

**Valero Crude by Rail Project**  
**Public Comments received DEIR Public Review Period**  
**September 4 - September 11 (2:00 p.m.), 2014**

Commenter	Date Received
<b>Agencies</b>	
San Francisco Bay Regional Water Quality Control Board	4-Sep-14
City of Davis	10-Sep-14
City of Sacramento	10-Sep-14
Union Pacific Railroad	11-Sep-14
<b>Organizations</b>	
Performance Mechanical, Inc.	11-Sep-14
<b>Individuals</b>	
Phil Summers	4-Sep-14
Frank Fox	4-Sep-14
Bill Wagman	4-Sep-14
Catherine LeBlanc	5-Sep-14
Lori Bateman	5-Sep-14
David Frank	8-Sep-14
Pam Rhodes	8-Sep-14
Mark Feloci	8-Sep-14
Joanna Lyons	9-Sep-14
Susan Hodgson	9-Sep-14
Alysia Porter	9-Sep-14
Robin Lancaster	9-Sep-14
Heidi A. Bucher	9-Sep-14
Katie Kane	10-Sep-14
Lawrence Reid Fox	10-Sep-14
Rick Slizeski	10-Sep-14
Douglas McColm	10-Sep-14
Karen Meuhlbauer	10-Sep-14
Roger Straw	10-Sep-14
Jack Ruszel	10-Sep-14
Chris Meldner	10-Sep-14
Jack Ruszel	11-Sep-14
Bernard Tatera	11-Sep-14
Maria Ilomin	11-Sep-14
Kathy Kerridge	11-Sep-14
Tim Ault	11-Sep-14
Darren Ratekin	11-Sep-14
John Lazorick	11-Sep-14
Donna Paul	11-Sep-14
William & Delena Darnell	11-Sep-14
Judith Sullivan	11-Sep-14
Jan Ellen Rein	11-Sep-14



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

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**San Francisco Bay Regional Water Quality Control Board**

Date: September 4, 2014  
CIWQS Place ID: 223950

City of Benicia, Community Development Department  
250 East L Street  
Benicia, CA 94510  
ATTN: Amy Million

Sent via e-mail: [AMillion@ci.benicia.ca.us](mailto:AMillion@ci.benicia.ca.us)

**SUBJECT: RESPONSE TO DRAFT ENVIRONMENTAL IMPACT REPORT (EIR), VALERO BENICIA REFINERY, CONTRA COSTA COUNTY**

Dear Ms. Million,

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Refinery's proposed Crude-by-Rail Project (Project). Staff of the San Francisco Bay Regional Water Quality Control Board (Water Board), have reviewed the DEIR and this letter provides our comments and concerns regarding potential threats and/or impacts to water quality that may arise from the Project. I understand that our comments and concerns will be included, to the extent possible, in the scope of the final EIR commissioned by the City of Benicia.

As we understand it, the proposed Project would allow crude oil that is currently inaccessible to be delivered by railway to the Refinery. The crude would originate at various sites in North America, and Union Pacific Railroad (UPRR) would transport the crudes in tank cars using existing rail lines to Roseville, California, and then on to the Valero Refinery.

The Project involves the installation of a new tank car unloading rack, rail track spurs, pumps, pipeline, and associated infrastructure at the Refinery. The Project would allow the Refinery to receive up to 100 tank cars of crude oil per day in two 50-tank car trains. The trains would enter the Refinery on an existing rail spur outside the southern boundary of the Refinery. The crude oil unloaded from the tank cars would be pumped to the existing crude oil storage tanks in the Refinery via a new pipeline connected to existing piping infrastructure.

The Project would also include replacement and relocation of approximately 1,800 feet of existing tank farm dikes; relocation of an existing firewater pipeline, compressor station, and underground infrastructure; relocation of groundwater wells along Avenue A; and construction of a service road adjacent to the proposed unloading rack.

The entire Refinery area is regulated by three Water Board orders:

- Waste Discharge Requirements Order No. R2-2013-0033 for the Waste Water Treatment Plant (WWTP) and Crude Oil Storage Area;
- Site Cleanup Requirements Order No. R2-2014-0004 for the remainder of the Refinery; and
- A National Pollutant Discharge Elimination System (NPDES) Order No. R2-2009-0079.

DR. TERRY F. YOUNG, CHAIR | BRUCE H. WOLFE, EXECUTIVE OFFICER

1515 Clay St., Suite 1400, Oakland, CA 94612 | [www.waterboards.ca.gov/sanfranciscobay](http://www.waterboards.ca.gov/sanfranciscobay)

Several aspects of the proposed project have the potential to affect groundwater and surface water quality:

- 1) Section 3.4.1.1 states that the new containment sump to be constructed beneath the unloading racks is designed to capture and contain one tank car worth of crude oil, but several things are not clear:
  - a. Where would the product be routed in the event of a spill into the sump?
  - b. Is it possible to construct a sump with greater storage capacity?
  - c. Has the 100-year flood been taken into account should a spill occur at the same time as a significant rain event or at a time when Sulphur Springs Creek is overflowing?
  - d. What are the dimensions of the sump? This is unclear based on the figure provided. Please provide a more detailed figure.
  - e. Will the sump be constructed partially into the shallow groundwater table? If so, would the excavation need to be dewatered? And would that contaminated groundwater be routed to the WWTP?
  - f. Is there any safety mechanism built into the design to prevent groundwater from entering the sump, or ensuring the crude oil doesn't escape the sump, such as a sensor within or beneath the sump?
- 2) Will the functionality of the track/unloading rack be maintained during the 100-year flood event?
- 3) Section 4.8.5 discusses the option of either discharging stormwater through the outfalls or routing it to the WWTP. Please revise this section to clarify that storm water runoff collected in the containment areas of the Refinery will be discharged through the NPDES-permitted storm water outfalls only if observation and sampling confirm that it complies with the storm water effluent limitations in the Refinery's NPDES permit; otherwise, it will be sent to the Refinery's wastewater treatment plant for treatment and discharge through Discharge Point No. 001 to Carquinez Strait, as the permit requires.
- 4) From Suisun City to the Refinery, the UPRR tracks run through a marsh area. Therefore, strict speed limits should be imposed to help reduce the possibility of a spill to this sensitive habitat. To prevent potential railcar overturns, or spills into the Sulphur Springs riparian corridor, will there be slower speed limits set in this area? It is not clear whether the Department of Transportation (DOT) and Association of American Railroads (AAR) programs setting maximum speed limits applies to the UPRR tracks only outside the Refinery, or on Refinery property as well. What will be the maximum speed limit once the railcars reach the refinery property?
- 5) The DEIR does not clearly state whether the tanks (approximately from Tanks 1734 through 1720) will be emptied prior to replacing the earthen berms along Avenue A with new concrete berms. Also, please include a figure showing the current and planned locations of the earthen and concrete containment berms.
- 6) The DEIR makes reference to Water Board orders that have been recently updated. The document should refer to Waste Discharge Requirements Order No. R2-2013-0033

(rather than Order No. 94-070), and Site Cleanup Requirements Order No. R2-2014-0004 (rather than Order No. 97-077).

- 7) Section 4.8.2.2 states that the stormwater pollution prevention plan (SWPPP) was most recently revised in 2011 to comply with Order No. R2-2009-0079. However, the SWPPP was last revised in April 2013 to include construction storm water pollution prevention measures as SWPPP section 7, Construction Activities. Please update this section of the DEIR to recognize the April 2013 SWPPP revision, and make appropriate changes to all references in the DEIR to the SWPPP, such as: Section 4.8.2.3 where SWPPP section 5 is referenced regarding BMPs for Erosion Control and Construction Activities.

Please contact Alyx Karpowicz at (510) 622-2427, or by email at [akarpowicz@waterboards.ca.gov](mailto:akarpowicz@waterboards.ca.gov) if you have any questions.

Sincerely,



Alyx Karpowicz, P.G.  
Groundwater Protection Division

cc: Sky Bellanca, Valero- [sky.bellanca@valero.com](mailto:sky.bellanca@valero.com)



DEPARTMENT OF COMMUNITY DEVELOPMENT & SUSTAINABILITY  
23 Russell Boulevard, Suite 2 – Davis, California 95616  
530/757-5610 FAX: 530/757-5660 TDD: 530/757-5666



**Via Certified Mail and Email**

September 8, 2014

City of Benicia  
Attn: Amy Million, Principle Planner  
Community Development Department  
250 East L. Street  
Benicia, California 94510

**Re: Valero Benicia Crude by Rail Project Draft Environment Impact Report**

Dear Ms. Million:

Thank you for the opportunity for the City of Davis (Davis) to review the Draft Environmental Impact Report (DEIR) for the Valero Benicia Crude by Rail Project (Valero Project).

The Project, as described in the DEIR, proposes daily shipments of 70,000 barrels of crude oil to the Valero Benicia Refinery. (DEIR at ES-3.) The crude oil tank cars would originate at unidentified sites in North America, would be shipped to the Union Pacific Railroad Roseville Yard, and would be assembled there into two daily 50-car trains to Benicia. (Id.) Valero states that it will use so-called “1232 Tank cars” to transport the crude oil. (Id.)

The California Environmental Quality Act (CEQA) requires lead agencies, such as Benicia, to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible. If a project may cause adverse environmental impacts, the lead agency must prepare an Environmental Impact Report (EIR). EIRs must contain in-depth studies of potential impacts, measures to reduce or avoid those impacts, and an analysis of alternatives to the project. As famously stated, the EIR’s role “as an environmental alarm bell whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” (*County of Inyo v Yorty* (1973) 32 Cal.App.3d 795, 810.)

While Davis is not seeking to prevent the transportation of crude oil to Benicia, we are committed to ensuring that all measures are taken in order to protect the safety of our community. We firmly believe that through full compliance with CEQA and by building-in the highest levels of protection before disasters such as hazardous material releases and explosions occur we can avoid having such disasters in the first place.

Based upon our review of the DEIR, we have concluded that, for reasons detailed below, as well as those contained in the comment letters submitted on the Valero Project DEIR by the Sacramento Area Council of Governments (SACOG) and the County of Yolo (comments which are attached to this letter and which are incorporated by reference), the DEIR does not comply with the provisions of the California Environmental Quality Act (CEQA) and must be withdrawn. The DEIR must be revised to comply with CEQA before it can be recirculated. In order to facilitate the preparation of a revised DEIR Davis submits the following comments.

### **The DEIR's Project Description Is Incomplete and Misleading**

The DEIR states that “[i]f the Project is approved, Valero will accept up to 100 tank cars of crude oil a day in two 50-car trains.” (DEIR at 3-1.) Indeed, the DEIR’s entire analysis is predicated on two 50-car trains traveling to Benicia each day, with a maximum of 730 train visits per year. But the DEIR fails to include in its Project Description any information as to how these 50-car trains will be designed or operated in order to comply with the Department of Transportation’s May 7, 2014 Emergency Order. The DEIR also fails to include in its Project Description any information as to how these 50-car trains will be designed or operated in order to comply with the August 1, 2014 Notice of Proposed Rulemaking issued by the Department of Transportation’s Pipeline and Hazardous Materials Safety Administration, which proposes additional regulation for trains carrying 20 or more tank car loads of flammable liquids. Given these proposed rules, is it still accurate for the DEIR to state that the Project will operate 50-car trains? Are the Project Description and the DEIR’s analysis predicated on a scope of Project operation that is no longer assured? By failing to address the existing and reasonably foreseeable regulatory limits on the operation of 50-car trains, Davis is concerned that the DEIR misleads the public as to the scope of the Project and, equally fatally, fails to fully analyze the Project

Next, the DEIR states that the Project will use so-called 1232 Tank Cars, and states that by doing so it will “exceed legal requirements” regarding the safe transport of crude oil. (DEIR at 3-19 through 3-20.) But the National Safety Transportation Board’s Vice-Chairman Christopher A. Hart has expressed concern about the level of safety provided by 1232 Tank Cars. (See the March 6, 2014 testimony of Mr. Hart to Before the Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security Committee on Commerce, Science and Transportation United States Senate at its Hearing on Enhancing Our Rail Safety: Current Challenges for Passenger and Freight Rail.) Further, other than Valero’s voluntary statement that it will use 1232 Tank Cars, how will Benicia ensure that such cars and only such cars are used to transport oil to Benicia? Any safety benefits of the newer 1232 Tank Cars can only be realized if old and new tank cars are not commingled. At the very least, the use of 1232 Tank Cars (or of tank cars with more safety measures) for 100 percent of the tank cars carrying crude oil to the Valero Refinery should be mandated as a condition of Project approval.

Additionally, the DEIR assumes that a “just-in-time” supply chain can and will be used for the Project. As a consequence, the Project Description does not include a description of how often crude oil tank cars may be stored, for what length of time and where, before they can be processed at the Valero facility and does not discuss the possible locations for such storage. As Valero concedes that it ultimately cannot control the timing of the crude oil shipments, the

DEIR must account for such events in the Project Description. By failing to discuss these storage needs, the DEIR fails to analyze the entire project. As set forth in the CEQA Guidelines, a “project” is “the whole of an action” that may result in either a direct physical environmental change or a reasonably foreseeable indirect change. (CEQA Guidelines, § 15378; *see also Habitat & Watershed Caretakers v City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297; *Banning Ranch Conservancy v City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1220.)

In Davis, the shipments would travel on a Union Pacific rail line with three active sidings of up to 6,500 feet in length that run parallel to Second Street and Interstate 80. These sidings are utilized for storage of rail cars on a regular basis, with rail cars often being stored on these sidings for days or weeks at a time. These sidings are immediately adjacent to multiple businesses and multi-family housing (see attached map). City Staff have personally witnessed tanker cars stored on these sidings, though it is impossible to determine whether the tank cars are full or empty. The DEIR fails to describe whether storage of crude oil cars on this siding is possible, under what circumstances and for what duration. Tank cars sitting on this siding, unattended, would pose a significant hazard to the community, residents, businesses, and interstate transportation (I-80, Amtrak) and commerce should they be the subject of any accident, tampering or other impact on the cars, resulting in a spill or explosion.

### **The DEIR Inadequately Describes the Project Setting**

An EIR must describe the environmental setting for the project, which is made up of “the physical environmental conditions in the vicinity of the project” viewed from “a local and regional perspective.” (State CEQA Guidelines §15125(a), (c).) An EIR’s description of this environmental setting must be sufficiently comprehensive to allow the project’s significant impacts “to be considered in the full environmental context.” (State CEQA Guideline §15125(c).)

Here, the DEIR does not provide any information with regard to the existing conditions on the rail lines the train cars carrying crude oil will take on their journey to Benicia. It states only that: “Each train, carrying up to 50 cars of crude oil, would pass through the cities of Roseville, Sacramento, Davis, Dixon, Vacaville, Fairfield, Suisun City, and Benicia. The Refinery would receive two trains per day, 7 days per week (730 train visits per year).” (DEIR at 4.7-16.) But what are the conditions along the rail line that these trains carrying crude oil will travel 730 times per year, passing through Roseville, Sacramento, Davis, Dixon, Vacaville, Fairfield, Suisun City and Benicia? Are the tracks in good condition? Are they curved in any areas? Are there any cross-overs? Are they interrupted by rail or vehicle crossings in any areas? Are there any existing safety concerns on any portion or portion(s) of these tracks? Are there areas where the train operators will need to change speed to safely navigate the tracks? What land uses surround these tracks? The DEIR is entirely silent. Absent this information, the public is denied any ability to consider the Project in its full environmental context, a clear violation of CEQA.

The DEIR appears to substitute discussion of the Project’s setting outside of Benicia with a generalized assurance that Valero’s experts have estimated “the annual rate of crude oil release accidents on the route between Roseville and Benicia” and concludes that 100 or more gallons of crude oil will likely be spilled .009 times per year. (DEIR at 4.7-17; Appendix F at 10.) But

even Valero's expert report contains no information regarding the track between Roseville and Benicia, stating vaguely only that the "annual crude oil train derailment and release rates from Roseville to Benicia" were calculated "using the particular characteristics of the route."<sup>1</sup> (DEIR, Appendix F at 7.) However, the report does not consider the location of the track, the operational components of the track, the proximity of the track to highly populated areas, schools, hospitals, dangerous facilities, or sensitive lands or habitat.<sup>2</sup>

The City of Davis insists that the methodology leading to these statistics be clearly defined and sources referenced. In addition, the City of Davis asks for clarification to assure that the additional hazards specific to Davis were factored into the probability for derailment, such as 1) Need to slow for 30mph curve; 2) Need to potentially slow for 10mph mainline crossover; 3) Need to potentially negotiate 45mph double-crossover southwest of the Davis Amtrak Station 4) The potential conflict with switching operations where yard tracks are parallel to the main lines. The unique railroad layout in Davis and the actual train and vehicle collision, derailment, and train speeding incidents that have occurred in and near Davis should also be factored into the risk assessment.

Davis can report that the rail tracks running through the City travel through a highly populated area of both business and residential land uses, including the core of the Davis Downtown. There are facilities that rail cars traveling the tracks through Davis must negotiate. Train operators must: 1) slow their trains in advance to negotiate a curve with a 30 mile-per-hour speed limit through the heart of the Downtown, 2) be aware of the potential to utilize a 10 mile-per-hour cross-over immediately east of this curve in either direction when left-handed running – note that even though used infrequently the infrequency may actually increase the danger should operators lapse in remembering and fail to slow for this very-low-speed switch between main lines, such as happened in Burlington, Ontario, Canada in 2012; note also that several mainline freight trains have been observed utilizing this crossover in the last few months; 3) navigate over the Richards Subway vehicle undercrossing, as well as the private crossing at the east end of Arboretum Drive, where several pedestrian deaths and at least one vehicle collision and death have occurred, and immediately adjacent to a popular city park and shopping area; 4) navigate an at-grade vehicular crossing immediately east of the City limits at County Road 32A, where the derailment and fire occurred in the early 1990s;. Further east, just to the east of the City of Davis, trains navigate elevated tracks over the highly sensitive habitat area of the Yolo Causeway. None of this information is disclosed or considered in the DEIR.

In addition, the methodology for calculating the potential for spill and explosion does not appear to take into account the recent spills and explosions in Lac-Megantic, QC, Aliceville, AL, Casselton, ND and Lynchburg, VA.

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<sup>1</sup> The expert's report discusses the various classes of rail between Roseville and Benicia. But this limited amount of information reveals that over 1.3 miles of rail between Roseville to Benicia is FRA Class 1 track—track which has a 15.5 times greater risk of derailment than FRA Class 5 track that the expert's report focuses on. (DEIR Appendix F, at 6.)

<sup>2</sup> Although the DEIR lists schools within a quarter mile of the rail line (DEIR, at p. 4.7-23), it does not analyze the risks associated with such proximity other than the air quality impacts.

## **The DEIR Improperly Truncates Its Description of the Project Setting**

As discussed in the SACOG comment letter, the DEIR improperly limits its analysis to the route from Roseville to Benicia, claiming as “speculative” the originating site of the crude oil, though there are only three railroad subdivisions that could reasonably be expected to be used to bring crude oil to Roseville (the Roseville, Sacramento, and Valley subdivisions). Limiting the analysis to Roseville to Benicia is arbitrary and the DEIR must analyze the full environmental impacts of each potential route.

Further, as discussed above, once the entire area which will be affected by the Project is properly delineated, the revised DEIR must provide a full description of that area, including the existing conditions on the rail line that the train cars carrying crude oil will take on their journey to Roseville.

## **The DEIR’s Analysis of the Potential for Significant Hazards Violates CEQA**

As discussed in the Yolo County and SACOG DEIR comment letters, the DEIR’s conclusion that the transportation of crude oil by rail poses a less than significant hazard to upstream communities is unsupported by the evidence contained in the DEIR.

Though the sample Initial Study checklist found in Appendix G to the State CEQA Guidelines is an obvious and commonly used source of thresholds of significance, agencies may not rely on it exclusively when a particular project, or particular circumstance, gives rise to environmental concerns not addressed in the checklist. In *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, the court held that an agency cannot rely on a reflexive determination to follow the significance thresholds in Appendix G without regard to whether those standards are broad enough to encompass the scope of the project at issue or even relevant. The court explained that, “in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect.” (116 Cal. App. 4th at p. 1109.)

Here, in complete reliance on Appendix G, and without considering the very real and substantial risks of the transportation of crude by rail, the DEIR fails to address the risk of fire and explosion in its thresholds of significance. The DEIR’s only threshold of significance that addresses the hazards of transportation states:

Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the *release of hazardous materials into the environment.*

(DEIR at 4.7-13 [emphasis added].) As has been reported widely over the last several years, the character and quality of the North American and Canadian crude oil currently being transported by rail across the United States has dramatically shifted the public safety concern from a hazardous material release to fiery explosions. Accordingly, there is more than a fair argument that the DEIR has violated CEQA by failing to employ a threshold of significance broad enough to address the potential environmental impacts of this particular project.

Further, while, in general, lead agencies are given discretion in developing their thresholds of significance, as long as they are supported by substantial evidence, a fair argument can be made that the Project will result in a significant hazard. As discussed in the Yolo County comment letter, the threshold of significance applied to the Project to determine if it will pose a significant hazard is faulty as, even assuming the estimate is accurate (which as Yolo County observes, is questionable given the methodology employed) it focuses only on frequency and ignores magnitude. (DEIR at 4.7-18.) The DEIR assumes that the impact of each individual crude oil train release incident of 100 gallons or more is the same. The DEIR suggests that it is appropriate for the public to compare the chance that an individual driver will be involved in vehicle accident to the potential for a 50-car train carrying crude oil to explode in the middle of an urban area. There is no logic to this comparison.

The DEIR discloses that each 50-car train traveling to Benicia twice a day will carry 35,000 gallons of crude oil. Thus, the release (and potential associated explosion) could be of up to 35,000 gallons of crude oil, depending on the number of oil tank cars involved. This release and potential explosion could occur while the train is passing through the heavily populated cities of Roseville, Sacramento, Davis, Dixon, Vacaville, Fairfield, Suisun City and Benicia. Declaring a potential release of such a vast amount of crude oil (and potential explosion) as less than significant is directly contrary to CEQA. By way of example, if a project located in a 100 year flood plain must treat the possibility of a flood one in every 100 years as a significant impact (see State CEQA Guidelines Appendix G section IX) how can the DEIR conclude that the risk of release of up to 35,000 gallons of crude oils once every 111 years is less than significant?

### **The Project's Significant Hazard Risk Requires Feasible Mitigation Measures**

An EIR is inadequate unless it includes "a detailed statement setting forth . . . mitigation measures proposed to minimize [the project's] significant effects on the environment." (Pub. Res. Code, § 21100(b)(3); State CEQA Guidelines, §§ 15126 (e).) CEQA requires lead agencies to incorporate all feasible mitigation measures into a project to reduce the project's potentially significant impacts to a level of insignificance. (Pub. Res. Code, § 21081(a)(1)-(3); State CEQA Guidelines, §§ 15002 (a)(3), 15021(a)(2), 15091(a)(1).) Here, as discussed above, the risk of release and potential explosion of up to 35,000 gallons of crude oil is a significant effect on the environment that requires mitigation. Such mitigation must address a variety of concerns.

For instance, the DEIR states:

The approximately 730 trains that would transport crude oil through the Marsh each year would introduce a risk of an oil spill if a train were to derail *and* breach the integrity of the tank car, spilling some of its contents. Though a spill could occur anywhere along the line, the aquatic character of Suisun Marsh and the number of special-status organisms it supports make it an especially vulnerable location for a large spill. Depending on the location and severity of an oil spill and its resulting effects on special-status species, this could be a significant impact.

(DEIR at 4.2-33 [emphasis original].)

However, because the DEIR goes on to state that the risk of such spills is very low it concludes that the “impact [to biological resources] would be less than significant.” (*Id.*) By dismissing the need to mitigate what it admits is potentially “significant impact” to the Suisun Marsh, the DEIR avoids recommending mitigation measures to either reduce the risk of an oil spill and/or to develop programs or protocols to address such a spill. In other words, the DEIR fails to meet its obligation to incorporate all feasible mitigation measures into a project to reduce the project’s potentially significant impacts to a level of insignificance.

The DEIR’s failure to incorporate feasible mitigation measures to either prevent or to address the impacts posed by a spill or explosion infects and invalidates the document. Any future efforts to revise the DEIR so that it complies with CEQA must include such mitigation. Davis recommends that the revised DEIR include the following measures:

- Advance notification to the county and city emergency operations offices of all crude oil shipments;
- Limitations on storage of shipments in urbanized areas, and appropriate security for all storage of shipments;
- Support, including full cost funding, for training and outfitting emergency response crews;
- No oil transported by rail for this project until the entire fleet of tank cars to be used meet the upcoming recommendations by the US DOT or better, with at minimum reinforced puncture-resistant bulkheads, electronically controlled pneumatic brakes and rollover protection;
- Priority funding for rail safety projects;
- Utilization of best available inspection equipment and protocols; and
- Implementation of positive train control (PTC) to prioritize areas with crude oil shipments before such shipments begin (see attached letter to U.S. DOT).
- Limit all shipments of crude by rail to the Benicia Valero Refinery to only those shipments that have stripped out the most volatile elements, including flammable natural gas liquids (NGLs) before it is loaded into rail cars for shipment.
- Replace the left-hand, 10 mile-per-hour cross-over between main lines just east of the Davis depot with a the standard 45 mile-per-hour crossover standard used on the rest of the Capitol Corridor between Emeryville and Sacramento. This will greatly decrease the likelihood of an overspeed train derailment at this location caused by operator inattentiveness of a red-over-green signal aspect or should the operator lapse in remembering that this one switch has a much lower posted speed than other crossovers on the corridor displaying the same signal aspect for diverging movements. (Note: Implementation of PTC on all trains using the corridor before oil trains begin running would be acceptable instead in mitigating the risk at this significant potential derailment location.)
- Ensure full implementation and proper operation of track side monitoring equipment.
- Consideration of the construction of alternate means of oil transport other than rail or bypass routes for oil trains and other hazardous and flammable material trains around populated areas, such as Davis and Sacramento for example, such that the risk of explosion in a populated area would be wholly mitigated.

**The DEIR fails to analyze the cumulative impacts of the Project.**

In its cumulative impacts analysis the DEIR dismisses the potential for any increase in risk due to multiple rail cars from multiple projects transporting crude oil by rail by opining that any explosion/leakage from a rail car would be separate and apart from any other any other such explosion/leakage and thus there could be no cumulative impact. However, this discussion ignores that there is a higher probability of such an explosion/leakage with a greater frequency of trains, because a key factor in the risk analysis relied on in the DEIR is the number of train-miles traveled. Therefore, as the cumulative number of train trips increase along a particular rail alignment, the risk of accidents increases. The DEIR should have, but failed to, consider whether the proposed Project's contribution to this cumulative risk is cumulatively considerable. Further, at least two of the projects identified in the DEIR are projected to result in new crude oil shipments along the same rail alignment: the WesPac Pittsburgh Energy Infrastructure Project and the Phillips 66 Company Rail Spur Extension Project.

Where, as here, a DEIR's evaluation of cumulative impacts is based on a list of past, present, and probable future projects it must include in that list any project "producing related impacts, including, if necessary, projects outside the lead agency's control." (State CEQA Guidelines §15130(b)(1)(A).) Here, the DEIR has also failed to consider in its list of reasonably foreseeable future projects the potential for overall increase in rail cars traveling along the paths that will be taken by the Project's trains. The addition of any rail cars on the tracks will produce related safety issues, not just the increase in the number of rail cars transporting crude oil.

Revision to the DEIR to ensure it complies with CEQA must include a complete list of cumulative projects and a full assessment of any cumulatively considerable risk of release or explosion related to the Project.

We thank Benicia for this opportunity to comment on the DEIR and urge it to prepare and circulate a revised DEIR which includes a complete Project description and setting, properly identifies the Project's potentially significant Project-level and cumulative impacts, and incorporates all feasible mitigation measures into the Project that will reduce the significant impacts of the Project to a less than significant level or lessen those impacts that are determined to be significant and unavoidable even with the implementation of mitigation.

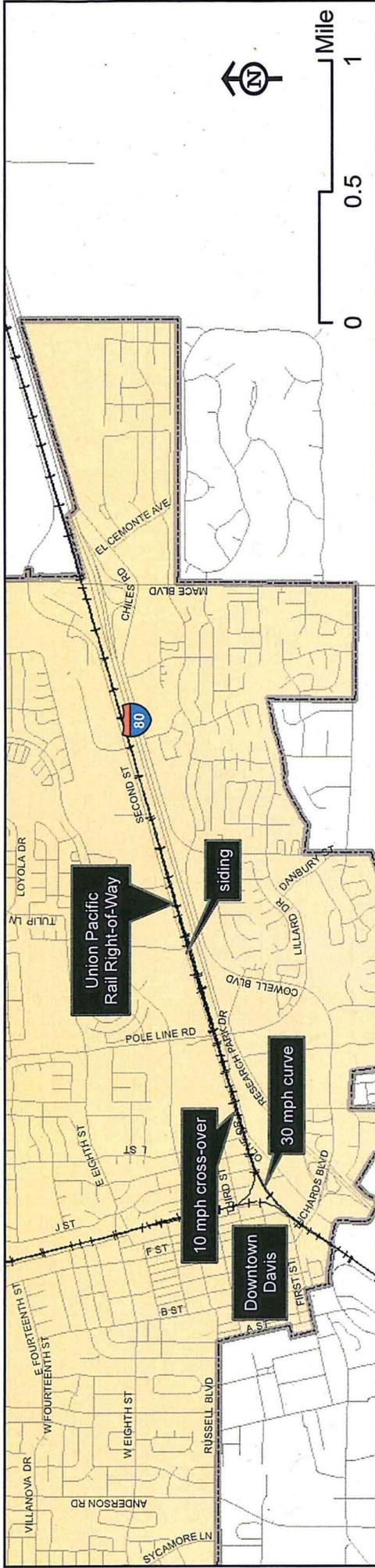
Sincerely,



Michael Webb  
Director of Community Development & Sustainability

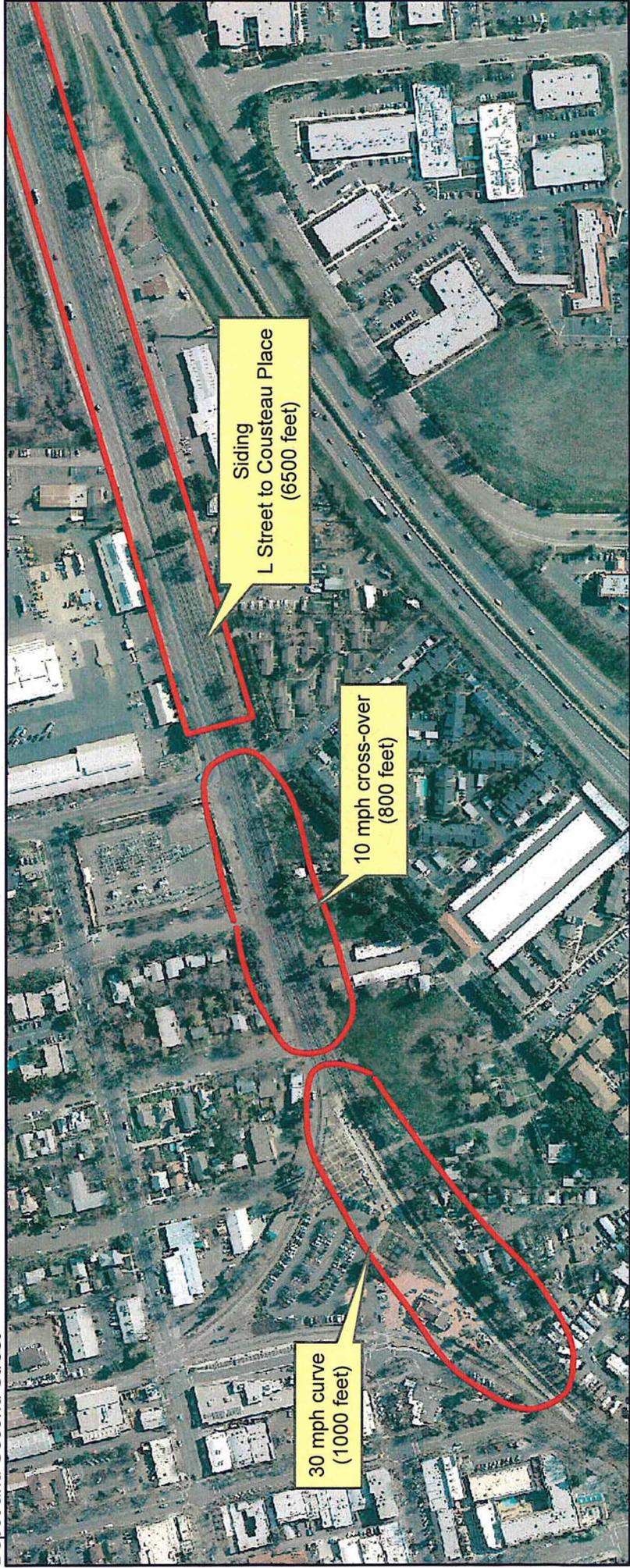
Attachments:

1. Map of Davis Rail Facilities
2. Letter to the U.S. DOT from Congress Members Garamendi, Matsui, Thompson and Miller



Davis

Depot and Second Street



Union Pacific Railway  
Davis, California

**Congress of the United States**  
**Washington, DC 20515**

July 1, 2014

The Honorable Anthony Foxx  
Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Dear Secretary Foxx:

As members of the California Congressional Delegation, we are writing to voice our strong concerns over the increased shipment of crude oil by rail in our districts and the safety risks associated with this upsurge. Northern California is already seeing a significant increase in the movement of oil through our local communities, and the number of shipments is only expected to rise in the coming years. We commend the Department of Transportation (DOT) for its focus thus far on more information sharing, slower speeds, and reinforced railcars. As you know, the solutions for this important safety issue must be multi-pronged and implemented as quickly as possible, which requires a strong and coordinated effort by the federal government to achieve an effective solution.

We are especially concerned with the high risks involved with transporting lighter, more flammable crude in densely populated areas. Should spills or explosions occur, as we have seen over the last year, the consequences could be disastrous, costing lives, damaging property, and harming the environment. While we are pleased with the many actions that DOT has taken thus far and we believe that your agency is making steady progress, we must still emphasize the utmost importance of demonstrated compliance with federal regulations by the railroad and petroleum industries. We believe there must be accountability and comprehensive oversight, as well as adherence to the most stringent of standards.

We appreciate your agency's May 7<sup>th</sup> Emergency Order that requires carriers to provide State Emergency Response Commissions with advance notice because it is imperative that local emergency managers and first responders are given up-to-date information on what materials are being transported through their regions, when these transports are occurring, and where this crude oil will be stored. But, because improved coordination and communication between the oil companies, railroads, and emergency managers is so fundamental to the safe transport of highly flammable lighter crude, we request a full report on the level of compliance by the oil companies and railroads to date.

Additionally, we urge your agency to prioritize implementing solutions in an expeditious manner that we believe will better protect our communities. One such solution would remove a

significant amount of the volatile elements, flammable natural gas liquids (NGLs), from the crude before it is loaded onto rail cars and we understand that regulators are already considering this course of action. In order for industry to comply, they would need to build small processing towers known as stabilizers that shave off NGLs from crude before it is ultimately loaded for transport. Stabilizers are common in other parts of the country and we understand that this could also be feasible through equipment leasing. Because your agency has explicitly stated that all options are on table, we believe that requiring the petroleum industry to make lighter crude shipments by rail less volatile must be a part of the solution. And, although building infrastructure will require time and investment, industry experts have also publicly stated that stripping NGLs from lighter crude is a part of the equation for addressing railcar safety.

Furthermore, we believe that positive train control (PTC) advanced technology should be fully implemented as it is designed to automatically stop or slow a train before accidents can occur. Derailments must be avoided at all costs and PTC should be prioritized due to its accurate prevention of train-to-train collisions and derailments caused by excessive speed and unauthorized movement of trains. We believe that an expedited final rulemaking requiring full implementation of PTC is needed for those railroads that will be transporting lighter crude by rail through our communities.

Yet another solution that has been considered and in some cases the oil industry has initiated, is switching out older rail cars for new, retrofitted ones. We urge your agency to issue a rulemaking to require phasing out and retrofitting older tank cars that do not have the latest safety technologies installed in order to further minimize the impact of an explosion, if a derailment with lighter crude were to occur.

As all of these federal emergency orders and standards are being considered and final regulations are set to come out next year, we request that your agency provide us ongoing information regarding industry compliance and develop ambitious standards that will both prevent derailments and ensure that industry workers and communities are protected in cases where derailments do occur. We cannot allow communities to be in danger when viable solutions are available.

To sum up our requests, we would like your agency to:

- Provide a report on the level of compliance by the railroad and petroleum industry to the May 7<sup>th</sup> Emergency Order.
- Issue rulemaking that requires stripping out the most volatile elements from Bakken crude before it is loaded onto rail cars.
- Expedite the issuance of a final rulemaking to require the full implementation of PTC technology for all railroads transporting lighter crude and provide a status report on the progress of PTC implementation to date.
- Expedite the issuance of a rulemaking that requires phasing out old rail cars for newer, retrofitted cars.

We believe that we must be vigilant and put in place strict safety regulations that can adapt and meet the rapidly changing transportation and energy needs of our country. Thank you for your continued elevation of these important safety issues, and we look forward to working with you on this matter.

Sincerely,



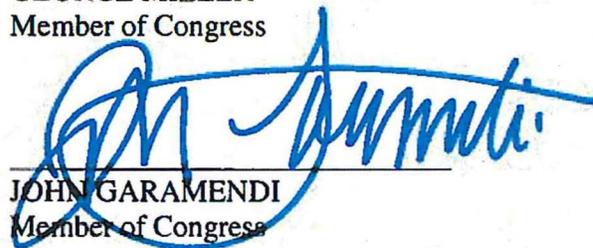
DORIS O. MATSUI  
Member of Congress



GEORGE MILLER  
Member of Congress

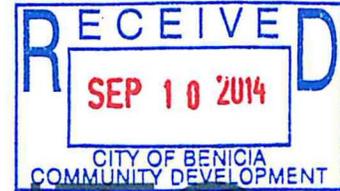


MIKE THOMPSON  
Member of Congress



JOHN GARAMENDI  
Member of Congress

*City of*  
**SACRAMENTO**



OFFICE OF THE  
CITY MANAGER

**CITY OF SACRAMENTO  
CALIFORNIA**

915 I STREET  
CITY HALL  
5<sup>TH</sup> FLOOR  
SACRAMENTO, CA  
95814-2604

PH: 916-808-5704  
FAX: 916-808-7618

September 10, 2014

Amy Million, Principal Planner  
City of Benicia  
Community Development Department  
250 East L Street  
Benicia, CA 94510

**Re: Valero Benicia Crude by Rail Project Draft Environment Impact Report**

Dear Ms. Million:

On August 21, 2014, the Sacramento Area Council of Governments (SACOG) Board of Directors voted to approve a comment letter on the Valero Crude Oil by Rail Project Draft Environmental Impact Report for the City of Benicia. The City of Sacramento participated in the drafting of the letter and concurs with the tone and substance of the SACOG letter.

The Valero Benicia refinery is one of two California refineries that are in the process of securing permits to build rail terminals to import Canadian tar sands and Bakken crude oils from the Dakotas. The Benicia bound crude oil trains enter northern California via the Donner Pass, pass through Auburn, Rocklin, and Roseville, then proceed along the American River through Sacramento following on to Yolo and Solano Counties.

**Why this project is of particular concern to Sacramento**

Although the federal government provides general regulations for freight rail movement, there are some specific aspects to consider in Sacramento that need to be considered because a potential derailment of railcars carrying flammable crude oil would be catastrophic in terms of potential fires, explosions, and exposures to hazardous substances.

### High population density adjacent to rail freight lines

Several active rail lines traverse Sacramento; these lines converge in downtown and midtown Sacramento. Based on the map prepared by the Sacramento Area Council of Governments (see attached Figure 1), more than 147,000 City residents live within ½ mile of freight rail lines potentially carrying crude oil. Additionally, numerous K-12 schools are located proximate to these rail lines. Sacramento is the capital city of California and its Central Business District is home to a large number of public and private employers, all located in close proximity to these rail lines. The new arena to serve the Sacramento Kings and other entertainment activities will be located within blocks of the rail line.

### Sacramento Valley Station - high concentration of people

The Sacramento Valley Station is located at 4th and I Streets, serving as the gateway to the northern edge of downtown Sacramento and the southern boundary of the 240 acre Railyards redevelopment site. The historic station has served as the primary rail passenger station for the northern California region since its opening in 1926 and has grown in ridership to the nation's 7th busiest station, serving the Capitol Corridor and San Joaquin trains. The planned High Speed Rail terminus station is designated at the Sacramento Valley Station immediately adjacent to the freight rail tracks that Benicia proposes using for crude oil transport.

The Railyards Specific Plan was approved in 2007 and allows for development of up to 12,000 residential units, 2.4 million square feet of office, 1,100 hotel rooms, 485,000 square feet of historic/cultural space, and 491,000 square feet of mixed-use space.

Source: <http://sacramentovalleystation.com/background-information/>

### Track curves through populated areas

Within the City of Sacramento, a number of curved track segments and/or railroad switches are adjacent to densely populated areas. These curved track segments may be more vulnerable to derailment – especially if the engineer fails to slow the train for a sharp curved section in a route that otherwise has higher speed conditions. Federal regulations address maximum allowable speeds; however, we believe there are curves within the city limits that would necessitate even slower speeds than what general regulations allow. This factor is underscored in that some freight train derailments have been found to have been caused by excessive speed.

### Track atop levees - higher likelihood of rail car puncture in the event of a derailment

The City of Sacramento is traversed by both the Sacramento and American Rivers and numerous flood control canals, surrounded by levees. The rail route proposed for the Valero project crosses and travels along the levees in several locations. In the event of a derailment resulting in rail cars tumbling down a steep embankment (such as a levee), there could be a higher likelihood of tank car puncture and resulting fires, explosions, and hazardous materials exposures affecting thousands of residents and workers in the surrounding neighborhoods.

### Concurrence with SACOG's request for mitigation measures

The City concurs that, at a minimum, the mitigation measures to protect the City of Sacramento (and more broadly, the region), should include the following:

- Advance notification to county and city emergency operations offices of all crude oil shipments (to facilitate more rapid and appropriate public safety responses);
- Prohibition of storage of crude oil tank cars in urbanized areas (of any size), and appropriate security for all shipments;
- Support, including full-cost funding, for training and outfitting emergency response crews;
- Utilization of freight cars with electronically-controlled pneumatic brakes, rollover protection, and other features that mitigate to the maximum extent feasible the risks associated with crude oil shipments;
- Funding for rail safety projects (e.g., replacement/upgrade of existing tracks, grade separations, Positive Train Control, etc.);
- Utilization of best available inspection equipment and protocols;
- Implementation of positive train controls to prioritize areas with crude oil shipments; and
- Prohibition of shipments of unstabilized crude oil that has not been stripped of the most volatile elements, including flammable natural gas liquids.

### Conclusion

We urge the City of Benicia to substantially revise the DEIR for this Project so that it will fully inform the public and the City Council of the full impacts of this Project and analyze all available mitigation to reduce those impacts to a less-than-significant level.

We appreciate your consideration of our concerns and comments and are available to answer any questions you may have. Our contact person is Scot Mende, at (916) 808-4756.

Sincerely,



JOHN F. SHIREY  
City Manager

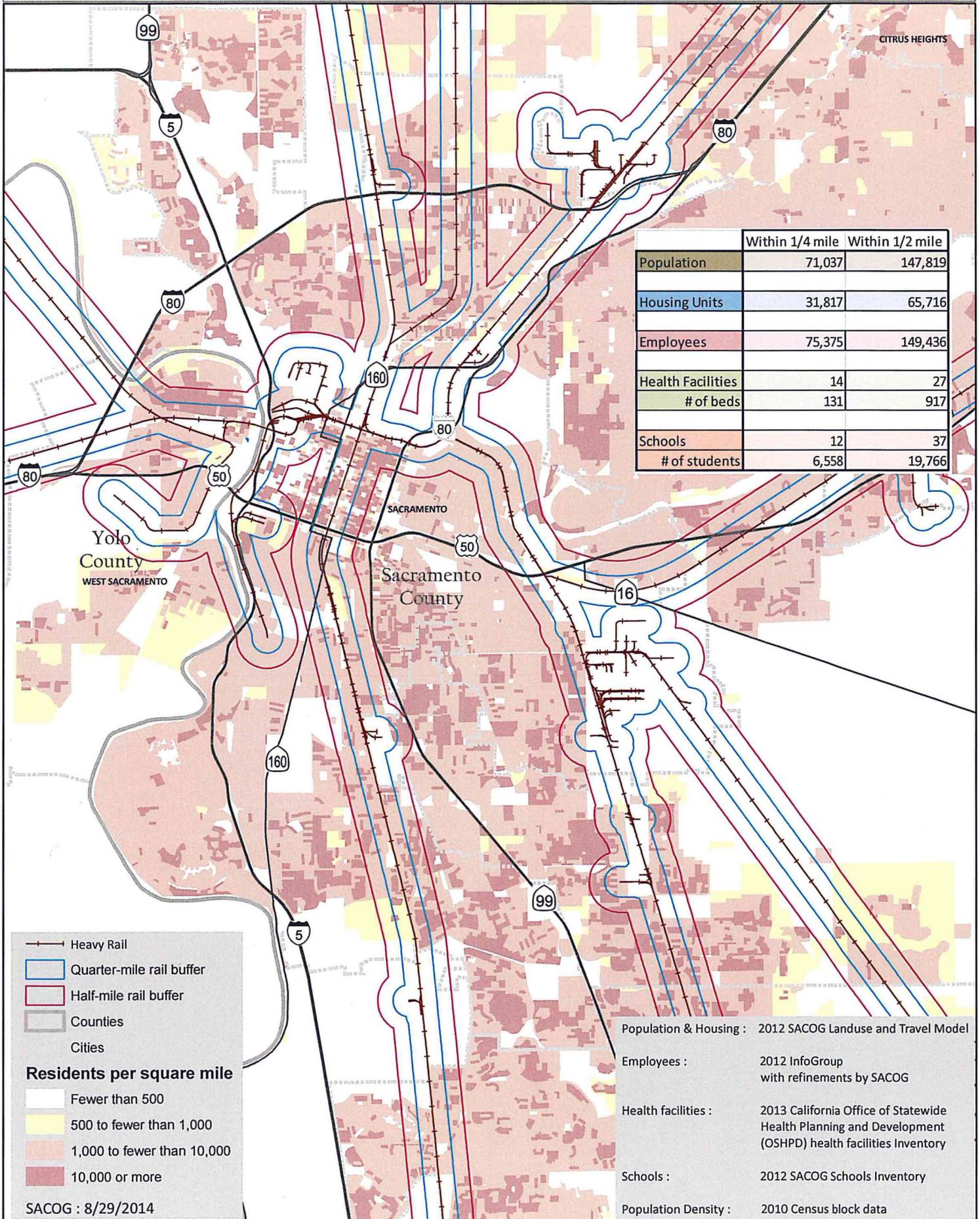
September 10, 2014

Page 4

Copies to:

Mayor and City Council Members  
Fran Halbakken, City Manager's Office  
Randi Knott, City Manager's Office  
Walt White, Fire Chief  
Ryan DeVore, Community Development Dept. Director  
David Kwong, Planning Director  
Tom Pace, Principal Planner  
Scot Mende, Principal Planner  
Kirk Trost, SACOG

# Figure 1 Potential Derailment Risk Zones City of Sacramento



UNION PACIFIC RAILROAD  
801 Louisiana, Ste. 300  
Houston, Texas 77002  
www.up.com

Melissa B. Hagan Senior General Attorney–Environmental Law

713.220.3207 (o)  
713.907.6810 (c)  
[mbhagan@up.com](mailto:mbhagan@up.com)

By U.S. Mail and Email [MMcKeever@sacog.org](mailto:MMcKeever@sacog.org)

Mr. Mike McKeever  
Chief Executive Officer  
Sacramento Area Council of Governments  
1415 L Street, Suite 300  
Sacramento, CA 95814



Re: Union Pacific – Valero Refinery Project

Dear Mr. McKeever:

Union Pacific Railroad Company (UP) appreciates this opportunity to comment on the draft Comment Letter on Valero Crude by Rail Project Environmental Impact Report, Item #14-8-4, which we understand will be considered by the Sacramento Area Council of Governments (SACOG) on August 21, 2014.

UP understands the concern about the risks associated with crude-by-rail and we take our responsibility to ship crude oil, as mandated by federal law, very seriously. UP follows the strictest safety practices and in many cases, exceed federal safety regulations. UP's goal is to have zero derailments and it works closely with the federal Department of Transportation (DOT), the Federal Railroad Administration (FRA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Association of American Railroads (AAR) and our customers to ensure it operates the safest railroad possible.

Safety is UP's top priority. The only effective way to ensure safety is through comprehensive federal regulation. A state-by-state, or town-by-town approach in which different rules apply to the beginning, middle, and end of a single rail journey, would not be effective. Congress agrees. Federal regulations completely preempt the application of the California Environmental Quality Act (CEQA) and the mitigation measures proposed in the comment letter drafted by SACOG staff. We encourage SACOG and its member agencies to participate in this rulemaking process.

**I. Union Pacific is working closely with other stakeholders to ensure the safety of crude transportation.**

Union Pacific is working diligently with federal, state and local authorities to prevent derailments or other accidents. UP spent more than \$21.6 billion in capital investments from 2007-2013 continuing to strengthen our infrastructure. By doing so, it is continuously improving safety for our employees, our communities and our customers.



UP has decreased derailments 23% over the last 10 years, due in large part to our robust derailment prevention and risk reduction process. This process includes, among others, the following measures:

- Union Pacific uses lasers and ultrasound to identify rail imperfections.
- UP forecasts potential failures before they happen by tracking the acoustic vibration on wheels.
- UP performs a real-time analysis of every rail car moving on our system each time it passes a trackside sensor, equaling 20 million car evaluations per day.
- UP employees participate in rigorous safety training programs on a regular basis and are trained to identify and prevent potential derailments.

Union Pacific also reaches out to fire departments as well as other emergency responders along our lines to offer comprehensive training to hazmat first-responders in communities where we operate. Union Pacific annually trains approximately 2,500 local, state and federal first-responders on ways to minimize the impact of a derailment in their communities. UP has trained nearly 38,000 public responders and almost 7,500 private responders (shippers & contractors) since 2003. This includes classroom and hands-on training.

These efforts have paid off. The overall safety record of rail transportation, as measured by the FRA has been trending in the right direction for decades. In fact, based on the three most common rail safety measures, recent years have been the safest in rail history: the train accident rate in 2013 was down 79 percent from 1980 and down 42 percent from 2000; the employee injury rate was down 84 percent from 1980 and down 47 percent from 2000; and the grade crossing collision rate was down 81 percent from 1980 and down 42 percent from 2000.

## **II. The Federal Government is imposing more stringent requirements for safe transportation of crude oil.**

As federal rail authorities recently explained, DOT, through the FRA and PHMSA, “continue[s] to pursue a *comprehensive, all-of-the-above approach* in minimizing risk and ensuring the safe transport of crude oil by rail.” Department of Transportation, *Federal Railroad Administration’s Action Plan for Hazardous Materials Safety* at 1 (May 20, 2014), available at <http://www.fra.dot.gov/eLib/details/L04721>. These efforts include not only scores of regulations governing the safe transportation of hazardous materials, including oil products, found in 49 C.F.R. Parts 171 to 180, but also a host of equipment and operating rules promulgated by FRA, as well as voluntary agreements and Emergency Orders issued over the past year in response to oil spills.

### Voluntary Agreement

On February 21, 2014, the nation's major freight railroads and the DOT agreed to a rail operations safety initiative that established new operating practices for moving crude oil by rail. Under the industry's voluntary efforts, railroads are:

- Increasing the frequency of track inspections using high-tech track geometry readers.
- Equipping crude trains with either distributed power or two-way telemetry end-of-train devices. These technologies allow train crews to apply emergency brakes from both ends of the train in order to stop the train faster.
- Using new rail traffic routing technology (the Rail Corridor Risk Management System (RCRMS)) to aid in the determination of the safest and most secure rail routes for trains with 20 or more cars of crude oil.
- Lowering speeds to no more than 40 miles-per-hour in the 46 federally-designated high-threat-urban areas and no more than 50 miles per hour in other areas.
- Working with communities to address location-specific concerns that communities may have.
- Increasing trackside safety technology by installing additional wayside wheel bearing detectors if they are not already in place every 40 miles along tracks with trains carrying 20 or more crude oil cars, as other safety factors allow.
- Increasing emergency response training and tuition assistance.
- Enhancing emergency response capability planning.

These voluntary actions are already being implemented.

### Emergency Orders

In a February 25, 2014 Emergency Order, the DOT ordered certain changes in the way petroleum crude oil is classified and labeled during shipment, emphasizing that "with regard to emergency responders, sufficient knowledge about the hazards of the materials being transported [is needed] so that if an accident occurs, they can respond appropriately." February 25, 2014 Emergency Order at 13. And in its May 7, 2014 Emergency Order, the DOT ordered railroads transporting large quantities of crude oil to notify state authorities of the estimated number of trains traveling through each county of the State, provide certain emergency response information required by federal regulations (49 C.F.R. Part 172, subpart G) and identify the route over which the oil will be transported.

### Proposed Regulations

On July 23, 2014, the PHMSA proposed enhanced tank car standards, a classification and testing program for crude oil and new operational requirements for trains transporting such crude that include braking controls and speed restrictions. PHMSA proposes the phase out of older DOT 111 tank cars for the shipment flammable liquids, including most Bakken crude oil, unless the tank cars are retrofitted to comply with new tank car design standards. We encourage SACOG to participate in this rulemaking process.

The federal proposal includes:

- Better classification and characterization of mined gases and liquids
- Rail routing risk assessment
- Notification to State Emergency Response Commissions
- Reduced operating speeds
- Enhanced braking
- Enhanced standards for both new and existing tank cars

As the federal government's existing regulations, recent emergency orders, the voluntary agreements and the new regulatory proposals make abundantly clear, regulation of crude transportation is extremely detailed and complex. Union Pacific is actively participating in the efforts to finalize the new regulations and encourages SACOG and its member agencies to do the same. By jointly working to enhance safety we can ensure that the most effective regulations are adopted.

### **III. A uniform federal regulatory program is essential to ensure the safe transportation of crude oil.**

As the complex regulatory program described above illustrates, clear and uniform federal regulation is needed to ensure that crude oil continues to be transported safely. With respect to rail transportation, federal law preempts most state and local regulation of rail activities.

Uniform standards and rules for railroad operations allow the efficient movement of goods among the states. If each state or local community were allowed to impose its own regulations on railroad operations, rail transportation could grind to a halt, because train crews would need to apply different rules or perhaps use different equipment as they move from place to place.

As stated by the U.S. Congress:

Subjecting rail carriers to regulatory requirements that vary among the States would greatly undermine the industry's ability to provide the "seamless" service that is essential to its shippers and would weaken the industry's efficiency and competitive viability.

The U.S. Congress went on to state that

federal regulation of railroads is intended to address and encompass all such regulation and to be completely exclusive. Any other construction would undermine the uniformity of Federal standards and risk the balkanization and subversion of the Federal scheme of minimal regulation for this intrinsically interstate form of transportation.

Congress has therefore established federal preemption under several statutes governing rail transportation. As the U.S. Solicitor General has explained, Congress recognized that the federal government has "diverse sources of statutory authority . . . with which to address rail safety issues," and therefore "preemption had to apply to regulations issued" under any of those sources, for "otherwise, the desired uniformity could not be attained." Brief for United States as Amicus Curiae at 6, *Public Util. Comm'n of Ohio v. CSX Transp., Inc.*, 498 U.S. 1066 (1991) (No. 90-95), available at <http://www.justice.gov/osg/briefs/1990/sg900560.txt>; see also H.R. Rep. No. 1194, 91st Cong., 2d Sess. 19 (1970) ("[S]uch a vital part of our interstate commerce as railroads should not be subject to [a] multiplicity of enforcement by various certifying States as well as the Federal Government.")

#### Preemption under ICCTA

In 1996, Congress passed the Interstate Commerce Commission Termination Act (ICCTA), which broadened the preemptive effect of federal law and created the federal Surface Transportation Board ("STB"). The driving purpose behind ICCTA was to keep "bureaucracy and regulatory costs at the lowest possible level, consistent with affording remedies only where they are necessary and appropriate." H.R.Rep. No. 104-331, at 93, reprinted in 1995 U.S.C.C.A.N. 793, 805 (emphasis added).

Congress vested the STB with broad authority over railroad operations. Indeed, STB has "exclusive" jurisdiction over "(1) transportation by rail carriers . . . and (2) the construction, acquisition, operation, abandonment, or discontinuance of . . . tracks, or facilities." 49 U.S.C. § 10501(b).

"Transportation" by rail carriers broadly includes:

(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property. 49 U.S.C. § 10102(9)(emphasis added).

Further, ICCTA contains an express preemption clause: “the remedies provided under this part with respect to the regulation of rail transportation are exclusive and preempt the remedies provided under Federal and State law.” 49 U.S.C. § 10501(b). “It is difficult to imagine a broader statement of Congress’s intent to preempt state regulatory authority over railroad operations.” (*CSX Transp., Inc. v. Georgia Public Serv. Com’n* (N.D.Ga. 1996) 944 F.Supp. 1573, 1581 (CSX).) This provision continues the historic extensive federal regulation of railroads. (*Fayard v. Northeast Vehicle Services, LLC* (1st Cir. 2008) 533 F.3d 42, 46; see *Chicago & N.W. Tr. Co. v. Kalo Brick & Tile* (1981) 450 U.S. 311, 318 [“The Interstate Commerce Act is among the most pervasive and comprehensive of federal regulatory schemes.”].)

Over the years, many courts have addressed challenges by state and local authorities seeking to regulate some aspect of rail operations. The courts have consistently upheld Congress’s intention that no such regulation can be allowed. As one court stated, “freeing the railroads from state and federal regulatory authority was the principal purpose of Congress” in adopting ICCTA. *Wisconsin Central Ltd. v. City of Marshfield*, 160 F.Supp.2d 1009, 1015 (W.D.Wis. 2000).

#### Preemption under the Federal Railroad Safety Act

Congress directed in the Federal Railroad Safety Act (“FRSA”) that “[l]aws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.” 49 U.S.C. § 20106(a)(1). To accomplish that objective, Congress provided that a State may no longer “adopt or continue in force a law, regulation, or order related to railroad safety” once the “Secretary of Transportation . . . prescribes a regulation or issues an order covering the subject matter of the State requirement.” *Id.* § 20106(a)(2). State or local hazardous material railroad transportation requirements may be preempted under the FRSA without consideration of whether they might be consistent under the Federal hazmat law. *CSX Transportation, Inc. v. City of Tallahoma*, No. 4-87-47 (E.D. Tenn. 1988); *CSX Transportation, Inc. v. Public Utilities Comm’n of Ohio*, 701 F. Supp. 608 (D. Ohio 1988), affirmed, 901 F.2d 497 (6th Cir. 1990), cert. denied 111 S.Ct. 781 (1991).

Under Section 20106(a)(2), these DOT regulations and orders preempt state and local regulations relating to the same subject matter. The text of § 20106 is unambiguous. It plainly states that the terms of § 20106 govern the preemptive force of all DOT regulations and orders related to rail safety. DOT has recognized that “[t]hrough [the Federal Railroad Administration] and [the Pipeline and Hazardous Materials Safety Administration], DOT comprehensively and intentionally regulates the subject matter of the transportation of hazardous materials by rail . . . .

These regulations leave no room for State . . . standards established by any means . . . dealing with the subject matter covered by the DOT regulations.” 74 Fed. Reg. 1790 (Jan. 13, 2009).

#### Preemption under the Pipeline Safety Improvement Act

The Pipeline Safety Improvement Act, which created the PHMSA, includes an express preemption provision prohibiting any state or local agency from regulating “the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.” 49 U.S.C. §5125. Thus, any mitigation measure restricting or specifying the type of equipment to be used in transporting crude by rail is expressly preempted.

DOT has stated that “[t]hrough [the Federal Railroad Administration] and [the Pipeline and Hazardous Materials Safety Administration], DOT comprehensively and intentionally regulates the subject matter of the transportation of hazardous materials by rail . . . . These regulations leave no room for State . . . standards established by any means . . . dealing with the subject matter covered by the DOT regulations.” 74 Fed. Reg. 1790 (Jan. 13, 2009).

#### **IV. Neither SACOG nor its member agencies has authority to impose the mitigation measures or conditions proposed in the draft Comment Letter on Valero Crude by Rail Project Environmental Impact Report.**

The courts have found that ICCTA preempts state and local environmental, land use and planning regulations. For example, in *City of Auburn*, the Ninth Circuit affirmed STB’s ruling that local environmental review regulations could not be required for BNSF’s proposal to reacquire and reactivate a rail line. 154 F.3d 1025, 1031 (9th Cir. 1998). The court found that the State of Washington’s environmental review statute – a statute that is similar to CEQA – could not be applied to a rail project. Similarly, the Second Circuit found that ICCTA preempted a state requirement for a railroad to obtain a pre-construction environmental permit for a transloading facility because it would give the local governmental body the ability to deny or delay the right to build the facility. *Green Mountain Railroad Corporation v. State of Vermont*, 404 F.3d 638, 641-45 (2d Cir. 2005). In effect, the court found that if a permit allowed the state or local agency to exercise discretion over the rail project, that permit requirement would be preempted.

The California Court of Appeal laid out this same logic in its recent decision in *Town of Atherton v. California High Speed Rail Authority* (filed July 24, 2014), stating:

[S]tate actions are ‘categorically’ or ‘facially’ preempted where they ‘would directly conflict with exclusive federal regulation of railroads.’ [Citations.] Courts and the STB have recognized ‘two broad categories of state and local actions’ that are categorically preempted regardless of the context of the action: (1) ‘any form of state or local permitting or preclearance that, by its nature, could be used to deny a railroad the ability

to conduct some part of its operations or to proceed with activities that the [STB] has authorized' and (2) 'state or local regulation of matters directly regulated by the [STB]—such as the construction, operation, and abandonment of rail lines; railroad mergers, line acquisitions, and other forms of consolidation; and railroad rates and service.' [Citations.] Because these categories of state regulation are 'per se unreasonable interference with interstate commerce,' 'the preemption analysis is addressed not to the reasonableness of the particular state or local action, but rather to the act of regulation itself.'

The California Attorney General endorsed this application of the law and specifically argued that "[c]ourts and the STB uniformly hold that the ICCTA preempts state environmental pre-clearance requirements such as those in the California Environmental Quality Act (CEQA)." Letter dated August 9, 2013 from Attorney General Kamala Harris to the Hon. Vance W. Raye, Presiding Justice, California Court of Appeal for the Third District at 3.

Additional cases and STB decisions that have struck down state and local environmental and land use regulations include: *Norfolk Southern Railway Company v. City of Austell*, 1997 WL 1113647, \*6 (N.D.Ga. 1997) ("ICCTA expresses Congress's unambiguous and clear intent to preempt [city's] authority to regulate and govern the construction, development, and operation of the plaintiff's intermodal facility"); *Soo Line R.R. v. City of Minneapolis*, 38 F.Supp.2d 1096, 1101 (D. Minn. 1998) ("The Court concludes that the City's demolition permitting process upon which Defendants have relied to prevent [the railroad] from demolishing five buildings . . . that are related to the movement of property by rail is expressly preempted by [ICCTA]."); *Norfolk S. Ry. v. City of Austell*, 1997 WL 1113647 (N.D. Ga. 1997) (local zoning and land use regulations preempted); *Village of Ridgely Park v. New York, Susquehanna & W. Ry.*, 750 A.2d 57 (N.J. 2000) (complaints about rail operations under local nuisance law preempted); *Burlington Northern and Santa Fe Ry. v. City of Houston*, S.W.3d, 2005 WL 1118121 (Tex. App. 2005) (interpretations of state condemnation law that would prevent condemnation of city land required for construction of rail line preempted).

The *Atherton* court noted that state and local agencies may exercise authority over the development of railroad property to the extent that such regulations:

can be approved (or rejected) without the exercise of discretion on subjective questions. Electrical, plumbing and fire codes, direct environmental regulations enacted for the protection of the public health and safety, and other generally applicable, non-discriminatory regulations and permit requirements would seem to withstand preemption.

The limited exception for routine, non-discretionary permits to meet building and electrical codes is not relevant here. Instead, the cases have clearly established that state and local agencies have no authority to impose permitting or land use requirements that "would give the local governmental body the ability to deny or delay the right to build the facility."

## V. Conclusion

Like the transloading facility in the *Green Mountain* case and the intermodal facility in the *Norfolk Southern* case, the proposed loading rack and tracks at the Valero Refinery are essential components of rail transportation. As noted above, “transportation” includes a “yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership. . .” as well as “receipt, delivery, elevation, transfer in transit, . . . storage, [and] handling” of goods. Valero’s proposed project falls squarely within the scope of this definition and the Congress and the courts have made it abundantly clear that “no state or local governmental agency may delay or deny the right to build” such a facility.

As noted above, Union Pacific supports the federal regulatory efforts to ensure that crude transportation is carried out safely. We encourage SACOG and its member agencies to participate in the rulemaking process. Neither SACOG nor its member agencies can go it alone—federal law and common sense demand that a uniform national approach be adopted and applied to ensure safety.

Regards,

UNION PACIFIC RAILROAD COMPANY



Melissa B. Hagan

cc: Ms. Amy Million, City of Benicia Planning Commission



# Performance Mechanical, Inc.

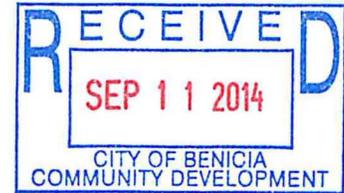
General Engineering Contractor

California License No. 475516  
Hawaii License No. ABC 30963



September 11<sup>th</sup>, 2014

Ms. Amy Million  
Mr. Brad Kilger  
Planning Commissioner



**Reference: Support for the Valero Benicia Refinery Crude By Rail Project**

Dear Ms. Million and Mr. Kilger and other Planning Commissioners,

As someone who uses their car to commute to work, soccer practices and games for my U-10 girl's team, softball games, the grocery store, and so on, I care about gas prices. As an American, I care about our energy independence and local jobs.

As a Bay Area resident I see it as my responsibility to remind you that Valero is an amazing part of our great community. I have worked in the refinery, off and on, for the last 13 years. I have had an opportunity to dine at the restaurants, and shop in the boutiques that Valero employees and Valero tax dollars help support. I have seen the benefits that Valero's support of the local community brings. I can say, without questions, that Valero has always been a great business partner. Safety, Honesty and Fairness have always been the trademarks of our business relationship. I would imagine that Valero's treatment of the local community is much the same. As Benicia's largest company and employer, Valero has the ability to increase Benicia and the greater Bay Area's use of domestic energy supplies via access by rail. Valero's proposed crude by rail project allows the refinery to refine a larger portion of domestic oil, thereby lessening our dependence on foreign oil, including oil from the Middle East. Domestic oil will boost the American economy and keep jobs, and American dollars, here rather than abroad.

Please vote to approve this important project.

Thank you,

Sincerely,

Performance Mechanical, Inc.

*Jonathan Hosler*

Jonathan Hosler  
Project Manager

**Sacramento Office**  
6001 Midway Street  
Sacramento, CA 95828  
(916) 421-4087 Ph, (888) 841-6156 Fax

**Corporate Office**  
701 Willow Pass Road, Suite 2  
Pittsburg, CA 94565  
(925) 432-4080 Ph, (925) 432-4141 Fax

**Los Angeles Office**  
17925 S. Broadway  
Gardena, CA 90248  
(310) 327-3205 Ph, (310) 516-0218 Fax

2003      11 Million Man-Hours Without a Lost Time Injury      2014



Amy Million - Please forward my comments to Benicia's Planning Commissioners

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**From:** Phil Summers <p.summers9@gmail.com>  
**To:** <amillion@ci.benicia.ca.us>  
**Date:** 9/4/2014 10:02 AM  
**Subject:** Please forward my comments to Benicia's Planning Commissioners

---



Dear Benicia Planning Commission

We wish to register our opposition to trains carrying crude oil running through Davis CA due to environmental / toxicity risks (detailed below) that we deem unacceptable.

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Valero in Benicia is a long way from giving up on the rail terminal that will allow it to import 100 tank cars of crude by rail daily, most likely from the tar sands of Alberta, Canada, and the Bakken Crude shale of North Dakota. These two extreme forms of crude — Bakken crude is highly volatile and proven explosive and tar sands bitumen is toxic and impossible to clean up in a spill (Kalamazoo spill, July 2010) — are already being processed in some Bay Area refineries.

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References:

Sacramento leaders: Risk of oil train explosions needs to be acknowledged

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Chances of a crude oil train fire are low but mounting in Sacramento

By Tony Bizjak [tbizjak@sacbee.com](mailto:tbizjak@sacbee.com)

Sincerely

Philip J Summers Ph.D. and Henriette Bruun P.T.

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Phil Summers  
[530-574-4172](tel:530-574-4172)

Amy Million - Please forward to Planning Commission

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**From:** Frank Fox <fdfox@jps.net>  
**To:** <amillion@ci.benicia.ca.us>  
**Date:** 9/4/2014 10:46 AM  
**Subject:** Please forward to Planning Commission

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Sincerely

Frank Fox  
[fdfox@jps.net](mailto:fdfox@jps.net)

612 Amherst Drive

Davis, CA

Moreen L Libet, PhD and Franklin D Fox, PhD

Moreen L Libet 530-4007843 Franklin D Fox 530-400-8478

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## Amy Million - Crude Oil trains through Davis?

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**From:** "Bill Wagman" <wjwagman@dcn.org>  
**To:** <amillion@ci.benicia.ca.us>  
**Date:** 9/4/2014 2:33 PM  
**Subject:** Crude Oil trains through Davis?



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Chances of a crude oil train fire are low but mounting in Sacramento By Tony

Bizjak [tbizjak@sacbee.com](mailto:tbizjak@sacbee.com)

Bill Wagman  
1350 Monarch Lane  
Davis Ca. 95618  
(530) 753-3472 (h)  
(530) 304-8758 (c)  
wjwagman@dcn.org

**Amy Million - Please Forward to Planning Commission: Re: Crude Oil Trains Passing Through Davis**

**From:** Catherine LeBlanc MFT <catherineleblancmft@gmail.com>  
**To:** "amillion@ci.benicia.ca.us" <amillion@ci.benicia.ca.us>  
**Date:** 9/4/2014 6:32 PM  
**Subject:** Please Forward to Planning Commission: Re: Crude Oil Trains Passing Through Davis



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By Tony Bizjak [tbizjak@sacbee.com](mailto:tbizjak@sacbee.com)

Sincerely,

Catherine LeBlanc, MFT  
President, Yolo-Solano CAMFT  
[www.catherineleblancmft.com](http://www.catherineleblancmft.com)  
[catherineleblancmft@gmail.com](mailto:catherineleblancmft@gmail.com)  
[@cleblancmft](mailto:@cleblancmft)  
717 7th Street  
Davis, CA 95616  
[530-574-7779](tel:530-574-7779)  
[530-341-0614](tel:530-341-0614) fax

## Amy Million - CBR Support

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**From:** "Bateman, Lori" <Lori.Bateman@valero.com>  
**To:** "AMillion@ci.benicia.ca.us" <AMillion@ci.benicia.ca.us>  
**Date:** 9/5/2014 3:16 PM  
**Subject:** CBR Support  
**Attachments:** My Company Valero Energy Corp.docx



To the members of the Benicia Planning Commission:

My name is Lori Bateman and I'm a Valero Benicia Refinery employee and Benicia resident for the last 25 years. I am writing in support of Valero's Crude By Rail project. I believe this project provides the refinery a chance to be consistently profitable in a highly competitive market, and to make it a viable asset for Valero Energy Corporation. My biggest fear is that the corporation may not want to continue to invest in and support a refinery that is not profitable.

It makes me sick to think that Valero could be denied this project. The discussion around the coffee makers or water coolers include fears of having the refinery sold to overseas investors (specifically China or India) who don't have a vested interest in our environment, much less our communities or jobs, and that the Benicia site would be much more valuable to them as a terminal for importing their products, and/or exporting our crudes. This keeps the worst polluters in business and expanding their markets, and shuts down one of the cleanest refineries in the world (that would be the Benicia Refinery). Or there's the scenario that some compare our refinery to Valero's former Delaware City Refinery that was so unprofitable, that they were forced to shut it down and walk away, leaving 550 people jobless, not to mention the other businesses it supported. It was so devastating to Delaware City and its community, that the state offered PBF Energy \$30MM as an incentive to purchase and restart the refinery. *That's* the kind of discussions we have with each other, and we're scared.

So it can be said that there is fear on both sides of the project.

California has always been the leader in safety and environmental standards and it's our day-in and day-out business to manage our operations to the highest of standards. So even though railcars are scary to those who don't handle them routinely, and spilling or exploding oil would be a horrible event by anyone's standards, I cannot wrap my mind around the hysteria surrounding the project, because there are so many standards, precautions, and safety measures already in place, *and managed extremely well every day*. I'm not saying a spill or explosion is impossible, but it would take a blatant disregard of numerous standards, precautions, and safety measures for it to actually occur, and that's not how the railroad nor how Valero operates its business, period.

*However*, from my side of the fear perspective, the Benicia refinery's contribution, or lack thereof, to Valero's profitability is *real and quantifiable*, as noted in any Valero quarterly report; it's happening RIGHT NOW; it's not hysteria, it is reality. We're tired of keeping our fingers crossed hoping that the economic tide will eventually turn in our favor, even if it's just enough to cover losses in this highly competitive California market. While anyone who thinks that the Valero Benicia Refinery will always be in business is definitely a vote of confidence, I'm not certain that I would make that bet.

So it's a choice between hysteria and reality, and it's your job to decide what the best choice is for this community.

Valero is an amazing employer and neighbor. I've attached a short essay I wrote that summarizes some facts that you may or may not know about your neighbor Valero, but that I think are important if there are any doubts in your minds about the company in your back yards. I hope you learn at least one new thing you didn't already know about Valero.

Thank You,  
Lori Bateman



Please consider the environment before printing this e-mail.

## Valero Energy Corporation

I've gone to the effort of assembling some facts about the company I work for to inform the community of what an asset and good neighbor they have in their back yards. I've worked for the Benicia refinery for nearly 26 years, which is well over half of my life, and I get the feeling that people don't understand what a reputable upstanding company Valero Energy Corporation is. Here is my attempt to share some of the things I know, and most of this information is available on the internet for everyone else to find.

Valero is a corporation began in Texas in 1980 as a natural gas company. Named after the original name of the Alamo (*Misión San Antonio de Valero*) in its headquarter city of San Antonio, Valero began to diversify its operations in the mid 1980's when it acquired half ownership of a refinery in Corpus Christi, Texas. In 1997 it spun off its refining division, keeping its Valero name, and selling the natural gas business to PG&E, and expanded its refining capacity when it acquired Basis petroleum, putting the total number of refineries at four (Valero Website, n.d., Our Business Company History).

In 2000, Valero won a major coup when it purchased Exxon's Benicia refinery after the Federal Trade Commission forced its sale as a result of the ExxonMobil merger. Compared to ExxonMobil, Valero was a "mom and pops" size company at the time, but due to its focus on taking care of its employees and the community, Exxon accepted Valero's bid even though it was the *lowest bid out of the three being offered*. The purchase of the Benicia Refinery was pivotal to the future of Valero and the following year Valero acquired another Benicia bidder, Ultramar Diamond Shamrock, doubling the size of the company and expanding operations internationally. Valero's current asset count is sixteen refineries with 3 million barrels per day

refining capacity, twelve ethanol and wind plants with 1.2 billion gallon per year capacity, and 7,300 wholesale branded sites operated in 44 states, Canada, the UK, Ireland, and the Caribbean.

The refining industry is a very market-driven industry that frequently loses money. The largest influence on the price of gasoline and other fuels is inventory, so as inventories go up, prices go down and vice versa. If a refiner has an upset in its operations, this results in a temporary market shortage and subsequent temporary upswing in refining margins for the refineries running reliably. This also means a higher price at the gas pump for the consumer. The competitive advantage that Valero or any refiner can have is by acquiring crudes at a lower cost. By being able to acquire crudes at a lower cost, this results in an immediate increase in margins, and does not require the misfortune of the competition to remain competitive, and it will not drive up prices at the pump. Finding and creating alternative means of getting lower cost crude into a refinery can mean the difference between staying and going out of business.

This might come as a surprise to some, but there is virtually no product differentiation when it comes to fuel due to strict government specifications. Some companies have attempted market differentiation with additives such as Chevron with Techron, or Shell with its nitrogen enriched fuel. This may have resulted in some brand loyalty, but the bulk of fuel is sold as generic fuel to outlets like Valero, Costco, Safeway, Beacon, etc.

Valero has the utmost respect for the environment and environmental laws, as well as the health and wellness of its employees and community. Valero's Social Responsibility Report 2013 devotes the bulk of its content to these matters and is committed to achieving excellence. Valero has received numerous awards for its commitment to the environment, health, and safety, and is an industry leader when it comes to having an open relationship with OSHA and has achieved OSHA's Voluntary Protection Program (VPP) Star status at 8 of its refineries with the

goal of achieving Star status at all of its refineries. VPP Star status requires meeting standards that are far more rigorous than the minimum safety standards set by OSHA, and includes an open door policy, allowing OSHA to visit anytime they want. Valero not only has 8 Star status sites, but has also passed along their teachings to 28 contracting companies that work for Valero and helped them achieve Star status as well. Valero's Star sites also serve as mentors to neighboring refiners, and encourage them to make the investment and commitment required to achieve Star status. This status must also be reassessed every 3 years, each recertification more stringent than the previous, forcing VPP sites to continuously improve their procedures and processes. Valero's proof of this effort and investment is working is reflected in their injury rate being less than half of the industry average. The only two refineries in California that hold the title of VPP Star sites are both owned by Valero Energy Corporation.

With regard to ethics, Valero has very stringent standards and practices and they are available to the public on their company website. Valero has no tolerance for unethical behavior and it is reinforced to every single employee through annual mandatory training, which includes real life examples of unethical behavior that has occurred within the company, and the training changes from year to year so that it is not something that the employees will ignore because it is never the same canned materials every year. Ethics training comes from the top down, and is being taught by the executive directors of the corporation, up to and including the CEO. Valero wants complete transparency in its business and will not tolerate even the perception of foul play. This does not only applies to accounting practices, but also employee relationships to contractors and vendors, sharing or providing insider information to anyone, even if it was unintentional, providing a harassment free workplace, and providing protection to the whistle blowers by providing a third party anonymous hotline, to name a few. Valero takes these matters very

seriously and goes to great lengths to ensure that ethics standards are being met by every single employee that works for them ("Business Ethics," n.d.).

Valero is also a huge supporter of the community. All employees are encouraged to volunteer their time and money to help those in needs. Valero is recognized as one of America's most community-minded companies in The Civic 50, an annual initiative that identifies and recognizes companies for their commitment to improve the quality of life in the communities where they do business. The survey was conducted by the National Conference on Citizenship (NCoC) and Points of Light, the nation's definitive experts on civic engagement, with the results published by Bloomberg News. Valero was the only refining company, and one of only four energy/utility companies, to make the list. Valero and its employees pledge to donate \$10.6 million to the United Way in 2014 with Valero's fifty-cents-on-the-dollar matching funds program. The company raised a record \$10 million for children's charities across the United States in 2013 through the Valero Texas Open and Benefit for Children. The contribution is the largest charity gift of any tournament on the PGA TOUR. Since Valero became the title sponsor of the event in 2002, it has raised \$81.5 million for children's charities ("Social Responsibility Report," 2013, p. 22). Valero also provides paid time to its employees who volunteer in the community during normal business hours and has a Valero Volunteer Council that provides an endless supply of volunteer opportunities to its employees. Employees are also encouraged to sponsor and facilitate charitable events, which not only provide much needed funds to their choice of charities, but also foster camaraderie amongst the event participants.

Valero follows the generally accepted accounting principles (GAAP) that govern the practice of financial accounting. I compiled the following table, and provided a couple typical

ratio calculations with an additional calculation of the gross profit percentage to illustrate the difference between profit margins in refining as compared to a discount retail chain.

<i>All figures used are in thousands</i>			
<b>Ratio Name</b>			
<b>Format</b>	<b>Type</b>	<b>What it measures</b>	<b>VLO</b>
<b>Current Ratio:</b> Current assets/current liabilities	Liquidity: measures the ability of an organization pay off short term liabilities that come due	Compares current assets (assets that will provide cash in the next year) to current liabilities (debts that will come due in the next year).	\$19,277,000 / \$13,123,000 =1.47 1.2 to 1.5 where most successful businesses operate
<b>Debt to Assets:</b> Total liabilities/total assets	Leverage: measures the extent to which a firm uses debt to meet its financing needs	Similar to debt-to-equity, but compares debt to assets rather than equity.	\$27,800,000 / \$47,260,000 = 0.5882 or 58.82% A normal debt ratio ranges from 60-70%

<b>Comparison:</b>	Valero	Walmart
<b>Gross Profit Percentage:</b> Gross profit/net sales revenue	\$10,758,000 / \$138,074,000 = 0.0779 or 7.79%	\$118,225,000 / \$476,294,000 = 0.2482 or 24.82%

("WMT Income Statement," 2013) ("VLO Income Statement," 2013)

These figures are for the entire Valero Corporation, and the GPP for refiners in California are even lower and frequently negative. While the public perception might be that "Big Oil" makes obscene amounts of money, the comparison to Walmart, a discount retailer who makes over 3 times as much profit from their net sales, clearly shows that this is not the case at all. Had I used a comparison to companies like Apple, Google, or Amazon, I would have illustrated very clearly where obscene amounts of money were really being made.

Overall, Valero is an extremely reputable company that has made Forbes top 100 companies to work for, for 9 years in a row. Valero strives to be the best of the best in every aspect of the business and constantly pushes to achieve excellence in all of its operations.

Valero's employs a system called Commitment to Excellence Management System, or CTEMS.

CTEMS has nine major elements, with detailed expectations for each that provide a framework for achieving operational excellence:

1. Leadership Accountability
2. Protecting People and Environment
3. People Skills and Development
4. Operations Reliability and Mechanical Integrity
5. Technical Excellence & Knowledge Development
6. Change Management
7. Business Competitiveness
8. External Stakeholder Relationships
9. Assurance and Review

Operational excellence means reliable and predictable operations, which make our facilities safer and more efficient. CTEMS has counted many successes, in areas ranging from change management to risk assessment, fixed-equipment inspection and preventive maintenance. Valero will continue to assess existing programs against expectations defined in CTEMS, and establish plans to close any identified gaps ("Social Responsibility Report," 2013, p. 4). With this level of commitment to excellence, Valero is a company to be proud of, and I couldn't be more proud.

I hope you've enjoyed learning about your old neighbor who's been in Benicia for the last 45 years and that you will support its continued viability in California's tough economic market. Supporting the crude by rail logistics project can give the Benicia refinery a fighting chance for profitability and continued operation.

## References

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Social Responsibility Report. (2013). Retrieved from [www.valero.com](http://www.valero.com)

Valero Energy Corporation. (n.d.). In *Valero Energy Corporation*. Retrieved 05/18/14, from

[http://en.wikipedia.org/wiki/Valero\\_Energy\\_Corporation](http://en.wikipedia.org/wiki/Valero_Energy_Corporation)

Valero Website. (n.d.). [www.valero.com](http://www.valero.com)

**Amy Million - Support Valero's Crude By Rail Project**

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**From:** "Frank, David" <David.Frank@Valero.com>  
**To:** "amillion@ci.benicia.ca.us" <amillion@ci.benicia.ca.us>  
**Date:** 9/8/2014 11:57 AM  
**Subject:** Support Valero's Crude By Rail Project  
**Attachments:** Support .pdf



I'm sending this in support of Valero's Crude By Rail Project..

David Frank



To the Benicia Planning Commissioners,

After thoughtful consideration of the information contained in the city of Benicia's Draft Environmental Impact Report I am fully supportive of Valero's Crude by Rail project. The DEIR explains that this project will have many environmental benefits for Benicia and the state at large and will ultimately improve air quality and lessen the likelihood of an oil release in our community.

I respect the rights of everyone to voice their opinion on any project that will impact his or her community. However, I feel it is equally important that these voices only supply facts rather than stir up fear or rely upon fiction. Per the City of Benicia's Draft Environmental Impact Report, this project will:

- Result in beneficial impacts to air quality in the Bay Area
- Reduce the risk of accidental release by replacing up to 82% of the current marine delivery of crude oil with delivery by rail, which is statistically much safer
- Employ safety standards that exceed mandatory compliance measures, including the use of 1232 rail cars instead of Legacy DOT-111s and a tremendous amount of training for local and uprail first responders
- And much more

Also per the DEIR, this project will not:

- Change refinery operations
- Change the refinery's current feedstock profile
- Alter the quantity of crude processed at the refinery
- Alter the type of crude processed at the refinery

Importantly, the refinery and railroad are making efforts to ensure that this project is not only safe to our environment and community, but also does not have any undue impact on the surrounding community. Just one example of this effort can be seen in regards to traffic, where the DEIR explains that:

- All switching activity of rail cars will occur on the refinery's property to prevent traffic delays or impacts
- Railcar transport would be scheduled so that none of the railcars would cross Park Road during the commute hours of 6: 00 AM to 9:00 AM and 4:00 PM and 6:00 PM.

I believe the Draft EIR does an adequate job of exploring all aspects of this project and its contents lead me to believe that this project will be good for Valero and good for Benicia. I ask you to please consider the importance of this project to the Refinery and of the Refinery to our town when making a thoughtful, informed decision about this project based upon facts rather than fiction.

Thank you,

**Amy Million - Valero Rail Project**

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**From:** pamela rhodes <rhodes4764@att.net>  
**To:** "bkilger@ci.benicia.ca.us" <bkilger@ci.benicia.ca.us>, "amillion@ci.benicia.ca.us" <amillion@ci.benicia.ca.us>  
**Date:** 9/8/2014 12:25 PM  
**Subject:** Valero Rail Project

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Dear Mr. Kilger and Ms. Million:

I live in Davis, up-rail from the proposed Valero rail project which plans that two 50-car trains cross the Yolo Basin (home of our beautiful and sensitive Yolo Basin Wildlife Preserve) and then pass through downtown and several dense residential areas, exiting town along the edge of UC Davis by the Mondavi Center Complex. I am very concerned about the impact of crude oil trains moving through our community every day.

I have many questions and concerns. Here are a few:

1. Since Bakken crude is highly combustible why is it not required that the oil industry make the crude less volatile before it is loaded into tank cars?
2. The DOT111A tank cars are said to be unsafe and rupture when they derail. Even the 14,000 cars that meet 2011 standards may be prone to rupture as one did in Lynchburg, VA traveling at 23 miles per hour. The trains through Davis would probably travel at 50 miles per hour. How can Valero assure us we will be safe until stronger cars are in place?
3. Without regular inspections of rail tracks and bridges, they may not hold up under the weight of these heavier tanker cars. Can Richards Blvd. and the Yolo Causeway carry the weight of the proposed heavier cars?
4. The water in the Yolo Bypass is the beginning of the Delta with implications for the whole state in terms of the rice crops, bird migrations, and drought. These impacts must be analyzed.

I and other residents of Davis and the surrounding area have many more questions and concerns. Please consider decisions regarding the proposed Valero project with wisdom and foresight.

Sincerely,  
Pam Rhodes  
3011 Corona Dr.  
Davis, CA 95616  
530-792-1256

**Amy Million - Crude by Rail approval**

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**From:** "Felsoci, Mark" <Mark.Felsoci@valero.com>  
**To:** "amillion@ci.benicia.ca.us" <amillion@ci.benicia.ca.us>  
**Date:** 9/8/2014 3:26 PM  
**Subject:** Crude by Rail approval

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Benicia City Leaders:

I want to thank the City of Benicia for its comprehensive analysis of the Valero Crude by Rail Project in the Draft EIR. This document provides us with important facts about this proposed project and ultimately concludes that the project will not have significant impacts on our community.

I know there has been some concern about this project increasing the amount of crude being brought into Benicia, as well as the composition and origin of the crude that will be transported. As the Draft EIR explains in great detail, this project is not about crude – it is simply about logistics.

The CBR project will not increase the amount of crude currently being transported into and out of the refinery, nor will it allow the refinery to process crudes that they are not already able to process. More specifically - this project will not increase the amount of crude being processed, the type of crude the refinery can process and it will not increase process emissions. It simply adds another mode of crude delivery for the refinery that will allow access to landlocked domestic crude.

Thank you to the City for this comprehensive Draft EIR. I ask Benicia City Leaders to show true leadership and certify the document, approve the project so that the Valero Benicia Refinery can continue without further delay. Doing so will provide more jobs and additional tax revenues for the community.

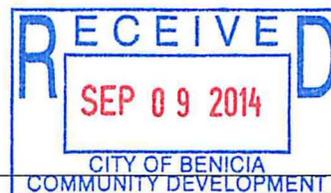
Sincerely,

Mark Felsoci

**Amy Million - Public Comment on DEIR**

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**From:** <rfdlyons@pacbell.net>  
**To:** <amillion@ci.benicia.ca.us>  
**Date:** 9/9/2014 10:42 AM  
**Subject:** Public Comment on DEIR



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The purpose of this email is to provide comment on the DEIR and the proposed Valero Crude-By-Rail Project.

I am 100% against this proposed project.

I support reducing our reliance on fossil fuels, and restricting environmental emissions.....not making it easier for oil companies to access more crude oil, expand their infrastructure, and produce more oil-based products.

The oil lobby in the USA is powerful and seems invincible.

Zero-emission vehicles, plug-in and fuel cell electric cars, and other forms of clean energy must become a priority. This is of zero interest to Valero. And, why should it be, when their business is “refining oil?”

Blocking crude-by-rail sends a message to Valero that we do not intend to make access to fossil fuels easier for them and even more dangerous for our community.

Sincerely,

Joanna Lyons  
641 Semple Court  
Benicia, CA 94510  
(707)980-2816



This email is free from viruses and malware because avast! Antivirus protection is active.

September 7, 2014

Ms. Amy Million, Principal Planner  
Community Development Department  
250 East L Street  
Benicia, CA 94510



Dear Ms. Million:

In the early 1980s, I wrote for a magazine called *California Geology* about the oil trains coming from Utah to refineries in Richmond, California. At this time, every tanker car had a set of heating coils. The coils were critical because their heat kept the naturally thick Utah oil runny enough to pour out of the tankers at the refineries. If the tanker cars of today still have heating coils, there is a possible way to use the coils as part of an environmental strategy.

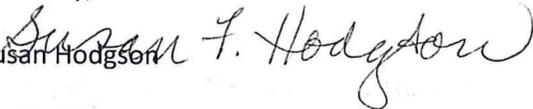
What if—when we pour the crude oil into tanker cars, the heating coils are turned off? At this time the oil may be a little warm from production circumstances but soon it will cool down in the tankers. The cooled oil will thicken to its natural viscosity—and the oil from the tar sands is very viscous. Then as the tanker cars begin rolling to the refineries with their cargoes of cold, viscous oil—if an accident happens—instead of oil pouring out of the tanker cars destroying surrounding areas, an oil clog will appear. A clog is infinitely less harmful and easier to remove.

On arriving at the refinery, the coils in the tanker cars can be reignited to liquefy the oil.

Of course all petroleum is different. Some oils are not very viscous and this plan wouldn't apply to them—but it certainly would to petroleum from the tar sands. Please take this idea under consideration.

Thank you.

Sincerely,

  
Susan Hodgson

Davis, CA

cosmos@dcn.org

**Amy Million - I support CBR Project**

---

**From:** "Porter, Alysia" <Alysia.Porter@valero.com>  
**To:** "amillion@ci.benicia.ca.us" <amillion@ci.benicia.ca.us>, 'Brad Kilger'  
<BKilger@ci.benicia.ca.us>  
**Date:** 9/9/2014 3:47 PM  
**Subject:** I support CBR Project



I support the crude by rail project because as an employee of Valero, I know firsthand that my company places safety as their No. 1 priority – for me, for the contractors that work in our plant, and for the residents living in Benicia. Earning the Cal/OSHA VPP star site designation for safety practices and procedures speaks to our commitment to safety, and I am confident safety is the No. 1 goal for each and every person involved with this project.

Also, there will be no changes to the amount or the type of crude oil processed at our refinery because of CBR either; and as always, we will continue to comply with existing environmental and air quality requirements set by regulatory agencies.

And the city of Benicia will benefit from our project! It will bring jobs to the community and generate tax revenues. It's a win-win situation for both Valero and Benicia.

Alysia Porter  
Valero Benicia Refinery

To: City of Benicia Planning Commission  
Fr: Robin Lancaster  
Dt: September 6, 2014  
Re: Valero's DEIR



The following is in response to the proposed project as proposed by Valero. I have questions with quotes from the DEIR for your convenience.

(1.) Concerns related to the Green Valley – Concord Fault:

The fault is located immediately to the west of 680.

Please note that in addition to the above I've enclosed materials related to the earthquake from the USGS.

There is no way to "mitigate" against the expected liquefaction of soils to include lateral and horizontal ground displacement of possibly several feet during an earthquake. To suggest that there is a less than significant threat of a disaster from a major fault such as the Green Valley – Concord Fault is absurd.

How can the mitigation as proposed protect the rails from disruption from a seismic event on the Green Valley fault?

(2.) Noise/Vibration as referenced in the DEIR:

Note that noise is referenced; however, vibration continues to not be addressed. The City of Benicia noise ordinance states that noise must not be more than 50 dba.; yet the DEIR states that the current average as produced by the plant (over 24 hour periods) is between 52 dba and 56 dba - and the proposed increase in dba will increase an average of between 1 and 3 dba. According to the DEIR the increase is not significant!

Please review the noise technical study within the DEIR. Note that the monitoring sites did not include El Bonito Way, and yet reference is made to El Bonito Way on page 8. Please also note that the site locator map page makes reference to the Hillcrest area – on the West side of East 2<sup>nd</sup> Street. The Hillcrest area is located to the East of East 2<sup>nd</sup> Street.

Why has the Hillcrest Neighborhood not been correctly identified and used as a test site for a "Noise Monitor Location and Sensitive Receptors" location?

Most cities allow a maximum of 50 dba during the day and 40 dba between 10 pm. and 7 am. Benicia needs to review its current noise ordinance. It should be further noted that the Benicia noise ordinance removed all penalties from the ordinance (see 8.20.220 Violation - Penalty); although, the City may pursue the issue of excessive noise as a public nuisance.

City of Benicia  
Planning Commission  
September 6, 2014

Questions Continued:

Noise Continued:

Movement of trains at night will be extremely disruptive to the sleep of residents and pets, wild birds and animals. How can the sleep of Benicia residents be protected from the proposed increase in noise?

(3.) Biological Resources (Birds):

Please refer to page 4.2-10 of the DEIR – Table 4.21:

Please contact the Audubon Society for better information.

Tricolored blackbird: Viewed at times in Benicia.

Golden Eagle: Viewed in early fall through the winter in Benicia.

White-tailed kite: The chart lists the bird as being greater than 5 miles from the Project Study Area and 2 miles from the railroad. Please note that the White-tailed kite nests in the trees along El Bonito Way – specifically in the 100 block of homes – in the trees that adjoin the Valero property.

Page Two of Two

Enclosures;

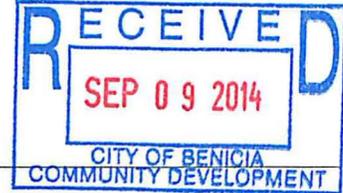
State of California Dept. of Conservation quake map of Benicia and environs, the Green Valley – Concord Fault and a portion of the California Geological Survey as located on [shmp@consrv.ca.gov](mailto:shmp@consrv.ca.gov). November 26, 2008.

ccAudubon Society  
City of Benicia Planning Commission file

**Amy Million - Valero DEIR - Planning Commission Questions:**

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**From:** Robin Lancaster <robin\_lancaster@hotmail.com>  
**To:** "amillion@ci.benicia.ca.us" <amillion@ci.benicia.ca.us>  
**Date:** 9/9/2014 4:35 PM  
**Subject:** Valero DEIR - Planning Commission Questions:



Dear Amy:

Enclosed is meant to be an attachment to the questions that I just sent to you regarding the DEIR. Please note that the DEIR makes reference to birds as not being within the study area (see page 4.2-10 Table 4.21). Note that the information below makes reference to three of the mentioned birds within the Valero area.

Thanks again,  
 Robin Lancaster  
 745-3645

Question for the DEIR:

> Date: Mon, 8 Sep 2014 11:21:07 -0700  
 > From: robin\_leong@netzero.net  
 > To: Robin\_Lancaster@Hotmail.com  
 > CC: LeyDM@aol.com; wschack@hotmail.com; ajf51@humboldt.edu; cheryleharris@sbcglobal.net  
 > Subject: Re: Can you help this person?

>

> Dear Robin,  
 > All three species, tricolored blackbirds, golden eagle, and especially  
 > white-tailed kites have been found within 5 miles of Valero. Every year  
 > Napa-Solano Audubon Society sponsors the Benicia Christmas Bird Count  
 > (BCBC). Valero is within the 15 mile diameter circle that we count all  
 > the species seen or heard during a 24 hour period for one day between  
 > Dec 14 to January 5. Valero has graciously allowed us to count species  
 > on their property on that day. (BTW they also sponsor our count by  
 > giving a large donation.) We have seen white-tail kites during those  
 > counts. Christmas count data can be found on National Audubon Society's  
 > website under Citizen's Science CBC. The Benicia CBC data is under CABE.  
 > However this tells you what has been seen within the 15 mile diameter  
 > circle. I have the data broken down in 14 territories with in the 15  
 > mile diameter circle. I know that during our BCBC we have counted golden  
 > eagles in the Benicia area and they have nested in Sky Valley Benicia as  
 > censused in our Solano Breeding Bird Atlas 2005-2010. As for tricolored  
 > blackbirds, they have not been seen on the BCBC. But I recall them being  
 > seen anecdotally in the marshes along Industrial Way between Lake Herman  
 > road and Hwy 680.

> I hope this helps,  
>  
> Be the change,  
> Robin  
> That's whoo  
> ..+..(o^o)..+ .  
> +...((\_\_\_\_))  
> -----" "-----  
> I use GoodSearch to benefit the American Birding Association --  
> <http://www.goodsearch.com/>  
>  
> On 9/8/2014 2:09 AM, LeyDM@aol.com wrote:  
>> Hi Robin - Received this message on the NSAS email request form. His  
>> email address is Robin\_Lancaster@Hotmail.com  
>> <[mailto:Robin\\_Lancaster@Hotmail.com](mailto:Robin_Lancaster@Hotmail.com)> and his phone number is  
>> 707-745-3645. Do you have any information that can help him? Thanks. -  
>> Diane  
>> Hello:  
>>  
>> This is a plea for your assistance. I am currently writing a response  
>> to the Valero Refinery's request to bring fracked oil via rail to the  
>> Benicia Refinery. We have until the 14th of the month to respond to  
>> the EIR.  
>>  
>> The report lists a number of birds as NOT in the area of the proposed  
>> project - as not within 5 miles of the project. The birds they have  
>> listed as NOT in the area include birds that I have seen at my home in  
>> Benicia - which adjoins the Valero property and the proposed "project":  
>>  
>> Tricolored blackbird (yes, I have occasionally seen as migratory birds)  
>> Golden Eagle (view every year in the fall and winter)  
>> White-tailed kite (kites nest next door!)  
>>  
>> Are there any statistics or data available related to Benicia? I have  
>> been unable to locate the information I need on the Audubon web site.  
>>  
>> Any assistance is most appreciated! Thank you for your consideration.  
>>  
>> Yours, Robin Lancaster  
>>  
>> -----  
>> /Diane Ley  
>> 707-552-2905/  
>  
>

September 9, 2014



To City Leaders in Benicia,

Valero has demonstrated time and time again that accident prevention is the top priority at the Benicia Refinery. Their commendable safety record and continuous VPP Star Site designation since 2006 both affirm that safe practices and procedures are interwoven into everything that they do. I have full confidence in Valero to operate this project with the same commitment to safety demonstrated by current operational standards.

The Draft EIR identifies more than a dozen regulatory agencies that mandate programs to promote workplace safety and prevent accidents both on and off-site. Additionally, the Draft EIR contains information about the Petrochemical Mutual Aid Organization (PMAO), an agreement for emergency mutual aid with other Bay area refineries to expand Valero's response capabilities beyond those already in place. The refinery has an on-site fire department and first responders that train with the Benicia Fire Department.

In July of this year, Governor Brown approved a state budget that includes funding for crude by rail accident prevention, preparedness and response. This is important because it supplements the current federal rail safety efforts with additional safety measures statewide. The budget features funding for the California Public Utilities Commission to hire seven additional track inspectors. Also introduced in the budget is a 6.5 cent per barrel fee on crude coming into the state by rail. 100% of the revenue from this fee will go to the expansion of California's Office of Spill Prevention and Response (OSPR) for prevention, emergency response preparedness, cleanup and enforcement.

Every day we accept the inherent risks associated with living one's life. We also mitigate those risks in a variety of ways such as wearing seatbelts or washing our hands. The Draft EIR comprehensively analyzes the risks associated with this potential project and determines that they are less than significant to deter this project. I strongly request you please approve this document and allow the project to begin without further delay.

Thank you!

My best,

Heidi A. Bucher  
310 Drake Court  
Benicia, CA 94510-1521

**Amy Million - Valero's Crude By Rail Project: Please add my comments to the public legal record and incorporate them as part of the review of its DEIR**

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**From:** Kv Kanee <2013ktlist@gmail.com>  
**To:** <bkilger@ci.benicia.ca.us>, <amillion@ci.benicia.ca.us>  
**Date:** 9/10/2014 12:23 AM  
**Subject:** Valero's Crude By Rail Project: Please add my comments to the public legal record and incorporate them as part of the review of its DEIR

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Brad Kilger, City Manager

250 East L Street, Benicia, CA 94510

[bkilger@ci.benicia.ca.us](mailto:bkilger@ci.benicia.ca.us)

Fax: (707) 747-1637

Amy Million, Principal Planner

Community Development Department

250 East L Street, Benicia, CA 94510

[amillion@ci.benicia.ca.us](mailto:amillion@ci.benicia.ca.us)

Fax: (707) 747-1637

Dear Mr. Kilger and Ms. Million,

Please add my comments to the public legal record on Valero's Crude By Rail Project and incorporate them as part of the review of its DEIR.

*In addition*, please forward my comments to the Planning Commissioners.

As a resident of Sacramento, I live close to the proposed Valero rail project. The 50-car trains will come within blocks of my friends' homes and businesses, the E. M. Hart Senior Center, schools, residences, and businesses. I am very concerned about the impact that a daily, lurching crude oil train will have on my community. If you are convinced that your crude oil-laden trains are trouble-free, then moving your families within 500 feet of this project would instill confidence in said project.

I want the City of Benicia and Valero to make these two problems *top priority* before more trains move through Sacramento:

**1) Provide resources to emergency responders:**

States should assess fees on shippers and carriers to fully cover the costs of providing emergency response services and safeguarding the public from oil trains, and ensure that there is adequate emergency response capacity.

**2) Make additional operational safety and oversight improvements:**

Place unit trains of crude oil and other hazardous materials in the highest risk category of Hazmat shipments.

In the context of the federal rail safety rulemaking, two-person staffing should be required for all unit trains; "Positive Train Control" should be mandatory for all unit trains of crude oil and other hazardous materials; and audio and video recorders should be installed in the cabs of all unit trains carrying crude oil or other hazardous materials.



Additional inspections of crude oil trains are also critical, including the funding necessary for more rail safety personnel. The Federal Railroad Association admits its inspectors inspect less than one percent of the federally regulated railroad system. GAO Government Accountability Office, *Rail Safety: Improved Human Capital Planning Could Address Emerging Safety Oversight Challenges*, report to Congress, December 2013, <http://www.gao.gov/assets/660/659536.pdf>

Thank you,

Katie Kane  
3104 O St.  
Sacramento, CA 95816

Amy Million  
Brad Kilger  
City of Benicia  
250 East L Street  
Benicia, CA 94510



September 10, 2014

To the Benicia City Planning Commission:

I'm writing to request that the City redo a clearly flawed Draft Environmental Impact Report before any consideration of Vallero's Crude Oil by Rail project.

The DEIR is flawed for the following reasons:

- It limits its analysis to only the part of the route from Roseville to Benicia, when it is clear that the trains will come in through areas such as the environmentally sensitive Feather River Canyon.
- It's conclusion that crude oil by rail poses a "less than significant hazard" to upstream communities is unsupported by the evidence contained in the DEIR.
- It avoids recommending measures to reduce the risk of an oil spill or to develop programs that would address conditions created by a spill, as required by the The California Environmental Quality Act (CEQA).
- It incorrectly claims that there is little significant risk of oil spills or explosions, when we know that there have been more such explosions and spills in the last two years than in the previous 40 years. The new crudes are demonstrably more hazardous than the crudes that have been processed in our community in the past, and have led to many horrendous accidents in other parts of North America. Today, in the Benicia Herald, there was a report of a derailment in Benicia. Accidents can and will happen here.
- It doesn't provide information about current conditions on the rail lines the trains would take on the way here. It only says: "Each train, carrying up to 50 cars of crude oil, would pass through the cities of Roseville, Sacramento, Davis, Dixon, Vacaville, Fairfield, Suisun City, and Benicia." (In another section, it state that there will be 100 car trains.)

The bottom line is that fossil fuels are going away, sooner or later, and Benicia will need to adapt, sooner or later. We need to take a longer-term and wider-scope view of the issue. We may reap short-term local gains by approving this project, but the cost is unacceptably high. In doing so, we would be putting our Industrial Park at risk, and inconveniencing them with the long trains. This area should be the economic engine for the next 100 years. We would be ignoring the legitimate concerns of communities up the tracks from us. We would be responsible for putting environmentally sensitive areas at risk. We would be contributing to global warming and thus sea level rise, which poses a clear threat to our community and the rest of the world as well. We would be contributing to decimation of the old-growth forests in Northern Canada.

The symbolic value of our community standing up to big oil would be significant.

It's up to us to guard our own welfare, and also, as a City, to be responsible citizens of California, the USA and our fragile planet.

Thank you for your consideration of my opinions,

Respectfully,

A handwritten signature in black ink, appearing to read "Lawrence Reid Fox". The signature is stylized and cursive, with a long horizontal line extending from the left side.

Lawrence (Larnie) Reid Fox,  
420 East I Street,  
Benicia, CA, 94510

September 7, 2014

Amy Million  
Principal Planner  
Community Development Department  
City of Benicia  
250 East L Street  
Benicia, CA 94510



Re: Valero Crude by Rail Project—Transportation Issues

Dear Ms. Million:

The Planning Commission should not approve the shipment of crude by rail to Valero as it will put at risk not only Benicia but all other communities along the transportation corridor. Additionally, the hazards created are simply too dangerous to be countenanced.

**If the DEIR is approved, the City of Benicia will be unable to control the methods used in shipping crude by rail.**

The DEIR acknowledges that the City of Benicia has no authority to regulate the shipment of crude by rail. As stated at page 3.7 of the report:

UPRR has taken the position that, among other types of regulation, any limitation on the volume of product shipped or the frequency, route, or configuration of such shipments is clearly preempted under federal law.

As stated in Appendix L, the Union Pacific Railroad has taken the position that a local or state government has no authority to regulate any aspect of railroad transportation, including the types of railroad cars, the lengths of trains or the timing of shipments. Accordingly, despite the representations in the DEIR that trains will be limited to 50 tank cars in length, with no more than 2 trains per day and only updated 1232 tank cars used, those limitations are in fact unenforceable according to the case law set forth in Appendix L. In sum, once the City of Benicia approves any type of shipment of crude by rail, it will have lost control over the methods used by UPRR in bringing that product to the refinery. Rest assured that both Valero and UPRR will then use the least expensive and most convenient method of shipment possible, with no regard to the interests of the general public.

**Shipment of crude by rail creates significant hazards for the public.**

Even if the limits outlined in the DEIR were followed, the public still would be at risk from the shipment of crude by rail. The April 30, 2014 Lynchburg, Virginia derailment involved new

1232 tank cars which still ruptured despite the fact the train was traveling at a very low speed. These cars exploded and leaked crude into the James River. Moreover, the DEIR states that Valero plans to transport Bakken shale crude by rail. As stated in the Congressional Research Service's February 14, 2014 paper, *Crude Oil Properties Relevant to Oil Transport Safety, In Brief*.<sup>1</sup>

The growing perception is that light volatile crude oil, like Bakken crude, is a root cause for catastrophic incidents and thus may be too hazardous to ship by rail.

Valero also plans to ship in Canadian tar sands crude, i.e., diluted bitumen. Tar sands crude has proven nearly impossible to clean up when spilled in a waterway, as demonstrated by the 2010 Kalamazoo River spill, which has cost over \$1 billion in clean-up costs.<sup>2</sup> Such spills additionally create serious health problems for nearby residents, as documented with both the Kalamazoo and the 2013 Mayflower, Arkansas spill.

### **The DEIR is too limited in scope in assessing the hazards of shipping crude by rail.**

The DEIR limits its assessment of transportation hazards to the corridor between Roseville and Benicia. See DEIR, Section 4.7.2.2. The DEIR then only considers the likelihood of a spill occurring in this area and concludes the risk is less than significant. See Section 4.7-2. The DEIR in essence defines the problem in such a way as to minimize its potential risks and impacts.

To judge the actual risk, an assessment should be done of the likelihood of a spill from the point of origin all the way through to Benicia.<sup>3</sup> In particular, an assessment should be done for shipments from the Bakken oil fields in North Dakota and from the tar sands fields in Canada, the most likely sources of crude by rail for Valero, given their discounted price. Moreover, to get a true picture of the risks facing the public, the DEIR should not just consider the 2 trains per day Valero will be bringing in but all of the trains shipping crude from those locations into the Bay Area. While the risks created by the amount of crude shipped by any one refiner might be comparatively low, those created by the industry as a whole could be significant.

The DEIR seems to give no consideration to the fact that a 50 car train carrying highly volatile crude through multiple populated areas would make the perfect target for terrorists. Of note is the fact that the accidental Carrollton, North Dakota spill resulted in a 10-story high fireball, just the sort of spectacular event that terrorists crave. The DEIR also does not address the apparent impossibility of defending such trains from attack.

The DEIR also does not discuss whether the communities along the entire rail corridor have adequate resources to extinguish a crude oil fire or whether any community has successfully put

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<sup>1</sup> The entire article, written by energy policy specialist Anthony Andrews, should be read for a very balanced assessment of the issues raised by shipping crude by rail.

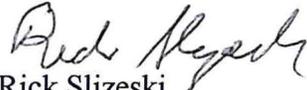
<sup>2</sup> For reasons that are unclear, the report does not address the risk of spills in waterways other than Suisun marsh.

<sup>3</sup> By increasing the scope of area considered, the report would have to consider the potential impact of spills along such significant environmental resources as the Truckee and Feather Rivers.

out a fire of the magnitude of the ones that occurred in Carrollton or in Lac Megantic, Canada. It does not address what would happen in the event of a crude oil fire triggering a chain reaction with another train carrying other hazardous material. Nor does it address the impact a crude oil spill would have if it occurred where the train tracks ran parallel to a major transportation corridor such as Interstate 80. It also does not discuss the wildfire hazards created by shipping such highly flammable material through the drought-stricken West.

In conclusion, the Valero CBR project is a perfect example of a corporation internalizing the benefits of a proposed project while externalizing the costs to the general public. Valero would be able to increase its profit margin by bringing in discounted crude from North Dakota and Canada. The public, however, would bear all the resulting risks and costs. Even if the DEIR adequately addressed the hazards presented, which it does not, the project should be rejected as too risky.

Sincerely,



Rick Slizeski  
363 West Seaview Drive  
Benicia, CA 94510

**From:** Doug McColm <mccolm@physics.ucdavis.edu>  
**To:** <amillion@ci.benicia.ca.us>  
**Date:** 9/10/2014 12:22 PM  
**Subject:** Public Comment on oli trains



Dear Amy - I understand that Public Comment on the Valero crude-by rail project is due soon. I would like the letter below to be included. Thank you.  
Doug McColm

Sept. 5, 2014

Planning Commission  
City of Benicia

Dear Sir/Madam,

The Environmental Impact report on oil trains going to the Bay Area needs to emphasize several things in my opinion:

- \* Local firefighters need to be trained how to deal with derailments.

Catherine Reheis-Boyd of the Western States Petroleum Association says that the information firefighters need will be provided. But training is also needed and needs to be planned for.

- \* The latest technology must be used. No DOT111 tank cars should be employed, for example.

- \* The trains should be run at times that do not conflict with the AMTRAK capital corridor trains. If the AMTRAK schedule is disrupted, many local residents would have to drive to the Bay Area instead of taking the train. These additional automobile trips would further degrade the environment, increasing pollution and gasoline consumption.

Thank you for your consideration.

Sincerely,  
Douglas McColm  
1000 Plum Lane  
Davis, CA 95616



September 10, 2014

Honorable members of the Planning Commission,

I am a chemical engineer and a Benicia resident and am in support of the findings in the Draft EIR and the Valero Crude by Rail project. My husband, also a chemical engineer, and I chose to put our scientific training to work at Valero. We love Benicia and could not have found a better place to live and raise our two young children. We are thankful members of this community, support many of the city's activities, and have spent many hours volunteering in the community. I started the Valero tutoring program at the Benicia Middle School and Benicia High School. We are proud to have been helping students for almost 10 years now.

I can personally vouch for Valero's safety and caring culture. As an employee of Valero, I feel part of a big family that cares about everyone in the community. The safety culture is a way of life for us. When you have this love and caring spirit, you do not want anyone to get hurt. The safety culture is so strong that I even find myself holding on the rail of my stairs at home the million times I go up and down because safety is a way of life for me. Valero would never compromise safety for anything and I know that this Crude by Rail project will be designed as safe as possible.

Our culture is evident in our Annual United Way campaign where employees show that they are not only generous with their time, volunteering over 1000 hrs/yr, but they are also generous with their money. A big percentage of the charitable donations that you hear about in the community come from Valero employee's donation in our annual United Way campaign. The average personal donation between myself and coworkers to our UW campaign is \$1200/yr. This is \$1200 dollars out of our paycheck that we could have spent on the latest tech gadget, family vacation, or whatever our hobby is, but we choose to spend our money in the community helping others who need it most. This is the caring people that work at Valero and the family I am proud to be a part of.

We ship many products by railcar including propane (the most flammable). In fact, according the United States Department of Transportation website, "Rail transportation of hazardous materials in the United States is recognized to be the safest method of moving large quantities of chemicals over long distances." This means it is safer than truck or ship and even nuclear hazardous waste is shipped by railcar.

I can promise that Valero would not be pursuing this Crude by Rail project if it were a safety risk to anyone anywhere. Please look at the facts in the EIR that a third party consultant hired by the city put together and trust us and the railroad to continue doing what we do best.

Thank you for your time,

Karen Muehlbauer



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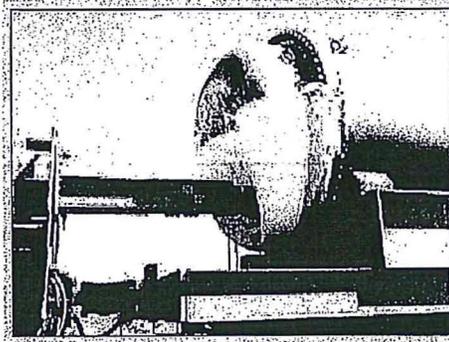
Next Generation Tank Car  
Project (NGRTC)



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# Hazardous Materials Transportation

The production, transportation, and use of hazardous materials are essential to the economy of the United States, Canada, and Mexico, and to their technology-dependent societies. The increased harmonization of regulations, better data, and new technology, and cooperative efforts between shippers, carriers, tank car builders, and governments influence safe transport practices for hazardous materials.



Rail transportation of hazardous materials in the United States is recognized to be the safest method of moving large quantities of chemicals over long distances. Recent statistics show that the rail industry's safety performance, as a whole, is improving. In particular, the vast majority of hazardous materials shipped by rail tank car every year arrive safely and without incident, and railroads generally have an outstanding record in moving shipments of hazardous materials safely.

For all hazardous materials, in the 12 years from 1994 through 2005, hazardous materials released in railroad accidents resulted in a total of 14 fatalities. In the same period, hazardous materials released in highway accidents resulted in a total of 116 fatalities. Continuous sponsored industry and government improvements in rail equipment, tank car and container design and construction, and inspection and maintenance methods have resulted in reducing derailments, spills, leaks, and casualties while the volume of traffic increases.

## Objectives

- Recognize incident trends by analyzing the accident/incident database and find, through research, ways to minimize the incident rate of leaks, spills, and damage to the environment due to hazardous materials releases.
- Lower the potential for loss of lading and reduce the exposure of hazardous materials to the environment and population in the event of a train accident caused by a derailment.
- Improve methods of inspection for tank car damage through the investigation of promising non-destructive detection technologies.
- Investigate emerging technologies and take advantage of national and international research programs that will increase the safety and efficiency of rail transportation.
- Continue to provide support to the Office of Safety's goals through the development of regulations and standards, as well as take a more active role in the tank car design approval process as a result of the changing roles of industry partners as the industry evolves.

## Goals

The hazardous materials research program includes fostering innovation throughout the industry, helping development of new regulations and design standards that improve the safety and integrity of tank cars and other packages carrying hazardous materials, and continuing growth of new research programs that satisfy the need of the industry and government.

Fostering innovation. Throughout the years, FRA has had a substantial influence on technical research and development. These public research and development programs have helped the development of new technology by advancing basic knowledge and understanding. The information generated by this research is the most important product, helping to improve the new product or process to improve the package.

Regulations and standards. Since regulation of private activity is accomplished by specifying a limited number of conforming designs and processes, considerable economic pressure exists to continue use of the technology embedded in those designs and processes. It is the nature of government regulations that acceptable designs will not generally include the latest and most efficient technologies. FRA wants to devise strategic and tactical plans that include getting involved in areas where a clear societal benefit exists, causing the least disruption to the economic process. These plans will include new technologies to improve the tank car's integrity, as well as safe and rapid transport of hazardous materials.

### See Also

- FRA Hazmat Technical Reports
- Miscellaneous Hazmat Papers
- Hazardous Materials Rail Vehicle Security Monitoring System

**Amy Million - Valero CBR: Regarding derailed Union Pacific engines in Benicia Sunday 9/7/14**



**From:** "BenIndy - Roger Straw" <rogmail@beniciaindependent.com>  
**To:** "Amy Million" <AMillion@ci.benicia.ca.us>, "Brad Kilger" <bkilger@ci.benicia.ca.us>  
**Date:** 9/10/2014 2:05 PM  
**Subject:** Valero CBR: Regarding derailed Union Pacific engines in Benicia Sunday 9/7/14

Brad and Amy – For the public record on Valero Crude By Rail: Please enter my remarks on the derailed train engines in Benicia last Sunday, September 7, 2014, as well as the Vallejo Times-Herald story which follows.

Jim Kirchhoffer spotted crews working on an apparent derailment in Benicia's Industrial Park on Sunday morning, 9/7/14, and brought it to my attention. I notified the media, and the story was picked up by the Vallejo Times-Herald and the Benicia Herald. Though minor, this derailment raises significant questions about the safety record of Valero and Union Pacific in and around the refinery. Set in context, this accident provides a cautionary tale on railroad safety in the Industrial Park. There have been two other recent Benicia derailments, one on 5/17/14 and another on 11/4/13. ***Do the math: that's 3 derailments in our Industrial Park in less than 10 months!***

**Questions for the DEIR Consultant:**

- Are we to expect a minor derailment every 3 months or so?
- If rail traffic volume rises dramatically with the addition of two 50-car oil trains daily (in and out) – will the frequency of derailments increase?
- What would happen if an oil train pulling "1232 tank cars" were to experience a "minor derailment" similar to any of those we have seen in recent years?

**Roger Straw**  
 Benicia, CA

September 9, 2014 <http://beniciaindependent.com/union-pacific-investigates-benicia-derailment/>  
 Repost from [The Vallejo Times-Herald](#)

## **Union Pacific investigates Benicia derailment**

### **Two locomotives came off the tracks Sunday near port**

*By Tony Burchyns, 09/09/2014*

**BENICIA >>** Union Pacific Railroad is investigating what caused two of its locomotives to come off the tracks in Benicia on Sunday, a spokesperson for the rail operator said Tuesday.

The locomotives were being used for switching operations and were moving rail cars near the Benicia port when each had one wheel set come off the tracks at about 2:30 a.m., Union Pacific spokesman Aaron Hunt said. The engines were attached to each other when the derailment occurred, he said.

Both were re-railed several hours later and moved to Union Pacific's maintenance yard in Roseville, where an internal investigation was launched to determine what caused the derailment, Hunt said. He added the findings would be reported to the Federal Railroad Administration.

"Fortunately there were no injuries and there was no damage to our track infrastructure," said Hunt, adding he did not know how fast the locomotives were traveling.

Benicia police got a call from Union Pacific at 2:38 a.m. Sunday reporting the incident, but there was no request for assistance and no emergency response by the city, Lt. Scott Przekurat said.

Hunt said that because the derailment happened in the railroad's automotive yard along Bayshore Road — where finished automobiles that arrive by boat are transported by rail to other places — there was no impact to motorists or other people in the area.

On May 17, two rail cars carrying petroleum coke derailed near the Valero refinery. Prior to that, three rail cars carrying petroleum coke came off the tracks on Nov. 4, 2013.

No hazardous materials were spilled in those incidents, but the derailments have raised eyebrows in light of the Valero refinery's plan to bring in up to 70,000 barrels of crude oil daily on Union Pacific tracks.

Asked whether the locomotives involved in Sunday's incident could be used to move tanker cars, Hunt said they were "switching locomotives" and are not the same as those used to move trains from city to city.

"Safety is our primary focus at Union Pacific," Hunt said. "We invest time, human power and substantial capital to minimize derailments across our 32,000-mile network."

Amy Million, Principal Planner  
Community Development Department  
250 East L Street  
Benicia, CA 94510



**RE: Valero Benicia Crude by Rail**

Dear Ms. Million:

I am the owner of Ruszel Woodworks located at 2980 Bayshore Rd. I need to address several issues concerning the DEIR, and specifically the Transportation Impact Analysis.

The DEIR understates the impact of the project to my business and the others in the industrial park. The conclusion that this project will have less than significant impact on the local traffic is absolutely false. The Transportation Impact Analysis is flawed because the auto and truck traffic data was collected at a different time from the when the rail traffic was observed. No actual correlation between rail crossing and blockage times and were observed, only inferred.

The analysis is biased and comes to conclusions that are deliberately misleading. For instance:

3.1 Project assumptions

“...Therefore, each 50 railcar train delivery would block traffic on Park road for approximately 8 minutes 18 seconds. The estimated blockage time on park road due to the proposed project is lower than other existing observed train crossings. The April 2013 maximum observed train crossing duration was 16 minutes and 17 seconds, which is nearly double the blockage time of the train crossings due to the project.”

Based on the data from the 1 week train crossing study, (pp. 1343 – 1349) it would be more honest to say;

Of the 58 crossings that occurred during the week, only 5 crossings exceeded 8 minutes.  
The average crossing duration is less than 3 minutes.  
Less than 8% of current crossings exceed 8 minutes.

With the project, railroad crossings will:  
Increase from 58 to 86 crossings per week, or 150% increase in crossings.  
Increase to from 5 to 34 crossings per week over 8 minutes or 680% increase in long crossings.

Because the study did not include my driveway, I must assume similar numbers to the data collected at the ironworker’s driveway.  
Currently , based on the same data, trains block the driveway, on average, 11.74 minutes a day. –  
With project trains of 50 cars, our access will be blocked a minimum of 85.7 minutes a day.

In an emergency, the chance that our driveway is blocked increases by 730%

This is a significant impact.

Based on this poorly accumulated data and faulty analysis, the study can come up with pp.1324 Figure 4-2. Cumulative Plus Project Queueing Analysis depicting graphically a reduction in maximum queueing length.

How is it that a 427% increase in rail traffic can be shown to reduce traffic impacts?  
(increase calculation is based on current number of cars passing the ironworkers driveway. Pages 1343- 1349)

The project does not eliminate any of the rail traffic currently occurring.

All of the analysis considers only 50 car trains and perfect, seamless operations, yet we know that the railroad may bring in trains of any length, and rail operations are not seamless. Indeed, the rail improvement extending into, and past the port area, would allow a unit train of over a mile in length to be brought in off of the mainline. Unit crude trains of all lengths are likely to be shuttled and stored in all the areas of the industrial park, causing great traffic impacts at all rail crossings in the park.

A new Transportation Impact Analysis must be conducted with the following:

- Rail and vehicular traffic data collected simultaneously
- Study area including all crossings in the industrial park
- Crude unit trains stored on any sidings in and around the industrial park
- Analysis assuming full unit trains pulled off the mainline
- 24 hour operations with no restrictions on rail movement

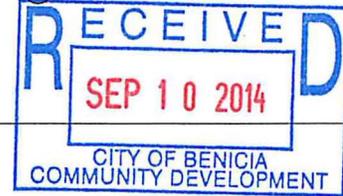
Thank you for your consideration

Jack Ruszel

**Amy Million - Valero CBR project - Draft EIR**

---

**From:** "Meldner, Chris" <Chris.Meldner@valero.com>  
**To:** "kbilger@ci.benicia.ca.us" <kbilger@ci.benicia.ca.us>, "amillion@ci.benicia.ca.us" <amillion@ci.benicia.ca.us>  
**Date:** 9/10/2014 4:12 PM  
**Subject:** Valero CBR project - Draft EIR



Dear Planning Commissioners:

It took almost a year for the City's chosen experts to analyze the Valero CBR project and create the Draft EIR. Given their expertise and the length of time taken to ensure the report was thorough and complete, I ask you to please affirm Valero's request to begin transporting crude by rail.

Most project opponents have identified railroad safety and operations as the basis for their concern. As the Draft EIR details extensively, the Valero Refinery has agreed to go above and beyond federal standards to ensure rail safety, including the use of 1232 tank cars rather than DOT-111s. It should be noted, however, that the Draft EIR also identifies that this issue is federally preempted, meaning that the City of Benicia and the Valero Benicia Refinery are quite limited by jurisdiction when addressing rail operations.

As stated in Section 3-26, "Under the Commerce Clause of the United States Constitution, no state or local government may impose laws or regulations that unduly burden interstate commerce. Because railroads are a key component of the system of interstate commerce, most aspects of railroad operations are governed exclusively by federal law."

I appreciate the time and effort the City of Benicia put into compiling the Draft EIR and understand that the federal government places certain restrictions on the scope of City and State jurisdiction in this matter. I commend the City's Draft EIR for addressing railroad operations and safety to the greatest extent possible and ask that the DEIR be approved so the project may begin.

Thank you,

Chris Meldner  
Valero Benicia Refinery  
Manager New Construction & AFE Maintenance  
T. 707-745-7426

Amy Million, Principal Planner  
Community Development Department  
250 East L Street  
Benicia, CA 94510



**RE: Valero Benicia Crude by Rail**

Dear Ms. Million:

CEQA requires the DEIR to evaluate likely outcomes of a proposed project. The following factors are key to evaluating the broader, likely outcome of this project.

1. For many years, the oil industry as a whole has made it clear, they want to move the Canadian tar sands, and the Bakken crude to the coasts as quickly as possible to export. In fact, just last month, President Barack Obama used the power of his Executive Office to allow the U.S. Commerce Department to issue a ruling that all but terminates a four-decade Congressional restriction against exporting U.S. domestically produced crude oil.

2. In 2010 Valero applied for, and recently was set up as a free trade zone, protecting them from federal trade tariffs.

The Vallejo Times Herald quoted Valero Energy Corp. spokesman Bill Day:

"It is something that would help the refinery be more competitive." Day added that he is prohibited from releasing detailed information about the company's business plans. But he said the move could "assist with exporting of finished fuels" to other countries, where demand is rising.

3. Valero is limited by their air quality permit to a maximum amount of oil it can refine on any given day. But - there is no restriction on how much oil can be brought into or shipped out of the refinery.

**4. UNION PACIFIC RAILROAD STATEMENT RE. PREEMPTION:**

"Union Pacific will not agree to any limitation on the volume of product it ships or the frequency, route or configuration of such shipments. Such restrictions are clearly preempted under federal law."

5. According to this proposal, Valero's port asset is being idled. Return-on-investment theory suggest that is not in their best interest.

The likely outcome is -

- Valero will bring in as much crude as is physically possible.
- Union pacific will bring in crude trains in whatever configurations and at whatever times they see fit.
- Valero will run the refinery at capacity - whether there is the domestic demand or not.

- Additional crude stocks will be sold overseas and shipped out of the port.
- Ship traffic is likely to **increase**
- Additional pollution will result from maximum refining, new rail traffic, and no reduction in ship traffic.
- The claim of environmental “benefits” stated in the DEIR will not only be negated, but additional pollution is almost guaranteed.
- **Every negative health, safety and environmental impact addressed in this report will be substantially increased.**
- The Benicia industrial park is likely to become a poorly designed rail yard, causing gridlock, driving out existing business and deterring new investment.
- New businesses will be less likely to locate in Benicia, reducing future tax base.
- Notoriety as a crude shipping port will undermine tourist draw.
- Valero may find they can be more competitive by not refining at the Benicia refinery and use the facility as a crude shipping port only. In this case, the city will lose jobs and income.

This EIR does not address these very likely outcomes, and must be revised and re-circulated with these impacts addressed.

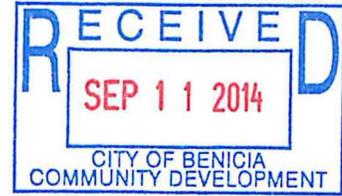
Sincerely,

Jack Ruszel

**Amy Million - Comment on Valero Crude by Rail Project**

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**From:** Bernard Tatera <oceandance@gmail.com>  
**To:** <amillion@ci.benicia.ca.us>  
**Date:** 9/10/2014 7:34 PM  
**Subject:** Comment on Valero Crude by Rail Project



Bernard S Tatera Jr. P.E.

280 Carlisle Way, Benicia CA 94510

707-745-2606 oceandance@gmail.com

September 10, 2014

To : Amy Million, Principal Planner

Community Development Department

City of Benicia

250 East I Street

Benicia, CA 94510

Valero refinery in Benicia should be allowed to receive crude by rail with the provision that the rail cars that will be used to transport the petroleum crude on this route is the enhanced safety specification tank car referred to by AAR as CPC-1232. This is an industry standard agreed to in 2011 that exceeds current federal regulatory requirements for DOT 111 tank cars transporting crude oil.

The Roseville to Benicia route is 69-miles long with signaled track that is mostly

FRA class 5 with some class 3 track. The US railroads' accident rate has been declining for decades and this trend is likely to continue due to continued investment in infrastructure and various new technologies that are being developed to improve operating safety. Recent improvements in rail track on the proposed route by Union Pacific also would indicate the consideration to safety by the rail transporter.

I am satisfied with the results of UNIVERSITY OF ILLINOIS AT URBANA - CHAMPAIGN RAIL TRANSPORTATION AND ENGINEERING CENTER STUDY that show that the expected occurrence of a crude oil train release incident exceeding 100 gallons between Roseville and Benicia is approximately 0.009 per year, or an average of about once per 111 years.

The comments from other Benicia residents highlighting the Catastrophic train accident and explosion in Lac-Megantic Quebec Canada in my opinion are irrelevant as the Canadian train derailment was a result of an unattended train parked on a 1.2 percent grade that ultimately traveled downhill unattended at high speed and resulted in a tragic crash. These conditions would not be expected to occur on the railroad

route from Roseville to Benicia.

Benicia is a town that is fortunate to have an established industrial base. The city leaders in the past took action to establish the industrial park when the Benicia Arsenal closed. I hope that city leaders today have the vision and foresight to allow continued operations and expansion of business at the Industrial Park in order to allow the city of Benicia and its residents to continue with economic vitality and have the opportunities and safe community we all have all have grown to expect living in Benicia.

Respectfully,

Bernard S Tatera Jr.



Dear Planning Commission,

I have been a resident of Benicia for the last 7 years and have worked at Valero Benicia as a Contractor for the last 11 years. Growing up in Solano County my entire life has revolved & or has been supported through the Oil & Gas industry as my father was Exxon Benicia before it became Valero. I understand the importance of SAFETY & Jobs that this Refinery has provided for its Community as well as their employees & contractors. As the Industrial Manager & VPP Coordinator for our Company, I am certified by Cal OSHA under their STM program. For those of you that don't know what VPP is, VPP is a Star Certification recognizing the companies who have implemented an effective safety & health management system in relationship with management, labor & OSHA. Valero has been recertified twice in the last 9 years & we ourselves received our recertification just last year. There are 77 companies in California that have earned the Star Site recognition from Cal/OSHA four of them are in Benicia & ALL FOUR are at Valero Benicia Refinery. I can honestly say that as many safety audits & evaluations that I do Valero Benicia IS the SAFEST Refinery I have ever been in; They not only emphasize the SAFETY & WELL BEING of their employees & contractors but the COMMUNITY as a whole.

In addition to helping us to achieve energy independence, this project will also provide local jobs and tax revenues for the City of Benicia. As a resident, the safety and livelihood of our community is very important to me. CBR will increase safety, air quality and provide additional job opportunities and increased funding for City services. With all due respect, as our City leaders, I ask that you please certify the Draft as complete and approve this project to allow Valero to begin transporting crude by rail.

Thank you.

Maria Ilomin  
Safway Services, LLC.  
Industrial Manager & Trainer – Western Division  
VPP Coordinator  
VPP STM Cal OSHA  
VPPPA Region IX Board of Directors  
536 Stone Rd., Suite H  
Benicia, CA 94510  
(707) 332-7510 cell  
Maria.ilomin@safway.com

Kathy Kerridge  
771 West I Street  
Benicia, CA 94510

Brad Kilger  
Amy Million  
City of Benicia, Community Development Department  
Benicia, CA 94510



September 10, 2014

Re: Comments on Valero's Crude by Rail Draft Environmental Impact Report

Valero is very secretive about what type of crude it will be processing, but we do know from the lists that the DEIR provides that it wants to bring in Canadian Tar Sands Crude and Bakken crude. What type of crude oil will be brought in and in what quantities? How can any discussion of risks be made without knowing what and how much will be transported?

The DEIR claims there will be a reduction in GHG here by this project, but there is no discussion or analysis of how that will be offset by bringing in tar sands crude from Canada which releases much more GHG in its production than regular crude. How much more GHG are emitted because of the tar sands production and how does this offset any GHG reduction because of the switch to rail?

Regionally we can focus much more on the safety of the transport of these extreme crudes. The DEIR only looks at safety between Roseville and Benicia as if these trains originate in Roseville. That is an extreme deficiency. Every train route going into California passes through mountains. We know that these trains will either come across the Donner Pass, through the Feather River Canyon, or through Dunsuir. That is where the railroads go. Every rail line into Benicia must go through a "high hazard area" designated by the California Office of Emergency Services. There is no discussion of rail safety in these areas in the DEIR. What are the rail safety issues in the high hazard areas? What is the risk of derailment? Dunsuir had a horrendous rail derailment not so long ago that destroyed all life in the river for about 20 miles. The rail lines in California go over 7,000 water crossings. 5 cups of oil can create sheen on 1 acre of water. I haven't yet come upon anything in the DEIR about this risk. What are the risks to California's water supply if there is a derailment and spill? What are the fire risks if there is an explosion in the mountains as a result of a derailment? What are the cumulative risks of the crude oil trains from all the other refineries on these high hazard areas? How will the bridges that all of these trains, not just the proposed ones from this project, fare under this huge additional amount of weight?

Bakken Crude has been involved in too many fiery and explosive derailments to keep track of. The National Transportation Safety Board said in January 2014 as far as routing of these trains, "Where technically feasible, require rerouting to avoid transportation of such

hazardous materials through populated and other sensitive areas.” Yet these trains will go through Sacramento, Davis, Fairfield, Dixon, Truckee, and Benicia as well as numerous other communities. The idea of a derailment in a town like Davis, where the tracks run parallel to downtown, or a fiery derailment on the mountain passes going through the Sierras during a time of high fire risk, or a derailment over the American or Sacramento River is too horrible to contemplate. There is no discussion in the DEIR of the risk of derailment using the last two years of information. The DEIR cherry picks the time period for discussion despite the fact that this type of crude was not transported much by rail before 2012. What are the risks using the last 2 years of data? What are the risks of an oil spill given the huge increase in oil spills over the last two years? More oil was spilled in 2013 than in the prior 37 years combined. What is the risk given this phenomenal increase in spills? The DEIR states the risk is going down despite this information from the U.S. Pipeline and Hazardous Materials Safety Administration.

There is no discussion of the gravity of the risk. A spill that spills 10 gallons of oil is treated just like a derailment that kills potentially hundreds of people. Where is any weighing of the risks? The town of Davis has experienced two derailments in recent years and has a dangerous curve. Where is the discussion of the risk to Davis? How can the risk of derailment and spill be one every 111 years when there have been two derailments in Davis recently?

In section 4.7-2 The DEIR states that “this analysis focuses on derailments that result in a release of crude oil.” What are the risks of a derailment that results in an explosion? What are the risks to the tens of thousands who live within a mile of the tracks? What are the risks to those in closer proximity? What are the risks to the refinery if there is an explosion there? What are the risks if these rail cars are the subject of a terrorist attack? What are the security measures in place outside of the Valero refinery where the cars will travel and could be stored?

There was a derailment and spill in the Suisun Marsh. The rail car was simply left there and not removed. That makes at least 3 derailments in the last 50 years on these lines that I know of. How do these facts square with the 1 in 111 year threat the DEIR states? There have been 12 derailments of Union Pacific Cars in Martinez since 2004. One derailment in 2007 involved 10 empty cars flying off the tracks into backyards in Martinez. There have been 3 derailments in Benicia in the last 10 months. Given all of these derailments what is the risk factor? Given the potential increase in crude by rail by other refineries in the area what is the cumulative risk? How will the risk increase with each additional unit train?

The DEIR states that Valero will use the newer 1232 railcars, but these split and broke open in the recent derailment in Lynchburg VA on April 30 of this year. There is no real analysis on why they would be safer in light of this recent accident. The DEIR trusts that Valero will keep its word and use these cars which it claims are safer, but there is no discussion of how this will work when the cars are loaded thousands of mile away. How were the 1232 cars tested? What speed were they tested at? Have they been found to be puncture proof if in an accident at speeds under 20 miles an hour? Have they been found to be puncture proof in an accident at speeds under 30 miles per hour? Have they been found to be puncture proof in an accident at speeds under 40 miles per hour? Have they been found to be puncture proof in an accident

at speeds under 50 miles per hour? What is the highest speed the trains will be traveling at? What is the history of an accident going around curves on the tracks? If a train derails in Davis on the curve (as at least 2 have) what speed will it be traveling at and is the car puncture proof at that speed?

The DEIR states that transportation will get safer since the PHMSA is considering more stringent regulations. It fails to mention that the government has known since the 1990s that the DOT111s are unsafe and yet they are still being used. Where is the analysis of the fight both the railroads and oil industry are waging to prevent further safety measures from going into effect and how that will impact the safety of the project? What will Valero do if the 1232 cars are deemed unsafe and new regulations require much better cars? How long would it take for Valero to replace its fleet? How long would the community be at risk before all new cars are replaced? Why isn't postponement of the project until a safe rail car is developed and all old cars are replaced one of the mitigation measures?

Why is Alternative 1, reducing the number of rail cars in half, not feasible? What would Federal preemption have to do with the number of cars Valero brings into Benicia? If Valero had started out with one 50 car train a day would the Federal government have forced it to double the number?

At one time trains put buffer cars carrying nonhazardous materials in between cars carrying hazardous material so in the event of a derailment there would be a buffer. Why isn't this discussed as a potential mitigation measure?

Why is there no discussion of positive train control as a mitigation measure? Why isn't it discussed in the DEIR? Why is degasification of the Bakken crude at its source not discussed as a mitigation measure? This is a technology in use in other states.

The DEIR states that this project will be safer since the railroads have to notify the State Emergency Response Commission of each state so adequate emergency response procedures are in place. When will this notification take place? How far in advance will it be or will it be after the fact? The DEIR does not discuss the fact that most of rural California has no emergency response teams and that in fighting a Bakken Crude fire there is nothing much they can do except watch it burn. What is the effect of a derailment and fire in the many mountainous areas of California during a dry period? Who will respond if there is not emergency response team in the area? The DEIR does not say. What will happen in an area with no emergency response team?

The DEIR states that if there is a spill Valero will activate its Incident Command organization and Valero would utilize NRC Environmental Services. Where is the discussion of how a spill of tar sands crude would be handled? Because of the unique characteristics of the diluted bitumen normal spill containment won't work. What method has been developed since the huge failure in cleaning up the tar sands spill in the Kalamazoo River? This spill cleanup cost approached \$1 Billion. Who will pay for a cleanup of that magnitude? What if there is a tar sands spill in the

Bay, Suisun Marsh or the any of the rivers the tracks go by? How will it be cleaned up? What new technology has been developed to do this? What are the specific plans for a cleanup of a tar sands spill? How will a spill of oil affect groundwater? If there is a spill in the industrial park will it seep into the soil? Could it poison the groundwater? What would be the hazards in a cleanup? Sometimes the cleanup creates more problems than the spill?

If tar sands are refined what are potential problems with the smell? How will this impact other commercial businesses? How much additional pet coke will be produced? How will it be disposed of? What kind of additional particulate will people be exposed to? How will the particulate matter that fall on the tracks be cleaned up?

Why is there no mitigation of building new tracks that reroute these dangerous trains around populated areas? Where is the cost analysis of this compared with the profit Valero will make from this new source of crude?

In section 4.7.5 there is a discussion of general rail safety. In that it states that UP does not leave trains unattended unless specifically authorized. What are their guidelines for this? This is of particular concern since it was an unattended train that caused the 47 deaths in Quebec. It says a plan will be developed to specify locations and circumstances where a train can be left unattended. Why isn't that plan part of the DEIR? It should be specifically stated so it can be reviewed.

These questions need to be answered before this project can go forward.

Sincerely,

Kathy Kerridge



**Subject: Valero's Crude-by-Rail Infrastructure Improvement**

**Date: September 10, 2014**

Dear Planning Commission Members,

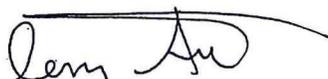
Your consideration of Valero's proposed infrastructure improvements in support of the Crude-by-Rail project has significance well beyond the confines of community of Benicia. The area's refineries provide vital resources that support the needs of our transportation system and provide economic strength through employment and direct payment of taxes. I urge the Commission to take an unbiased look at the contributions of the Valero Refinery and vote to support their efforts to serve the region's economy and quality of life. **Please vote to support the Crude-by- Rail project.**

Twenty-five years of residence in Benicia has given me a great sense of pride in the community and their support for a mixed residential and industrial economy. Benicia's balanced industrial and residential development is a model that other cities in California should emulate. Valero has been a responsible part of this model and their continued presence should be supported. The utilization of all potential sources of refineable product is vital to both the success of the industry and to the regions supply of petroleum. Restrictions on petroleum from particular sources will inevitably lead to reduced supply and higher prices at the pump. Unwise decisions with respect the industry may jeopardize the industries presence in the East Bay. For example, one would not have envisioned Tesla's departure from the San Francisco Bay area: but alas, Nevada, not California has been chosen for their new plant (undoubtedly the result of many well intentioned restrictions).

Over thirty years in the Environmental Industry provides a perspective on industrial activity and associated risk. The ESA Draft Environmental Impact Report does not identify any unacceptable impacts despite their classification of some relatively minor issues as "potentially significant." Traffic congestion in the Industrial Park, much of it refinery related, is hardly a reason to disapprove critical plant upgrades. Certainly the City of Benicia can come up with a workable solution that does not involve restrictions to nighttime only operations. Air quality impacts due to rail line activity along an existing rail corridor would seem like predictable phenomena: it is not clear why that constitutes a potentially significant impact. Similarly, ascribing potentially significant impact to spills and accidents at an already operating refinery appears excessive and would, in reality add only a minor "incremental" element of risk. Wet lands impacts are much the same with existing mitigation measures being adequate. I urge the Planning Commission to view the proposed project as informed and knowledgeable citizens and **support Valero's proposed infrastructure improvements.** There are numerous county, State and Federal agencies that monitor rail safety, air and water quality: not to mention industrial safety. Let these agencies do their jobs. Benicia should look to the future and support the region's economy.

Please consider Valero's good record as an employer and its contribution is for our community. As a local employee with CB&I, and a worker in the environmental industry, I strongly support this project as Valero provides jobs, supports our economy, supports local charities, and shows great concern for the safety of Benicia. I think the responsible thing is to approve this project and keep Valero thriving. Please vote to approve crude by rail.

Thank you, Tim Ault – California Professional Geologist

 9-10-2014



**MAIN OFFICE**  
5141 Commercial Circle  
Concord, CA 94520  
PH: 925.685.6799  
FX: 925.685.6851  
LIC. # 199902

**Southern California**  
13052 Dahlia Street  
Fontana, CA 92337  
Ph: 909.350.0474  
Fx: 909.350.0475  
LIC. # 199902

**Pacific Northwest**  
18644 72nd Avenue  
Kent, WA 98032  
Ph: 425.251.1684  
Fx: 425.251.6548  
LIC.# CONCOCCO44LS



September 10, 2014

Amy Million  
Benicia Planning Commission  
250 East L Street  
Benicia, CA 94510

Benicia Planning Commissioners:

As a member of the business community in Benicia, I understand the costs and responsibilities associated with project development and approval. After a review of the Draft Environmental Impact Report for the Valero Crude by Rail Project I want to offer my support for the proposed improvements and to commend the City of Benicia and the experts chosen for their thorough analysis provided in the Draft EIR.

After reading the report, there should be no doubt that the environmental impacts of such a project are taken very seriously and have been given careful consideration by Valero and the City of Benicia. Additionally, with the boom in domestic energy throughout our nation, our local economy cannot afford to fall behind the industry standard. With over \$3 billion in economic activity in our region over the last eight years, Valero is a vital partner in the economic vitality of Benicia and the Bay Area as a whole.

By reducing the overall environmental impact of their business, providing additional well-paying jobs and keeping up with state of the art for energy production in America, Valero will help to ensure the success of Benicia and surrounding communities. Please certify the Draft EIR so that the project can move forward.

Sincerely,

Darren Ratekin  
The Conco Companies



## **Valero Crude By Rail Project**

**Comments prepared for speaking at August 14<sup>th</sup> Commission Meeting but presented only a short version – Below are my full comments**

My name is John Lazorik. My wife and I have lived in Benicia for 25 years where we raise our two children, and I share your desire to ensure that Benicia remains the safe, clean and healthy community that we all enjoy.

I hold a masters degree in environmental management and have worked in the environmental field for over 27 years, the past 10 years, as an environmental engineer at Valero. I understand the risks associated with the handling and transport of flammable materials, but I also know the regulations, procedures, and resources that are in place to minimize those risks and to respond to them in the unlikely event of an environmental incident.

I work side-by-side with some of the most dedicated, ethical and talented people in the industry. This extends not only to my fellow Valero employees, but also to our contractors and the regulatory agency staff with whom we work with on a daily basis.

It is an enormous responsibility to operate a petroleum refinery in the San Francisco Bay estuary, one of the world's most ecologically complex waterways... It's a responsibility that we take very seriously. I am one of about two dozen environmental, health & safety staff at Valero whose sole responsibilities are to ensure that the refinery manages its business in an environmentally sound manner and with no harm to our employees and the people of our community.

My wife and I choose Benicia as our home as do many other Valero employees. Like you and your families, we all breathe this air, we drink the water, we fish and recreate in and around the Bay.... We are deeply vested in this community.

We take great pride when we hear our regulators compliment us on our extraordinary environmental stewardship or when our contractors share with us that they feel safer in our refinery than any other place they've worked in..... and we hear these comments quite often.

As I heard John Hill say at one of the public hearings at the Iron Workers hall, "if you're going to have a refinery in your city... you want it to be Valero". I wish all of you really understood how true that statement is. Our corporate culture emphasizes community involvement, safety performance and strong environmental stewardship. This is backed by years of us demonstrating the sincerity of these values, as many of you know.

This crude by rail project is a critical step in Valero remaining strong and viable in this extremely competitive and challenging California energy market.

The health of the City and its industrial constituents are very closely linked. As Benicians who TRULY care about the overall health of our town, the focus should not

be solely on preventing this project from proceeding, rather, we should be working together to identify the REAL impacts associated with the project and determine the appropriate mitigative measures necessary to protect our community.

This EIR was a massive undertaking by the City and its consultants, which pulled together subject matter experts from multiple disciplines. It is time to replace fear, drama, and inaccurate speculation with the facts that are presented in this document. And basing decisions on facts, one can clearly arrive at the conclusion that the crude-by-rail project has both direct and indirect benefits to Benicia, benefits that outweigh the risks.

When it comes to this project, there are many here who believe the only tolerable risk is zero-risk, yet I'm fairly certain that no one here lives a zero-risk life. How many here with children or pets have power tools, medications, household cleaners, or other items that could prove harmful or even fatal if accidentally ingested or could otherwise cause great injury? These are things that pose real dangers, yet we choose to have them in our homes, taking what we believe to be reasonable steps to mitigate the hazards. This same concept of risk management also applies to the crude by rail project.

Crude-by-rail has gotten all the attention it deserves and with well designed off-loading facilities, state-of-the-art railcars, increased rail safety measures to prevent accidents, and emergency response preparedness, North American crude oil will be brought safely to our refinery just as crude oil is currently brought here safely by marine vessels and by pipeline.

It is important to understand that ANY of the North American crude oils made more readily available by this project fall squarely within the spectrum of hazardous materials routinely moving through Benicia today. It is neither the least hazardous, nor is it the most hazardous. The fact is, ALL hazardous materials transported in and out of our town must be managed and transported with great care, and history has shown that this can be accomplished without incident.

As a Benicia resident, it is important for ME to know that a project such as crude by rail will not jeopardize the safety of my family or cause harm to this precious environment that we all enjoy. With that said, I fully support this project and am confident that Valero, Union Pacific, and all key stakeholders will implement this project with great care and with the appropriate level of safeguards.

Donna Paul  
328 22<sup>nd</sup> St.  
Sacramento, CA 95816

September 11, 2014

Brad Kilger, City Manager  
250 East L Street, Benicia, CA 94510

Amy Million, Principal Planner  
Community Development Department  
250 East L Street, Benicia, CA 94510



Dear Mr. Kilger and Ms. Million,

Please add my comments to the public legal record on Valero's Crude-By-Rail Project and incorporate them as part of the review of its DEIR. *In addition*, please forward my comments to the Planning Commissioners.

As a resident of Sacramento, I live near the tracks where the proposed Valero rail project trains would pass and am very concerned about the impact of these trains.

I am especially concerned about public safety as I'm sure you are. But the oil industry is lobbying strongly against additional safety precautions. I hope more attention can be paid to the proposed recommendations for rail track and bridge inspections and tank car improvements. Additionally, the combustibility of the type of crude that is proposed to be transported requires additional infrastructure, lower speeds and safer routes.

I am very concerned about the potential of a large accident. And on this anniversary of 9/11, I can't help but think about the possible destruction terrorists could cause by simply derailing or targeting an oil train.

Please do not approve the Valero plan without additional safety precautions as recommended by Representatives Garamendi, Matsui, Miller and Thompson.

Sincerely,

Donna Paul



**September 10, 2014**

**ATTN: CITY OF BENICIA, Planning Commission**

**RE: CRUDE BY RAIL**

Please approve this project as it conforms to the long-term objectives of the Benicia Industrial Park; jobs, city revenue, and community support.

Benicia High School and college students look to our Industrial Park for jobs.

Our charities depend on Industrial Park generosity.

Crude By Rail is good for Benicia.

Thank you,

  
William & Delena Darnell

342 Lori Drive

Benicia, CA 94510

Sept. 8, 2014



Dear Amy Million, Principal City Planner, and Planning Commissioners of Benicia, Ca.

Although well researched commentary has already been offered by written report and public testimony at the hearings in opposition to the DEIR re: Valero's CBR Project by many from Benicia and the up rail communities, I want to thank you once again for the extended opportunity to share some personal reasons as to why I am still opposed to this project. After reading the DEIR and doing further investigation into both the Benicia Valero Refinery and the Valero Corporation as a whole, I came away with an even stronger sense of needing to voice objections regarding the potential impacts this project could have on our city, state and the parts of the country through which the CBR trains will travel.

One specific point of concern was the chosen arbitrary scope of the project. The influence of the Valero's proposal evaluated in the DEIR was relegated to examining only the Roseville to Benicia portion, which is about 80 miles of a journey that could span at least 1,300 miles across the country in one train trip from origination to the Benicia Valero Refinery. This short range evaluation left out significant diverse areas in California and beyond that would also be exposed to the potential dangers and GHG emissions this daily trek of CBR would entail. This sampling of the journey doesn't begin to cover the diversity of circumstances and unique challenges that exist along the three UPRR routes that could be used. Outside of the up rail communities in California, most of which have also expressed opposition to the project, other communities beyond these areas are unaware of the risks that would be coming their way. They do not having the opportunity of notification before a vote is taken yet would be subject to many of the same risks we would face without having any forewarning. This happened repeatedly in the towns that have already unfortunately been victims of CBR disasters without even knowing CBR was transiting through their towns until an accident occurred.

The reason this is such an important issue is because in the past year, from March 2013 through May 2014, eleven CBR accidents have occurred in the U.S. and Canada. Please see enclosed flyer for descriptions of these "incidents," some of which involved explosive fire balls decimating tank cars, the fumes of which fouled the air, causing various traumas including death, destruction of property, bankruptcy of a city, as there is no liability for such disasters, and oil spills on land and into waterways that can't be successfully restored to their prior conditions. The water retains the toxins deposited, often dispersing portions of them into other connected bodies of water. In addition to the eleven accidents listed, four more CBR derailments have occurred in the U.S. this summer, after the flyer was printed, raising the total to 15.

Also enclosed for your review is a chart illustrating the current dramatic increase of oil spills. The chart begins in 1975 and goes to 2013, showing the vast spike that occurred from CBR oil spills in 2013. This graph is a stunning visual account of what is actually happening. Once one becomes aware of both the number of CBR accidents combined with the exponential increase in CBR oil spills that have occurred in such a short span of time, it becomes clear that the reliably safe transport of this unconventional oil has not even come close to being achieved. So far, delivery of CBR has created more risks than gains for all concerned other than the oil companies and perhaps the railroads involved in the transport. Both profit financially. But the question begs to be asked, in the light of all of these accidents/oil spills, do we have the right to continue exposing our community and others up rail to such risks?

Adding to the CBR dilemma is limited time/space on the tracks for regular, already scheduled train traffic. UPRR's largest client is UPS. Their business is dependent upon "on time" delivery which is getting compromised by the influx of CBR. Freight trains carrying grains and food products requiring time sensitive delivery are also suffering. Farmers have been complaining about not being able to get their crops to their destinations while still fresh due to delays caused by increased train traffic. If their shipments aren't fresh, they can't be sold. Passenger trains are being held up sometimes for two to three hours beyond their routine arrival times. Of course several railroads are involved in this time crunch crisis. This problem is not the fault of UPRR, but if the City of Benicia approves this proposal, their constant daily traffic across the country will add unfavorably to the seriously congested conditions on a daily basis. The cumulative effect of five Bay Area refinery communities seeking CBR, raises the critical mass of the problems mentioned above.

Another difficult factor is the need for CBR trains to significantly reduce speeds under a variety of conditions which would repeatedly cause even more delays. An issue over which Valero has no control that could interfere with safety re: the determination of speed is that we only know that a unit train of CBR tank cars will be set up between Roseville and Benicia. The rest and longest portion of the route could be composed of manifest trains, (mixed freight), which likely would not be obligated to follow the same speed rules, although the need to do so for CBR would be the same. Who would be supervising these or any of the unit trains re: speed limitations on a daily basis? Would the railroad accept and agree to be in compliance with the proposed speed restrictions? What would happen if they don't? When evaluating these overriding factors that interfere with other railroad purposes, it makes one ponder whether or not we have the right to impose yet another obligation upon a faltering, overwhelmed R.R. system, complicating a situation that has not been able to correct itself under the circumstances to suit the needs it is already committed to serve? The overall transportation picture needs to be addressed when evaluating this crucial choice that stands before our community. The decision affects a much broader dimension than just Valero's desire to receive "domestic crude" at a good, cheap price along side of whether or not approving the CBR project benefits our community's needs in the long run.

As far as our train traffic is concerned, we already have problems in our Benicia Industrial Park, which frequently has backups, often of fifteen minutes or more, due to freight traffic that can extend from Bayshore Road backing up into the Off Ramp of 680. This is not only annoying but can be perceived as dangerous under certain circumstances. Several businesses have complained of the problem these delays cause them and their customers.

Another consideration that needs to be evaluated is that it isn't unusual for there to be train derailments in the Industrial Park, which could be a big problem for a 50 tank car unit train of CBR carrying a very heavy load of quite volatile gases. When one tank slips off the track for whatever reason, it often causes other tank cars to go down, pulled by the gravitational force of the extra weight forcing down upon it from the cars behind which throws other cars off balance. For risk assessment baseline purposes, it would be helpful to know how many derailments the Industrial Park has actually experienced in the past five years? How many have they had in the past two years? Were there any product spills? Any significant damage or tie up/back up of traffic, (more than 6 cars left waiting for it to be cleared)? If this has happened, how long did it take to clear each incident which kept people having to wait to drive onward for more than a half an hour? How long would it take to upright one tank car? In multiplying that out, how long to upright five or six on average of the kinds of derailments that typically occur? Are there vulnerable places on the tracks where derailments tend to happen over and over again? How many derailments has Valero experienced in the last 5 years? How many in the last two years? Since new tracks have been installed on Valero property, that section might not be an issue, but

the full track line UPRR travels on through the Industrial Park has not been replaced, nor have the lines from origination to destination. Most of the tracks are old. Can the aging tracks handle the extensive weight of so many CBR tank car trains coming through the country on a daily basis?

Shipments of two 50 heavy loaded unit trains coming into the Benicia Refinery full and leaving empty daily increases both the traffic and the risks of derailment potential. If loaded ones puncture and explode from a derailment and/or spill oil that would obviously be a serious problem, but even if they don't explode or spill oil, the derailment of heavy tank cars take much longer to upright than a normal lighter freight load. It took eight to 10 hours to upright a derailed train in Seattle a month ago. Imagine the traffic back up that would cause in our Industrial Park. A more detailed perspective on traffic will be offered by a larger report, but these general issues are important to ponder when evaluating how having CBR come to Benicia could affect The Industrial Park.

None of the places that have thus far experienced CBR disasters were prepared to handle what unexpectedly happened in their towns. Emergency preparedness for the kinds of disasters that have been occurring via CBR reveal a weakness in our state and national emergency action plans that have yet to be properly addressed. How many cities in California through which these trains will travel have Hazmat I Certification? The Benicia Fire Department is still in the process of receiving that rating. How many F.D.'s have the necessary funding to be trained in time for the anticipated initiation of this project? How many F.D.'s have the funds for the special equipment necessary to compliment the training? Both the state and federal government are beginning to address these and other issues concerning CBR, but little has been decided upon and put into a regulatory format. California has put some preliminary regulatory "suggestions" before our governor, but nothing has been signed into law yet.

Looking more logistically at the emergency preparedness issue, it's important to evaluate our capacity to respond quickly if an accident did occur anywhere in the U.S. on the UPRR line. There are several critical factors that need to be dealt with when assessing this piece of the unresolved puzzle. With forty percent of the fire departments in the U.S. staffed by volunteers, sections of the country would be in a compromised position if a major disaster from CBR occurred. We can presume these particular fire departments are not well funded. Many are in vulnerable mountainous regions and rural areas, surrounded by the natural beauty we often use for recreation and would hope to preserve for future generations. What kind of immediate support can these locales expect when and if disaster strikes? Particularly during the hot, fire season when fire departments are often busy fighting other fires? We are in a drought that may be of long duration. All of these factors can have adverse impacts in being able to deal effectively with unexpected emergencies. Valero may have a well trained Hazmat certified Fire Department but they can't be everywhere and haven't experienced the large "incidents" that have been occurring from CBR. It is likely that coping with the magnitude of unconventional CBR disasters are as new to them as they are to the other Fire Departments that have had to deal with them. Valero gave no SPECIFIC examples in the DEIR of how they would deal with any large scale CBR disaster similar to what has already occurred with CBR in other places. Has Valero reached out to other F.D.'s to learn from their experiences re: what to do and what not to do in the event of a large scale CBR disaster? The DEIR was quite cavalier about what was claimed to be the rare possibility of an accident occurring between Roseville and Benicia, which according to the report's statistics, could only happen once in 111 years. The denial of the possibility was disconcerting after already receiving knowledge from elsewhere of the brief two year history of CBR transport disasters. Once again, referring to such a limited portion of trip contributed to the lack of logic that statement held within it. Such misleading comments led to an overall lack of confidence in the report. Other statistics within the document were also glaring. Unfortunately, statistics can be used in a variety of ways and many of them in this DEIR

were similarly disappointing and transparent in their intent. A more thorough examination of several of these examples is being handled by someone else so I won't go into them here.

I would like to know how Valero would deal with a derailment and or oil spill in the Suisun Marsh? How would they get cranes out onto the unstable ground to upright the tank car(s)? How would they clean the Pacific Flyway waterway and lands of toxins from an oil spill or other kind of accident that would have the potential to affect thousands of birds and wild life that depend on this area annually to live either temporarily or permanently, depending upon the species. It is well known as an essential place to touch down, feed, nest and rest. It really can't be replaced if contaminated. How would Valero restore the wild lands and their inhabitants if an oil spill were to occur? What SPECIFIC methods would be used for a safe and healthy restoration? If they know of a way to restore the waterways after a CBR oil spill, what would be the process they would use for a sweet crude such as Bakken Crude? What process would they use for a sour crude such as Tar Sands? Others who have experienced trying to clean the oil/chemicals spilled in waterways from a CBR upset have not been able to figure out how remove the attendant toxins and to return the water to its former pre-spill conditions. I would be interested in knowing what Valero's SPECIFIC restoration plans of action would be for this sensitive, critical piece of wilderness that supports so many birds and other critters along with a vast array of plant life in the event of a CBR disaster happening in this unique locale?

Another issue that caught my attention was the statement in the DEIR that Marine Vessel traffic would be reduced by receiving Domestic CBR, stating that they would not need to import as much conventional oil, which would reduce GHG emissions for the city of Benicia. Once again this narrow-minded choice of a very small part of the proposal's territory is neglectful of the much greater impact of GHG Emissions all along the route. As people from Davis stated, Benicia isn't the only place that deserves consideration re: GHG emissions. In the DEIR's Marine Vessel calculations, they left out an estimate for exporting the CBR via Marine Vessels. This portion of the equation for Marine Vessel transport was missing in the statistics offered. It was shared during the Negative Declaration of Impact last summer, that one of the main reasons they were seeking CBR, other than it being a cheap, low quality domestic fuel source, was to be able to ship it overseas, mentioning China as a country that will accept a lower fuel grade than we will allow, as the main export location. The global GHG would definitely increase under these conditions, considering that the CBR will cause GHG emissions all along the route to and from the refinery and then will continue to do so via Marine Vessel from port of origin to port of destination. From the global and cross country perspective, the GHG emissions would be increased rather than decreased. GHG would actually be less if Valero continued to receive the approximately 25 to 30 percent of crude it gets from Southern Ca., receiving other portions within a reasonable distance via pipeline and/or by receiving conventional oil as an import from Marine Vessels.

The DEIR asserts that BAAQMD 2012 and the California Air Quality Officers Association, (CAPCOA, 2008), are both concerned with the cumulative global effect of GHG Emissions. In deference to that goal, one must calculate the cumulative effect of transporting CBR. For instance, when originating in North Dakota, hauling Bakken Crude by rail requires a journey of about 1,300 miles across the country to the Benicia Valero Refinery. Once unloaded, trains return to another crude source again to reload. After the crude is refined, a large portion of it may be shipped overseas to China or other foreign countries. This dual transport process by both train and Marine Vessel causes a significant increase in global GHG Emissions. In CBR transport, first the train has to come to the final destination and then go back to origination of source or to another crude source via CBR, and then return again within the same repetitive cycle. This added to Marine Vessel exports, in addition to imports, indicate more of an increase than a decrease in GHG Emissions along all the routes chosen. It doesn't appear to be true that GHG Emissions in Benicia would actually be lessened due to the proposed increase in exports which isn't

acknowledged in the DEIR. Realistically, the full journey's GHG Emissions are what counts. Not the effect on what one town such as Benicia experiences, the assessment of which has been shown to be questionable. The total GHG Emissions would clearly be expanded by combining CBR and Marine Vessel traffic. If Valero's focus really was on lowering GHG Emissions from a planetary perspective, it would be better to let China receive their fuel sources from countries closer to their location. In doing so, that choice would certainly reduce planetary GHG Emissions.

We can all agree that Air quality is an essential element for good health. How can we assess if Valero's refinery practices are protecting our community's Air Quality? Without using onsite monitoring systems, this is difficult to accurately determine. The monitoring stations used for the DEIR were located in Concord and Vallejo, at appreciable distances, even though Valero does have the monitoring equipment units available that could be used in "real time" around Benicia.

When defining the Air Quality factor, it is important to note what policies a corporation backs with their campaign donations. What are the refinery's priorities in re: to environmental quality? As a partial indicator of this, we can look to their voting record. In 2010, Valero was the State of California's largest financial backer, having donated 5 million dollars, in the attempt to defeat Proposition 23, The California Global Warming Act. Had they been successful, they would have delayed the implementation of AB 32, which began in 2012. As a footnote to the position they took on this, the Valero Corporation as a whole happens to be rated 28<sup>th</sup> out of all corporations in the U.S. for air pollution. So, the general blue print for this corporation shows that Air Quality isn't necessarily a primary concern. Based on the perspectives these two pieces of information revealed, combined with the air pollutant/GHG Emission issues discovered in the DEIR, I was led to question Benicia Valero Refinery's commitment to improving the Air Quality within our community and our fence line communities, some of whom are affected even more so than we are, during different times of the year, depending on which way the wind is blowing. On a positive note in this regard, Valero did recently install a "Sulfur Scrubber." Sulfur is a toxin known to quickly corrode pipelines, causing them to deteriorate. Installing this unit also improves air quality as a secondary benefit.

The effects of NOx emissions from locomotives of trains carrying the unconventional crude fell into the unmitigated significant and unavoidable impact range for Yolo, Sacramento and Placer Counties. I would add Solano County to that, the reason for which will be described in the Marine Vessel portion of this letter, which refutes the DEIR's statistics re: Marine Vessel reduction. I would further extend the strong possibility of unmitigated significant and unavoidable impact of NOx emissions throughout all of the regions when traveling as CBR unit trains across the country, even though they were not studied for the purpose of the DEIR report as they don't exist in the limited geographical boundary used. The only differences might be the acceptable threshold levels per county through which the trains travel, which are unknown, as are the specific locales, dependent upon which one of the three possible UPRR routes are taken. These factors are important when assessing the cumulative national and global GHG Emissions issue written about later in this letter.

There will be two locomotives per unit train, and two unit trains per day, which equals four locomotives. When we consider that they will be arriving, unloading the then returning to get more crude, that equals eight times the locomotives will be spreading their unmitigated emissions in Benicia and all along the route per day. How toxic the NOx emissions are per day depends on the type/age of locomotives used which can vary based on UPRR's choice of which ones to send. Those built before 1980 are more polluting than those built afterwards, but both are known polluters with the older ones still in use. It is up to UPRR's discretion on any given day which ones to send which makes the total GHG emissions variable based on which locomotives are being used.

Air pollutant/carcinogens within oil products used are also a concern re: mitigation. To give an example, Pet Coke is one of them. Currently, this by product is heavily scattered, sometimes in piles, along the tracks. It is a visible and dirty toxic refuse from the refinery business that so far has not been deemed important to be cleaned up and cleared away by the refinery. CBR would greatly increase the amount of this substance coming into the refinery. This by product has fine particulates that are freely dispersed in the air. As a pollutant, in addition to being carcinogenic, it is known to cause an unhealthy atmosphere for people's respiratory systems because these tiny toxic particles are easily inhaled, contributing to a vast array of respiratory difficulties. Being a particulate of the air we breathe, we can't avoid being exposed to its effects. The DEIR failed to identify this air pollution hazard. These particulates are carried and dispersed by the wind. The request to have these toxins cleaned up was brought up during the Negative Declaration of Impact discussions at a Planning Commission Hearing last summer. No verbal or written response was given about this concern at the time from the refinery, nor have any been received since. The repetitive complaint about this issue was not discussed in the DEIR. So far, Valero's disregard for the public's health and safety in this matter has been and continues to be disturbing. It has been noticed that when comments of concern, like with the effects of pet coke, are expressed, Valero representatives listen, do not respond, and do not make any changes based on the complaints received, leaving one feeling their revelations and needs are discounted.

An even bigger deficiency of the DEIR was that the baseline provided for Air Quality did not use current data. For a new project, the actual physical existing conditions must be used, not hypothetical ones. That also includes revealing what the actual throughput happens to be in present time. These essential facts, for which the purpose of the DEIR is meant to reveal, are missing. This is a major flaw of the DEIR.

With much higher levels of toxicity coming in via the dirtier, even more carcinogenic crude products, it is even more important that we receive accurate information re: the current tallies of air pollutants already existing and how they are handled. My concern increases when witnessing this lack of response and responsibility re: their stewardship in the air pollution department. Because so many more known toxins, including carcinogens, are involved with CBR sources, it is vital to further ascertain Valero's ability and willingness to follow prescribed guidelines for Air Quality Control and GHG Emissions Control. Becoming more aware of their air pollution track record over time would help our city evaluate their commitment, or lack of same, to our Air Quality. As one way of doing that, I am asking for more transparency. For instance, it would be informative to know how many times, if any, since purchasing the Refinery in 2000 has Valero been sighted for infractions of Air Quality and/or GHG Emissions? A specific accounting of these instances, indicating in what year/date each infraction occurred, brief description of infraction in layman's terms, and what, if any improvements /corrections were made for each circumstance, and when they were implemented would be helpful for this purpose.

When warnings aren't heeded, a corporation is charged with a violation. In interest of knowing where Valero Refinery stands in handling pollution produced by their refinery, I am asking for a specific accounting of violation notices, if any have been received, re: Air Quality and/or GHG Emissions infractions/lack of compliance that have occurred in Valero's history as a Refinery here in town. Please indicate the year/date each violation occurred for Air Quality and/or GHG Emissions and how much each fine was, followed by a brief description in layman's terms of what the infraction was about, if any actions were taken to prevent further citations or violations, noting the dates these changes were implemented. Is Valero's track record improving, staying the same, or getting worse in either or both categories? What source(s) are used to determine the monitoring of these issues? If there were abuses in any category, does the public make reports by calling in and complaining and/or is it an environmental regulatory agency? If so which one(s) apply in each scenario reported? Who are the

“watchdog” regulation agencies responsible for overseeing the refinery in the Air Quality and GHG Emissions categories and how often do they check for Air Quality and GHG Emissions compliance? Is it random or known to you ahead of time that they will be checking or is it done through monitoring devices anonymously? The above questions are being asked to establish a baseline of practices that Valero has followed and what kind of monitoring system oversees their operations. Answers to these questions will give us an idea of Valero’s commitment to doing their best to help maintain the quality of our shared air space. Since we don’t have independent monitoring information available to the public which would enable us to discover this on our own, we need reliable sources upon which we can depend that do keep track of this important aspect of their business. Access to these records may be valuable in helping the city to make informed decisions at times like this, when a potential change in plans may have an effect on our city’s health and safety re: additional pollutants that may be arriving.

Although Valero has received STAR rating with Cal/OSHA, which is commendable and a big plus for their workers, this type of stewardship may not be reflected in their environmental choices which is what the DEIR examined. The determination of whether or not they are good stewards of our environment is a crucial factor for our governing bodies to discern when considering the how the “logistical project” they are envisioning, which would allow them to bring in CBR, could impact our quality of life from that broader perspective.

In summary, due to the many concerns stated in this letter and those that have been previously voiced, I request that The Planning Commission choose option “ES-5: No Project Alternative.” I honestly feel it is the best one, after having considered and evaluated the DEIR plus other resources related to the topic. We know that these crude sources in the U.S are playing out rapidly as they have already done in other parts of the world. Estimates predict less than ten years. The DEIR admits that Valero wouldn’t be doing CBR long term, stating “the supply of crude by rail will presumably become exhausted.” They admit being aware of the limited supply. This fact is common knowledge. When this happens, “the project would merely substitute North American crude oils for other crude oils from around the world,” returning to their prior practices. Is embracing CBR worth all the risks involved, particularly when considering our state and country’s lack of emergency preparedness to handle the potential crises that seem to be occurring all too frequently, for such a short term window of so-called opportunity?

If our city does choose to approve this project, which I hope it doesn’t, it seems to be of greater wisdom to wait to do so until ALL the necessary regulations and laws for procedural issues from emergency preparedness to speed limits and everything in between are in place. Also, according to DOT, safe tank cars still need to be created, tested, and then manufactured in a supply necessary to serve the needs the oil industry has for CBR transportation. The DOT 1232, recently considered a worthy replacement for the DOT 111, has also failed. Refer to the enclosed flyer explaining the CBR disaster in Virginia, in which these upgraded tank cars were used. Valero has said they will use whatever the federal government requires, but that is a mute point right now because the government has no safe recommendations to offer at this time. No safe tank cars for CBR have been invented. If the city decides to approve Valero’s request, I would hope this project would not be approved until a newly designed tank car has been built and adequately tested for safety. I would also suggest waiting until there is legal sanction forbidding any other tank cars being used for CBR either before or after the newly created ones can be manufactured for the purpose of transporting CBR. Once and if legal sanctions have been established, it may be important to have more independent railroad monitors in place to cover the bases, insuring on a regular basis that the various agreed upon rules are being adequately followed and corners are not being cut in the honoring of whatever stipulations may be set for CBR by our governmental bodies that suppliers, UPRR, and Valero will need to follow. It feels premature to approve CBR at this stage because the mode of transportation intended for this unconventional product

has proven over and over again that it doesn't have the necessary "legs" to stand upon in order to be able to operate in a safe and healthy manner at this stage of development. To do so before these measures are intact would be "putting the cart before the horse." Considering CBR's track record, what would be the purpose be of inviting more risk under the unprotected circumstances? We already know what doesn't work and need not repeat what has already contributed to repeated failures.

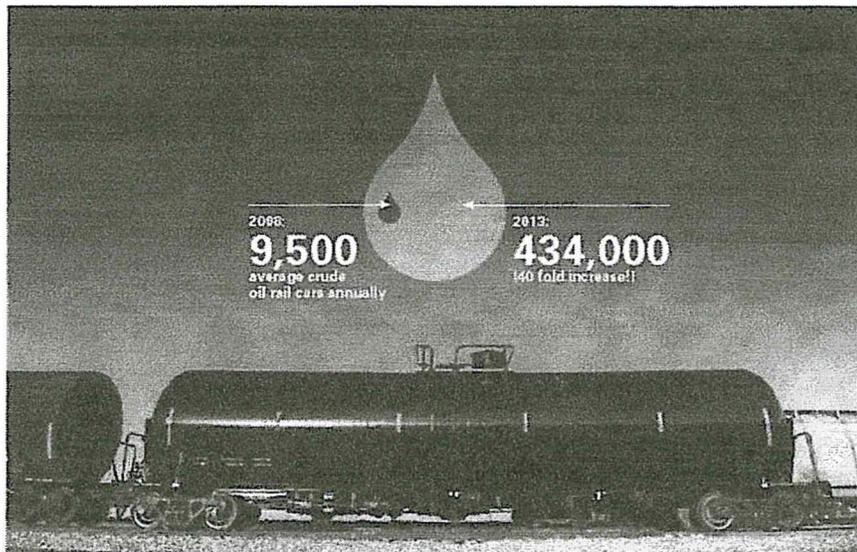
Some of the regulations needed may be hard to come by. The railroads have never been regulated and are resistant to the regulation process. The preemption issues re: their jurisdiction and how that impacts the proposed project have already been well discussed without full resolution at this point. The oil companies are also unaccustomed to being regulated and there is much pressure afoot from certain quarters to keep both of these entities unregulated. To accomplish the legal protection being sought in doing this venture in a conscientious, safe manner may be a laborious process, but doing so appears to be necessary. It seems prudent to wait, following the adage, "it is better to be safe than sorry." Much is at stake over a wide span of the country. Let us not act in haste. Many aspects of Valero's plan to transport CBR still need to be resolved. We need to admit that we are in the infancy stage of transporting these unconventional, more volatile, vaporous gases mixed with a toxic blend of chemicals, the combination of which can be and have been repeatedly hazardous in the short two year period they have traveled by rail. Valero is still a profit-making company whether they do CBR or not. The value of 20 added jobs, which is one of Valero's main selling points, seems miniscule when compared to the risks of moving forward before we can safely do so. It's disturbing to have the emphasis placed on how to handle the variety of disasters that inevitably are occurring if we continue on this path instead of realizing we have a choice. We don't need to accept CBR. The Benicia Valero Refinery and our city can continue as we are doing right now without the addition of CBR.

It is my understanding that all questions asked from within our written inquiries, delivered to the Planning Commission by the Sept. 15<sup>th</sup> deadline, and those questions asked during The Planning Commission's Public Hearings are to be answered by Valero in the Final DEIR. This is being brought up because it was very disappointing when our questions during the Negative Declaration of Impact were not responded to as promised by Valero, who had requested extra months in order to go through our comments so that they could respond. Many of us have diligently done our part by spending untold hours exploring the issues involved. Our questions are sincerely rendered and deserve the courtesy of replies so the communication process between Valero and the public can be an open, two way conversation in the interest of better serving our community.

Thank you for the opportunity of sharing these thoughts and concerns.

Respectfully submitted,

Judith Sullivan, Benicia resident

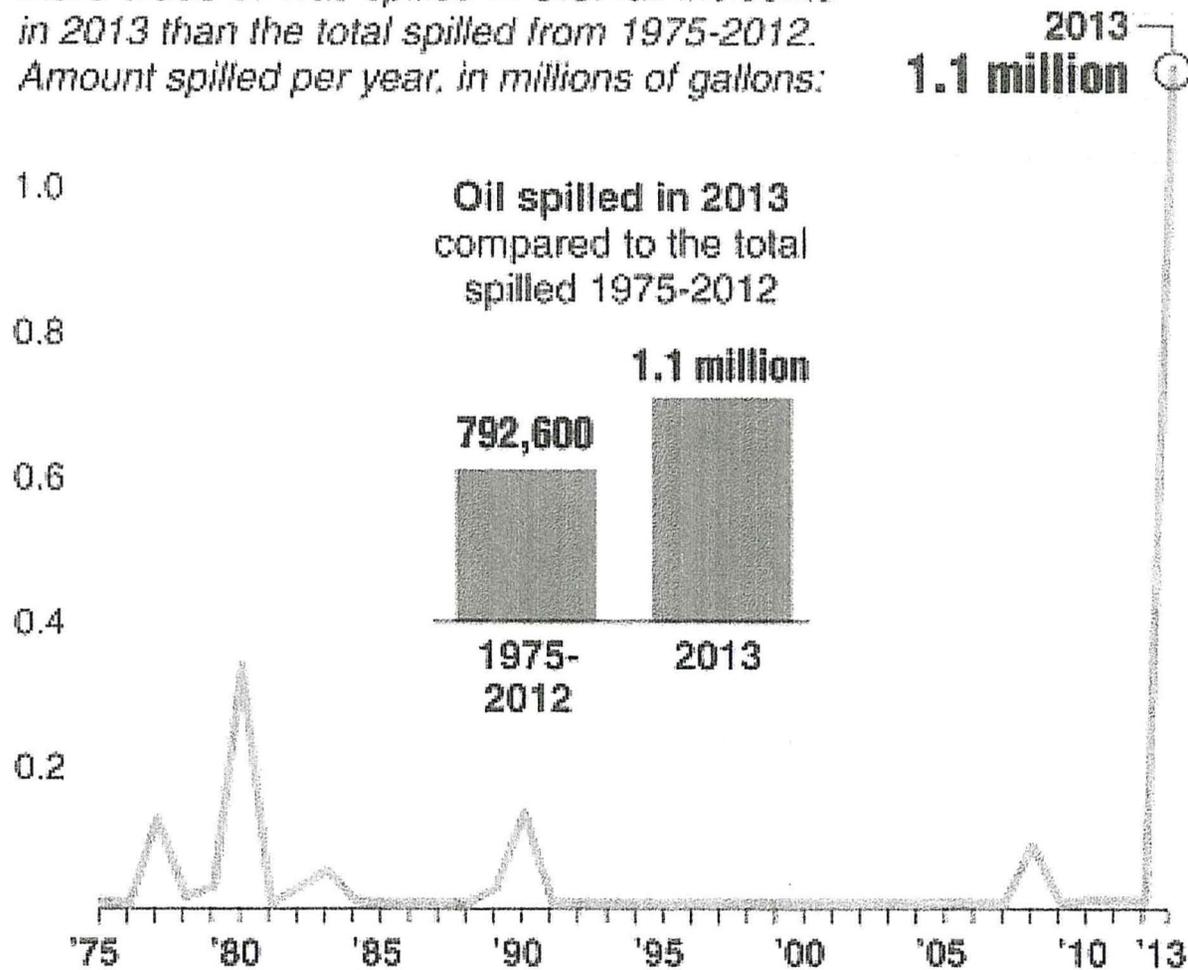


### **CRUDE BY RAIL ACCIDENTS, MARCH 2013 - MAY 2014**

- **March 27, 2013** Parkers Prairie, MN, 30,000 gallons of oil spilled.
- **May 21, 2013** Jansen, Saskatchewan, 24,000 gallons of oil spilled.
- **June 27, 2013** Emergency response prevents a major spill following a train derailment on a bridge over the Bow River in Calgary, Alberta.
- **July 6, 2013** Lac Megantic, Quebec, explosions from derailed oil cars kill 47 people and destroy 30 buildings.
- **October 19, 2013** In Gainford, Alberta, four derailed oil tankers cause explosions and fire and lead to local evacuations.
- **November 8, 2013** 90-car derailment in Pickens County, Alabama; 749,000 gallons of oil spilled, fires burn for two days.
- **December 30, 2013** Casselton, North Dakota, 400,000 gallons of crude spilled, explosion causes evacuation of 2,000 people.
- **January 7, 2014** Plaster Rock, New Brunswick, explosion and fire causes 150-person evacuation for 3 nights.
- **January 20, 2014** UPenn, Philadelphia, 6 train cars carrying bakken crude derail over the Schuylkill River near campus & major hospitals.
- **April 30, 2014** Lynchburg, Virginia, 17-car derailment spills crude oil into James River and threatens Richmond, Virginia's water supply.
- **May 9, 2014** In LaSalle, Colorado, a six-car derailment causes 6,500 gallons of oil to be spilled.

# Spike in oil spills from trains

More crude oil was spilled in U.S. rail incidents in 2013 than the total spilled from 1975-2012.  
Amount spilled per year, in millions of gallons:



Source: U.S. Pipeline and Hazardous Materials Safety Administration  
Graphic: Judy Treible

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*Union Pacific Railroad is investigating what caused two of its locomotives to come off the tracks in Benicia on Sunday, a spokesperson for the rail operator said Tuesday. (Tony Burchyns-Vallejo-Times-Herald)*

**BENICIA >>** Union Pacific Railroad is investigating what caused two of its locomotives to come off the tracks in Benicia on Sunday, a spokesperson for the rail operator said Tuesday.

The locomotives were being used for switching operations and were moving rail cars near the Benicia port when each had one wheel set come off the tracks at about 2:30 a.m., Union Pacific spokesman Aaron Hunt said. The engines were attached to each other when the derailment occurred, he said.

Both were re-railed several hours later and moved to Union Pacific's maintenance yard in Roseville, where an internal investigation was launched to determine what caused the derailment, Hunt said. He added the findings would be reported to the Federal Railroad Administration.

"Fortunately there were no injuries and there was no damage to our track infrastructure," said Hunt, adding he did not know how fast the locomotives were traveling.

Benicia police got a call from Union Pacific at 2:38 a.m. Sunday reporting the incident, but there was no request for assistance and no emergency response by the city, Lt. Scott Przekurat said.

Hunt said that because the derailment happened in the railroad's automotive yard along Bayshore Road — where finished automobiles that arrive by boat are transported by rail to other places — there was no impact to motorists or other people in the area.

On May 17, two rail cars carrying petroleum coke derailed near the Valero refinery. Prior to that, three rail cars carrying petroleum coke came off the tracks on Nov. 4, 2013.

No hazardous materials were spilled in those incidents, but the derailments have raised eyebrows in light of the Valero refinery's plan to bring in up to 70,000 barrels of crude oil daily on Union Pacific tracks.

Asked whether the locomotives involved in Sunday's incident could be used to move tanker cars, Hunt said they were "switching locomotives" and are not the same as those used to move trains from city to city.

"Safety is our primary focus at Union Pacific," Hunt said. "We invest time, human power and substantial capital to minimize derailments across our 32,000-mile network."

**Amy Million - COMMENT LETTER RE VALERO DEIR**

**From:** JAN ELLEN REIN <janny007@sbcglobal.net>  
**To:** "amillion@ci.benicia.ca.us" <amillion@ci.benicia.ca.us>  
**Date:** 9/11/2014 1:48 PM  
**Subject:** COMMENT LETTER RE VALERO DEIR

Dear Ms. Million,  
 Below is my comment letter on the Valero DEIR. Please acknowledge receipt.  
 Thank you,  
 Jan Ellen Rein

Amy Million Principal Planner  
 Community Development Department  
 250 East L Street  
 Benicia, CA 94510  
 September 9, 2014

**Re: Valero Benicia Crude by Rail Project Draft Environmental Impact Report**

Dear Ms. Million,

Please add my comments to the public legal record on Valero's Crude by Rail Project and incorporate them as part of the public record. As a Sacramento Resident who lives less than one-third of a mile from the railroad tracks --on which an increasing number of trains loaded with highly flammable, toxic crude oil in unsafe tanker cars will travel-- I am alarmed at Valero's proposed project which can only increase the number of trains passing immediately adjacent to our homes, schools and businesses. Due to the unprecedented recent oil surge, by the end of 2016, as many as five to six mile -long, 100 tanker trains *per day* are expected to roll through the Sacramento region's neighborhoods and city centers on the way to the coast. This leaves the 5,800,000 Californians and 25 million people nationwide who live within blast zones at extreme risk for the four to six years it will take for the Department of Transportation to complete, implement and assure compliance with rules to improve the safety of crude rail shipments

***Glaring Errors in the DEIR findings and analysis:***

1. *The DEIR analysis does not even consider the impact of the enormous increase of dangerous crude oil rail shipments within the last six years and the anticipated even greater increase in coming years.*  
 As the SACOG comment letter on this project notes at page 3, "[s]ince 2007, crude oil by rail has seen a 6,000% increase . . ." resulting mainly from the huge surge in Bakken crude production. The DEIR completely ignores the significance of such unprecedented increases on the likelihood and magnitude of the threat of crude oil shipments to human life and safety. (See 2. below.)

2. *The DEIR finding that no "significant hazard" exists is completely unfounded and flies in the face of U. S Department of Transportation findings and all evidence to the contrary.*

In its Notice of Proposed Rule Making, the U.S. Department of Transportation (DOT) found that "[t]he growing reliance on trains to transport large volumes of flammable liquids poses a significant risk to life, property, and the environment" (p.1) And, on page 7 of the same document, the DOT stated that "[t]he increase in shipments of large quantities of flammable liquids by rail has led to an increase in the number of train accidents, posing a significant safety and environmental concern." In May 2007, the DOT found that crude by rail shipments threatened not just a "significant hazard" but also an "imminent hazard"

Specifically, the DOT stated:

**"Upon information derived from recent railroad accidents and subsequent DOT investigations, the Department of Transportation (Secretary) has found that an unsafe condition or an unsafe practice is causing or otherwise constitutes an imminent hazard to the safe transportation of hazardous materials. Specifically, a pattern of releases and fires involving petroleum crude oil shipments originating from the Bakken and being transported by rail constitutes an imminent hazard under 49 U.S.C. 512 (d)."**

**"An imminent hazard, as defined by 49 U.S.C. 5102 (5) constitutes the existence of a condition relating to hazardous materials that presents a substantial likelihood that death, serious illness, severe personal injury or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of formal proceedings begun to lessen the risk . . . [of] death, illness, injury or endangerment."**

Emergency Restriction Prohibition Order DOT-OST-2014-0067 (May 7, 2014) (<http://www.dot.gov/briefing-room/emergency-order>) (Emphasis added.)

Considering the DOT findings of significant imminent hazard and the facts on the ground, the DEIR's finding that no significant hazard exists is incomprehensible and defies rational explanation. It also defies common sense to ignore the increase in crude by rail accidents occurring just within just the last year, one of which incinerated 47 people and at least five of which created explosions and one of which contaminated a river.. See NRDC FACT SHEET, IT COULD HAPPEN HERE, June, 2014.

### 3. *Other flaws in the DEIR*

There are many other flaws in the DEIR. Time does not permit me to elaborate so I will just list a few below:

\*The DEIR fails to analyze the potential environmental impacts of crude by rail transport beyond the Roseville to Benicia route. The City of Benicia should demand that the final EIR extend its impact risk and analysis at least to the borders of California and preferably to the extraction sites.

\* The DEIR fails to analyze the cumulative effects of the proposed project.

My main concern is to stop big oil from playing russian roulette with millions of lives during the four to six years it will take between now and compliance with new DOT rules. In the likely event of one or more serious explosions during this period, no emergency response team, however well prepared, could prevent people in the blast zone from being incinerated instantly. In California's severe drought conditions, even a small explosion or leak could trigger a fire that could destroy entire towns. Representatives from the oil and railroad industries insist that all these shipments will be safe because, in their words, "safety is our business." They rely on statistics from the years *before* the oil surge began. They do not mention that in 2013 alone there were nearly 100 rail accidents and that "more crude oil was spilled in U.S. rail accidents in 2013 than in the preceding four decades, more than 1.15 million gallons in 2013". (See City of Davis Staff findings and second whereas clause of City Council of Davis resolution opposing crude by rail shipments.) Only a few days ago, two trains going in opposite directions on the same track collided in Arkansas! If safety is their business, they are not doing a good job of it. The frequency and severity of crude by rail accidents can only increase as the volume of oil trains and tankers increase exponentially.

The city of Benicia should demand that Valero and the drafters of the DEIR give truthful, objectively verifiable answers to the following questions:

1. How will Valero guarantee that *all* tank cars meet the DOT standards under review immediately (not phased in over years), plus implement the previously mandated Positive Train Control technology, so uprail communities are protected.?
2. What are the daily and cumulative impacts and risks of transporting two extreme crude oils, tar sands and Bakkan crude, through our cities, through our sensitive habitats and over our water supplies?
- 3 What are the cumulative impacts of the Valero daily trains in the context of the additional 3 daily trains being approved currently in Bakersfield and the one daily train to San Luis Obispo, all possibly traveling through Sacramento? Include the increased potential for spills, accidents, greenhouse gas emissions, conflicts of interest on the rails, etc.
4. What is Valero's liability should there be a spill or accident on the oil trains to Benicia? Who carries enough coverage for a catastrophic accident? Will the taxpayers ultimately be responsible?

#### **Conclusion**

Elected city officials are sworn to protect and serve the real flesh and blood people in their communities. The Valero project poses an imminent and significant risk of catastrophic harm, not only to the people in Benicia but also to the people, ecosystems and entire communities along the rail lines to Benicia.

In its current iteration, the DEIR reads like it was written by and for the Valero oil company, without regard to the health, safety and very lives of the residents whose interests and safety the city government is sworn to protect. Few would deny that big money corporations have influenced governments at all levels to the extent that huge multinational corporations and conglomerates have been allowed to privatize profits while externalizing and socializing all risks and losses at enormous expense to our citizenry. The proposed project will increase Valero's profits while imposing huge risks and costs on the Benicia city residents as well as the residents of communities uprail of Benicia. I urge that the City of Benicia demand a complete overhaul of the DEIR to fully inform the public and the City Council of the enormity of the risks and costs this project poses. A failure to do so will only deepen the widespread public perception that governments at all levels routinely fold under the influence of big money instead of representing the public interest.

Those of us who live and work along the rail lines are, frankly, horrified at the prospect of having our homes, families and very lives at this extreme risk for any period of time. Please represent and protect us.

Thank you for your consideration.

Name: Jan Ellen Rein, Professor of Law, Emerita

Address: 2704 E. Street,

City Sacramento, CA Zip 95816

Email (optional) janny007@sbcglobal.net