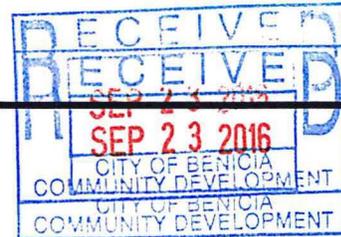


**Valero Crude by Rail Project  
Public Comments received  
September 23, 2016**

Commenter	Date Received
<b>Organizations</b>	
Roger Lin on behalf of Communities for a Better Environment	23-Sep-16
<b>Councilmembers</b>	
<b>Individual Comments</b>	

**Teresa Olson**

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**From:** Roger Lin <roger@cbeval.org>  
**Sent:** Tuesday, September 20, 2016 4:58 PM  
**To:** Teresa Olson  
**Subject:** CBE Response to Valero 13 Sep 2016 Rebuttal  
**Attachments:** CBE Technical Reply 092016.pdf  
  
**Categories:** CBR Comment

Ms. Olson,

Please see the attached correspondence submitted into the record for the Valero Crude by Rail project and also for distribution to members of the Council.

Please let me know if you have any problems with the attachment or if you require any additional information.

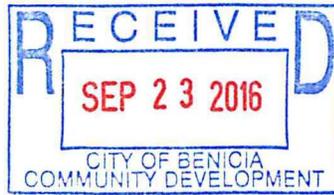
Many thanks,

Roger Lin  
Staff Attorney  
Communities for a Better Environment  
120 Broadway, Suite 2  
Richmond, CA 94804  
(510) 302-0430 ext. 16

This message and any attached documents may contain information that is confidential and/or privileged. It is intended only for the individual or entity to whom it is addressed. If you are not the intended recipient, you are hereby notified that any use of this communication is strictly prohibited. If you have received this transmission in error, please contact Communities for a Better Environment immediately by reply email or at 510-302-0430 extension 16, and then delete this message. Thank you.

20 September 2016

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



**Appeal of the Planning Commission's Decision to Not Certify the Final Environmental Impact Report (FEIR) and to Deny the Use Permit for the Valero Crude by Rail Project —Summary of Failures to Respond to Evidence for Significant Catastrophic Hazard, Air Emission and Climate Impacts of the Project by the Valero "Further Rebuttal" and City Development Director Staff Report Documents dated 13 September 2016.**

Dear Mayor Patterson and Council members,

Communities for a Better Environment (CBE) provided, in my declarations and testimony in this matter, peer reviewed evidence, data and expert opinions documenting the potential for significant on site catastrophic hazard and greenhouse gas (GHG) emission impacts of this project.<sup>1</sup> This evidence supports the Planning Commission's decisions, and is not otherwise addressed, as these significant impacts were not disclosed, analyzed, or mitigated in the EIR. For your consideration, this letter identifies clear factual errors and omissions in the Valero Further Rebuttal and Staff Report dated 13 September 2016, which fail to address or rebut this evidence for significant on site impacts the EIR did not disclose or address. Specifically:

- 1 Placing and operating the oil train unloading and vehicle service road dangerously close to existing facilities within the refinery would create a new knock-on (chain reaction) fire and explosion hazard that could cause catastrophic and irreversible impacts.<sup>2</sup> Valero's Further Rebuttal and the Staff report fail completely to address or rebut this significant impact.
- 2 Maintaining fuels production from the new, hydrogen-poor oil feed blends enabled by the project would increase Benicia Refinery hydrogen production, increasing refinery-wide GHG emissions and resulting in a significant emissions and climate impact.<sup>3</sup> The Staff Report erroneously rejects any project analysis of this impact based solely on an assertion that is clearly false. It asserts that California's cap-and-trade regulation "caps the amount of GHG emissions that can be released by the Refinery and requires that refinery-wide GHG emissions must decrease" (Resp. to Air Quality Question 1). In fact, as the BAAQMD explained again this year, California's cap-and-trade regulation caps only "economy-wide GHGs ... individual facilities could potentially increase their GHG emissions" (emphasis in original).<sup>4</sup> BAAQMD's original statement is highlighted in the attachment hereto.
- 3 Valero's "Further Rebuttal" fails to identify, respond to, rebut or otherwise address this hydrogen-poor oil related GHG emission impact of in any direct or recognizable manner.

- 4 Valero's insistence that the change in its oil feed quality that would result from this project could only properly be evaluated before the project proposal was revealed (Further Rebuttal at 1–2) is erroneous at best and disingenuous at worst. The project, which as proposed both enables and requires switching roughly half the Benicia Refinery oil feed from current oil streams to new and different oils that the Refinery cannot logistically and economically receive in such quantity now—an inescapable fact<sup>5</sup> Valero has not disputed on the record.
- 5 Valero commits an important error of omission by asserting unspecified “operational limitations of the refinery” will prevent its post-project oil feed quality from worsening (Further Rebuttal at 3 and App. 1) while at the same time ignoring and failing to address or rebut specific quantitative evidence that shows it can increase rates to run lower quality oil. The specific evidence disproving this Valero claim is from its refinery's own permits.<sup>6</sup>
- 6 Finally, Valero commits a fundamental error by insisting on the fallacy that all potential impacts of its crude slate correlate with the crude slate's density (API Gravity) and sulfur content alone. (Further Rebuttal at 2, App. 1.) Multiple peer reviewed authors' specifically disputed and disproved the validity of this API-and-sulfur-only analysis method, project-specific data disproves it, and hydrogen-poor project tar sands oil blends within the average density and sulfur content of the existing crude slate were shown to cause significant GHG impacts.<sup>7</sup> Valero's Further Rebuttal, however, ignores all this evidence in the record, failing even to attempt a rebuttal perhaps because the fallacy of its analysis method is so well established, and in any case rendering its crude slate analysis unsupported and erroneous.

Respectfully,



Greg Karras  
Senior Scientist

**Attachments:** (1)

**Notes**

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<sup>1</sup> Expert reports of Greg Karras, CBE, including attachments to those reports, dated 15 September 2014 and 30 March 2016. These are referenced below as Karras reports “KR-1” and KR-2.”

<sup>2</sup> *See* KR-2 as cited in note 1 above at ¶ 17, maps 1 and 2, and ¶ 18.

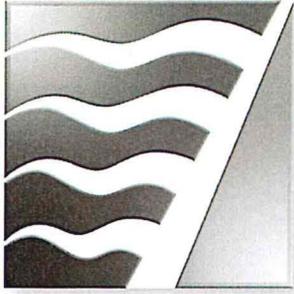
<sup>3</sup> *See* KR-2 at ¶¶ 16, 19–28 and 30, and Table KR-1.

<sup>4</sup> BAAQMD. *Draft Options for Reducing Refinery Combustion Emissions Evaluation Report*; Bay Area Air Quality Management District: San Francisco, CA. May 2016. *See* page 13. An excerpt of this report that highlights the passage quoted is attached for the record.

<sup>5</sup> *See* KR-2 at ¶ 16.

<sup>6</sup> *See* BAAQMD and RWQCB permit documents attached to KR-2 and cited in KR-2 at ¶ 27.

<sup>7</sup> *See* KR-2, *esp.* ¶¶ 21 and 25; *see also* ¶¶ 19–28.



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

**DRAFT**  
**Options for Reducing Refinery  
Combustion Emissions  
Evaluation Report**

Prepared by the staff of the  
Bay Area Air Quality Management District

May 2016

### Reduction of Toxic Pollutants Emissions

Toxic air contaminants can impact health for people exposed to them. For this criterion, staff will consider how likely the given approach would reduce the total health risk from emissions of toxic air contaminants from the refineries.

### Reduction of Health Impacts on Neighboring Communities (Including PM<sub>2.5</sub>)

Certain air pollutants can have disproportionate impacts to the health of communities near the source of where they are emitted. This includes toxic air contaminants, but also PM emissions, which cause both acute and chronic health effects including mortality and respiratory illnesses, like asthma. This criterion will be used to evaluate each approach for its potential to reduce both toxic and criteria pollutants that may impact neighboring communities.

## **Within Air District Authority**

### Air District Authority to Control Climate Pollutants

The California Health and Safety Code (H&SC) provides air districts authority to regulate GHGs as air pollutants. H&SC Section 40000 states that air districts “have the primary responsibility for control air pollution from all sources, other than emissions from motor vehicles.” H&SC §39013 defines “air pollutants” to include, among other things, “carbon” and “gases”; thereby including greenhouse gases. H&SC §39002 expressly allows air districts to adopt measures more stringent than the State. AB 32 specifically included a provision preserving the Air Districts’ preexisting authority over GHGs; H&SC §38594 which states “Nothing in [The California Global Warming Solutions Act of 2006] shall limit or expand the existing authority of any [air] district...” This criterion will be used to evaluate each approach to determine how well it likely aligns with Air District authority to regulate climate pollutants.

### Health and Safety Code Compliance

The H&SC requires the Air District to make “...findings of necessity, authority, clarity, consistency, non-duplication and reference” before adopting, amending, or repealing a rule (H&SC §40727). “Consistency” is defined to mean:

“The regulation is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.”

Consistency, as defined, is particularly important in light of AB 32 and the Cap-and-Trade Program. The stated goal of the Cap-and-Trade program is the reduce economy-wide GHGs emissions by explicit amounts by 2020. This does not necessarily equate to GHG emissions reductions from individual facilities underneath the cap. In fact, individual facilities could potentially increase GHG emissions and meet their Cap-and-Trade targets through offsets or credits. However, an Air District rule that caps or reduces GHG emissions from a specific facility or sector has the potential to be considered in conflict with the existing Cap-and-Trade program.