lead and responsible agencies, so that all who stand to be affected by a project's impacts may invest in safeguarding it. Agencies make decisions day after day, many of them erroneous, whose effects will be felt by all Californians, and study after study reveals that impacts—tank emissions, in this case—are incorrectly analyzed. Independent review, therefore, is crucial. As Dr. Fox explains, she has personally reviewed “hundreds of refinery tank emissions, including in the SCAQMD, and have consistently found invalid assumptions and calculation errors that underestimate tank emissions.”⁵⁵

C. Potentially Significant Emissions from Increased Capacity and Fugitive Sources are Underestimated

Responding to comments that the IS/ND vastly underestimated operational emissions because it failed to account for several sources of Project emissions, the Port asserted that a number of emissions sources—listed in responses to Earthjustice's comments, not in response to comments submitted by SAFER CA—had in fact been considered in emissions estimates.⁵⁶ Explanations of emissions from those sources, however, use flawed reasoning or are merely conclusory, and thus provide no evidence of the accuracy of emissions estimates. For instance, the Port claims that it coordinated with SCAQMD “to ensure that all new piping component fugitive VOC emissions are included in the emissions estimate.”⁵⁷ An agency's assurances that it has “ensured” the accuracy of a project's estimated impacts ignores the public participation requirement of CEQA. A conclusory statement “‘unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind’ not only fails to crystallize issues but ‘affords

⁵⁴ Fox Comments, p. 9; AP-42, Volume 1, Introduction, p. 2; <https://www.epa.gov/sites/default/files/2020-09/documents/c00s00.pdf>.

⁵⁵ Fox Comments, p. 8.

⁵⁶ IS/ND, p. 8-96.

⁵⁷ *Id.*

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no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.”⁵⁸

The IS/ND next claims that emissions from other sources, such as pipeline cleaning and tank dewatering, are immaterial because the Project would not result in any increase in oil throughput “due to limitations associated with the physical geometry of the site, physical limitations of the existing pipelines and truck loading racks and permitted throughput limits.”⁵⁹ This ignores the logical conclusion that, even though the existing throughput permits might not change, the Project proposes to add two 25,000-barrel tanks to the site, while the two larger tanks that were previously underutilized will be leased to third-party vendors and will likely be full, resulting in an increase in the amount of crude oil present at the site. This, in turn, will lead to increased emissions from any activity ancillary to tank operations.

The IS/ND, meanwhile, did not even bother to respond to Dr. Fox’s concerns regarding its lack of analysis of fugitive emissions sources. The Project will use two internal floating roof storage tanks, meaning that the roofs of the tanks will float on the surface of the liquid inside the tank.⁶⁰ Dr. Fox’s comments clearly explained that evaporative losses can occur when the contents of the tank reach the level where the roof sits on deck legs near the bottom of the tank.⁶¹ These losses occur when the floating roof has landed on the deck legs and stands idle while oil vapor is lost through a breather vent.⁶² Losses also occur through the breather vent while the tank is being refilled until the liquid in the tank rises to the level of the roof being refloated on the liquid’s surface.⁶³ The Port failed to respond to these significant comments demonstrating major errors and omissions in the Port’s emissions analysis.

There is more than a fair argument, which the Final IS/ND has failed to address, that all of the omissions discussed above, combined with the underestimated operational emissions from inaccurate AP-42 modeling, yields a highly significant air quality impact from VOC emissions. The Port must prepare an

⁵⁸ *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357.

⁵⁹ 9/21 IS/ND, pdf 15, 17.

⁶⁰ Fox Comments, pp. 18–20.

⁶¹ Fox 11/20/20 Comments, pp. 18–20.

⁶² Fox 11/20/20 Comments, pp. 18–20.

⁶³ Fox 11/20/20 Comments, pp. 18–20.

EIR which discloses these impacts and provides specific mitigation measures to reduce impacts to the greatest extent feasible.

D. The IS/ND Improperly Relies on Emissions Offsets to Reduce VOC Emissions

In response to our prior comments regarding the improper reliance on emissions offsets to reduce VOC emissions, the Port stated:

The IS/ND does not rely on emissions offsets to reduce or mitigate VOC emissions under CEQA. The proposed Project's operation VOC emissions are presented in the IS/ND, without taking into consideration use of the emissions reduction credits required for permitting (see IS/ND Table 4.3-2). The proposed Project's operation VOC emissions are well below the SCAQMD emissions significance thresholds and therefore do not require mitigation. VOC emissions offsets are specifically discussed as a requirement of SCAQMD for permitting the new tanks (SCAQMD, 2021c). The IS/ND indicates that VOC emissions reduction will be achieved using the emissions reduction credits in a footnote to the operation emissions table; however, use of the emissions offsets is in no way relied on to make CEQA emissions impact determinations for the proposed Project.⁶⁴

This Response ignores the concerns expressed in our comment regarding unmitigated VOC emissions and is non-responsive, in a violation of CEQA. As we explained before, there is a fair argument that VOC emissions from the Project will be highly significant. The offsets, which are intended to reduce the impacts of the Project's VOC emissions due to exceedances of SCAQMD's New Source Review Rule,⁶⁵ will not offset all of the VOC emissions from the Project's new tanks. The emissions, once properly calculated and analyzed, will exacerbate the existing potential for excess VOC emissions and further exceed SCAQMD's offset threshold, resulting in a significant impact.⁶⁶ The ERCs, however, are not valid mitigation for

⁶⁴ Responses to Comments, IS/ND, p. 8-216.

⁶⁵ "The facility's existing potential to emit is above the SCAQMD New Source Review Rule VOC offset threshold of 4 tons per year; therefore, the new tank emissions were required to be offset." Draft IS/ND, p. 4-9.

⁶⁶ 14 C.C.R. § 15126.2(a).

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VOC emissions under CEQA and could not be claimed as mitigation in a revised CEQA document.⁶⁷

Dr. Fox explains that historically banked ERCs only reflect emissions reductions in the past and do nothing to reduce emissions at the time and location where the air quality impacts are occurring.⁶⁸ Thus, ERCs are more appropriately considered part of the existing baseline of air quality conditions in the region.⁶⁹ Project emissions in the near future, regardless of whether they are covered by historically banked ERCs, constitute a deviation from that baseline and an exacerbation of existing air pollution.

Here, as discussed in our prior comments, the ERCs proposed to offset VOC emissions were issued December 14, 1993, 27 years ago.⁷⁰ Consequently, relying on the ERCs does nothing to actually mitigate the serious air quality concerns in the region in the present day.⁷¹ VOC emissions will increase in the Project area and currently nothing will be done to reduce those impacts.⁷² CEQA prohibits reliance on ineffective mitigation measures such as the ERCs proposed in the IS/ND.⁷³

Therefore, even with ERCs, the VOC emissions from the Project would still be significant when they are adjusted for all the flaws identified by Dr. Fox above. Even if adequate and effective mitigation could be adopted, a mitigated negative declaration would be necessary to comply with CEQA in lieu of the IS/ND. In the absence of mitigation, an EIR is required.

IV. CONCLUSION

The Port has failed to uphold its duty under CEQA to prepare a CEQA document that accurately discloses and mitigates the Project's air quality impacts, then failed to meaningfully respond to all significant comments on the record, in further violation of CEQA. For all of the reasons discussed above, the Final IS/ND

⁶⁷ Draft IS/ND, p. 4-9, Table 4.3-2; Fox 11/20/20 Comments, p. 23.

⁶⁸ Fox 11/20/20 Comments, pp. 23–24.

⁶⁹ Fox 11/20/20 Comments, pp. 23–24.

⁷⁰ SCAQMD, Certificate of Proof for Registered Emission Reduction Credit, Certificate No. AQ001032, Reissued to Ribost Terminal, LLC, Issued December 5, 2019.

⁷¹ Fox 11/20/20 Comments, pp. 23–24.

⁷² *Id.*

⁷³ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727–728. 4943-010acp

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for the Project is wholly inadequate and must be revised and recirculated as an EIR to provide legally adequate analysis of, and mitigation for, all the Project's potentially significant impacts. These revisions will necessarily require that the CEQA document be recirculated for additional public review. Until the Port has complied with these requirements for revision and recirculation as described herein, the Port may not approve the Project.

Sincerely,



Kendra Hartmann

:kdh

