"**The impacts associated with the use of anhydrous ammonia are potentially significant**." (Id.)

Having admitted that use and transportation of anhydrous ammonia creates a potentially significant impact, the SCAQMD cannot now be allowed to conclude that the ULSD Project's use and transport of anhydrous ammonia is not potentially significant. Thus, SCAQMD must prepare an EIR to analyze and mitigate the significant environmental impacts associated with the use and transportation of liquid ammonia and anhydrous ammonia.

3-2 cont.

3. The Project May Have Significant Risks From Terrorism and Sabotage

Furthermore, since the SCAQMD admitted the significance of accidental releases of anhydrous ammonia, the CEC has now concluded that additional risks exist related to the intentional release of ammonia due to terrorist acts or sabotage.[7] The CEC further concluded that existing regulations do not adequately protect against risks related to terrorism and sabotage.[8] The SCAQMD did not consider the additional risks related to terrorism or sabotage, and these risks exacerbate the already admittedly significant adverse environmental risks related to anhydrous ammonia.

3-3

The SND relies on compliance with existing regulations to mitigate risks from ammonia, but the CEC has just 2 months ago concluded that existing regulations do not adequately protect against risks related to terrorism or sabotage that may target ammonia. Obviously, if terrorists were to target ammonia or anhydrous ammonia trucks passing through the nearby residential community, the impacts on human health could be catastrophic. Despite the recent CEC report, the SND fails to analyze such risks at all.

Dr. Fox concluded that the "health risks from releases of either 30% aqueous and/or anhydrous ammonia caused by terrorism and employee sabotage are potentially significant." (Fox Supplemental Comments, p. 4.) Thus, there is a fair argument that the Project may have a significant adverse environmental impact

[7] California Energy Commission, Staff Report: Petroleum Infrastructure Environmental Performance Report, June 2005, p. 3, 78 (Exhibit 3 to Fox Supplemental Comment).
[8] Id. at 78.
1550-224a

related to the release of aqueous and/or anhydrous ammonia from terrorist acts or sabotage.

3-3 cont.

B. Cumulative Impacts of Ammonia and Anhydrous Ammonia Releases to Workers and Residents

The SND is inadequate because it completely fails to analyze potentially significant cumulative environmental impacts from liquid ammonia and anhydrous ammonia.

CEQA requires a mandatory finding that a project will have a significant effect on the environment if the "possible effects of a project are individually limited but cumulatively considerable." (CEQA § 21083(b)); see also CEQA Guidelines § 15064(h)(1). "'[C]umulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (CEQA § 21083(b).) "Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." Finally, a cumulative impacts analysis must consider "other closely related past, present, and reasonably foreseeable probable future projects." (CEQA Guidelines § 15355 (b).)

3-4

The importance of an adequate cumulative impacts analysis has been reaffirmed in two recent cases:

> Proper cumulative impact analysis is vital 'because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that the environmental damage often occurs incrementally from a variety of small sources with which they interact.'

(Bakersfield Citizens (2004) 124 Cal.App.4th at 1214 (quoting *Communities for a Better Environment v. California Resources Agency* 103 Cal.App.4th at 116.)

As discussed by Dr. Fox, the ConocoPhillips ULSD Project will have significant cumulative impacts when considered together with ammonia and anhydrous ammonia already in use at the ConocoPhillips Refinery, proposed to be used as part of the SCR Project at the ConocoPhillips Carson portion of the Refinery, and together with many other projects in the immediate vicinity that

already use or propose to use ammonia and/or anhydrous ammonia. (Fox Supplemental Comments pp. 4-7.)

The ConocoPhillips ULSD Project's use of ammonia and anhydrous ammonia will combine with these other projects to create an even more significant cumulative impact. Trucks carrying ammonia and anhydrous ammonia for all of these projects will circulate through the local community on a regular basis, creating a cumulatively significant risk to the public from accidental releases. The risk will be heightened due to heightened risks of intentional releases of these deadly chemicals by terrorist acts or sabotage. The SND fails entirely to consider any of these cumulatively significant impacts. Therefore, SCAQMD must prepare an EIR to at the very least study the cumulative impacts associated with this new SCR project.

3-4 cont.

III. THE SCAQMD HAS IMPROPERLY PIECEMEALED THE CONOCOPHILLIPS TWO SCR PROJECTS FROM THE ULSD PROJECT

The separation of the CEQA review for the SCR and ULSD projects, pursuant to four separate negative declarations, when the projects are part of the same refinery modernization project, violates the prohibition on project piecemealing. Here, SCAQMD evaluated SCR at the Carson site of the Los Angeles refinery simultaneously in a separate Negative Declaration from the Negative Declaration for the ULSD Project. (See Comments on Negative Declaration for ConocoPhillips Los Angeles Refinery Selective Catalytic Reduction Unit (SCR) Project, February 25, 2004 (Attached as Exhibit B).) Now, SCAQMD proposes a second SCR unit at the Wilmington site of the Los Angeles refinery. CEQA prohibits such "piecemealing" since by dividing a project up into several separate projects, it makes each phase appear less significant. This is precisely the error that the SCAQMD has committed in this case.

3-5

CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences." (*Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego*, (1989) 214 Cal.App.3d 1438, 1452.) Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project. (*Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 396-97 (EIR held inadequate for failure to assess impacts of second phase of pharmacy school's occupancy of a new medical research facility).) A

public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences. As the Second District very recently stated:

> The CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish. . . the purpose of CEQA is not to generate paper, but to compel government at all levels to make decision with environmental consequences in mind.

(*Natural Resources Defense Council v. City of Los Angeles ("NRDC v. LA")* (2002) 103 Cal.App.4th 268.)

The SCAMQD has noted that ConocoPhillips operates its Wilmington and Carson locations as a single, integrated refinery: "The Conoco-Phillips Refinery . . . is approximately 18 miles southwest of the Paramount Refinery. It consists of facilities at two locations (Wilmington and Carson) approximately three miles apart. The two integrated sites transfer raw, intermediate, and finished materials primarily by pipelines." (Paramount DEIR p. 5-1).[9] Therefore, it is improper to allege that the ULSD and Carson site SCR are separate based on the fact that they are being undertaken at different locations in the same refinery. SCAQMD's second proposed SCR at the Wilmington site is improper piecemealing from the other two previously adopted Negative Declarations and further evinces a pattern of piecemealing the ULSD modifications to the ConocoPhillips Los Angeles refinery.

3-5 cont.

By analyzing the Wilmington SCR project separately from the Carson SCR project separately from the ULSD Project, the SCAQMD has masked combined environmental impacts of the phases of the refinery modernization project. Considered together, there is a clearer picture that the ULSD Project contributes significant environmental impacts to the South Coast Air Basin.

CEQA prohibits such a "piecemeal" approach. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720.) In fact, it was precisely such piecemealing that was rejected by the Second District in the *NRDC v. LA* case. In that case, the Port of Los Angeles analyzed Phase 2 of a three phase project in a negative declaration. The court held that an EIR was required to analyze the entire three-phase project as a whole. (*NRDC v. LA, supra,* p. 284.) Similarly here, the Air

[9] *Available at* Hhttp://www.aqmd.gov/ceqa/documents/2004/nonaqmd/paramount/final/ch5.docH.

District must prepare an EIR to analyze the impacts of the entire refinery modernization project as a whole, rather than analyzing each individual phase in a series of separate negative declarations. By chopping up the refinery modernization project into different pieces, including two separate negative declarations for two SCR units associated with the same ULSD Project, the Air District is conducting precisely the type of piecemeal analysis prohibited by CEQA. (See Fox Supplemental Comments, p. 6-7.)

3-5 cont.

IV. THE DISTRICT MUST CONSIDER ALTERNATIVES AND MITIGATION MEASURES TO HIGHLY TOXIC LIQUID AND GASEOUS AMMONIA CATALYSTS

The SND is inadequate because it fails to consider alternatives or mitigation measures for significant impacts associated with the SCR project.

CEQA requires that an EIR "shall describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." (CEQA Guidelines § 15126.6(a); *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376).) One of the most substantive aspects of CEQA is that Section 21002 of the statute forbids agencies from approving projects with significant adverse impacts when feasible alternatives (or feasible mitigation measures) can substantially lessen such impacts. (*Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 440-41; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 711, 730-31; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2).)

3-6

The CEQA Guidelines explanation of the alternatives analysis purpose highlights its import:

> Because an EIR *must* identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the

> project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(CEQA Guidelines § 1526.6(b)). An EIR "shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." (CEQA Guidelines § 15126.6(d).). The EIR "must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation." (CEQA Guidelines § 15126.6(a); *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750.) The EIR should briefly describe the rationale for selecting the alternatives to be discussed. (CEQA Guidelines § 15126.6(c).) The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. (Id.)

In determining the nature and scope of alternatives to be examined in an EIR, local agencies shall be guided by the doctrine of "feasibility." CEQA has defined "feasible," for purposes of CEQA review, as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Resources Code, § 21061.1; Guidelines, § 15364; *Citizens of Goleta Valley,* 52 Cal.3d at 565; *Laurel Heights*, supra, 47 Cal.3d at 402, fn. 10.) The courts have further declared that "[t]he statutory requirements for consideration of alternatives must be judged against a rule of reason." (*Citizens of Goleta Valley,* 52 Cal.3d at 565.) When considering whether an alternatives analysis is reasonable, the courts have repeatedly framed the question with the conclusion that "[o]ne of [an EIR's] major functions ... is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official." (Id.)

3-6 cont.

This SND fails to meet the CEQA standards for a proper alternatives analysis because it fails to present a reasonable range of alternatives, fails to demonstrate or describe the process used to narrow down the alternatives considered, and fails to consider any alternative to using liquid ammonia and anhydrous ammonia as the catalysts for the SCR unit.

As the *Goleta* case explained, what constitutes a reasonable range of alternatives depends on the facts of the case, the environmental benefits to the

alternative, and the feasibility of the alternative. (*Citizens of Goleta Valley,* 52 Cal.3d at 566.) Here, SCAQMD has failed to consider *any* alternatives to the SCR Project. While SCAQMD need not consider every alternative, it is required to consider a reasonable range of alternatives. The failure to consider any alternatives whatsoever to liquid and anhydrous ammonia as an SCR catalyst does not constitute a reasonable range of alternatives, or adequately address all reasonable alternatives.[10]

An EIR should include a range of alternatives, which better addresses the environmental impacts from this Project.

A. Alternatives to 30% Aqueous Ammonia Must Be Considered

The Conoco proposes to use 30% aqueous ammonia with anhydrous ammonia as a back-up. However, the SCAQMD has concluded in other CEQA documents that:

> "Use of aqueous ammonia at concentrations less than 20 percent by volume in conjunction with the above mitigation measures can reduce hazard impacts associated with ammonia use to less than significant." (2003 AQMP EIR, page 4.3-21 to 4.3-22)

3-6 cont.

Despite this conclusion, the SND proposes to allow the use of 30% aqueous ammonia – a 50% higher concentration than recommended by the SCAQMD in a prior CEQA document analyzing this same impact. Since the SCAQMD has concluded that aqueous ammonia with concentrations of less than 20% ammonia in conjunction with mitigation measures can reduce hazard impacts to less than significant, the fact that the Conoco ULSD Project proposes to use the much higher 30% ammonia concentration is proof that the Project has *per se* significant adverse impacts related to ammonia as a matter of law. (*See, Mejia v. Los Angeles* (2005) 13 Cal. App. 4th 322 (if Project exceeds CEQA significance threshold it must be deemed to have potentially significant adverse impacts and an EIR is required).)

The SND fails even to consider the feasible alternative of using 19% aqueous ammonia as recommended by the SCAQMD in the prior EIR. An EIR must be required to consider this and other feasible alternatives to the use of 30% aqueous ammonia.

[10] *Id.* at 565

B. Solid Urea Should Be Considered as an Alternative to Liquid Ammonia and Anhydrous Ammonia

The SND fails entirely to consider the feasibility of the use of solid urea pellets. As Dr. Fox explained, urea pellets can be used in SCR projects to provide ammonia in a solid form. (Fox Supplemental Comments, p. 9.) Urea pellets eliminate almost entirely risks related to aqueous or anhydrous ammonia transport, use and storage. (Id.) In fact, the SCAQMD itself has analyzed the use of urea pellets as a feasible alternative in at least one other EIR prepared for a SCR project. (Final EIR for AES Alamitos LLC SCR Installation, p. 5-2 (2001) (Exhibit 8 to Fox Supplemental Comment).) An EIR must be prepared for the Conoco USLD Project to consider the feasibility of the use of urea pellets rather than aqueous ammonia or anhydrous ammonia.

C. Feasible Mitigations Measures to the Transportation of Liquid and Anhydrous Ammonia Must Be Considered

3-6 cont.

SCAQMD has identified feasible mitigation measures for risks related to the transportation of ammonia. None of these feasible mitigation measures were considered in the SND. Clearly these are feasible mitigation measures that must be evaluated in an EIR for the Conoco project.[11] The following are feasible mitigation measures that SCAQMD should consider for this Project:

> "HZ2: Rules encouraging the use of SCRs or permits for SCRs shall limit the catalyst to aqueous ammonia or its equivalent. Current SCAQMD policy already requires using aqueous ammonia.
> "HZ3: Require the use of transportation routes for ammonia shipments to facilities that ensures minimum exposure to sensitive population and further minimize risks by shipping ammonia during off-peak times. This will be accomplished by implementing the following mitigation measures:

[11] Final Program Environmental Impact Report to the 2003 Draft AQMP, State Clearinghouse No. 2002081137, Subchapter 4.3, Hazards, 4.3-21-4.3-22 *available at* Hhttp://www.aqmd.gov/CEQA/documents/2003/aqmd/finalEA/aqmp/14_ch4_hazards.docH (Exhibit 10 to Fox Comment Letter).

1. Prior to the first delivery of aqueous ammonia to a site, truck haul routes shall be submitted to the SCAQMD for review and approval.
2. The haul routes shall minimize rail crossings and crossings of busy intersections.
3. When traveling on surface streets, the haul routes shall not come within one-quarter mile of an existing or proposed school, where feasible.
4. Deliveries shall not be en route during peak traffic hours, which generally occur between 7:00 AM and 9:00 AM or between 4:00 PM and 6:00 PM weekdays.
5. The haul routes shall be resubmitted if suppliers are changed.

"HZ4: Require construction of containment dikes to be used during off-loading operations.
"HZ5: Require construction of containment dikes around ammonia storage tanks to contain the volume of the tank."

3-6 cont.

SCAQMD failed to consider any of the above feasible mitigation measures that could greatly reduce the individually and cumulatively significant risks posed by the use and transport of ammonia related to the Project. In fact, SCAQMD considerd no alternatives or mitigation measures whatsoever. An EIR must be required to consider and implement the above mitigation measures.

V. THE SND IS INADEQUATE BECAUSE IT IS INCONSISTENT WITH THE 2003 AQMP EIR

The SND is legally deficient because it fails to analyze and mitigate the SCR Project's inconsistency with the 2003 AQMP Program EIR ("2003 AQMP EIR"). The 2003 AQMP EIR specifically prohibits the use of anhydrous ammonia as an SCR catalyst. Proposing the use of anhydrous ammonia as a backup catalyst for this project violates the requirement to be consistent with applicable plans and policies. The SND's inconsistency with the 2003 AQMP EIR constitutes a significant impact under CEQA.

3-7

A. Inconsistency with an Air Quality Plan is a Significant Impact

CEQA requires an adequate description of the environmental setting and an assessment of any inconsistencies between the Project and applicable general plans and regional plans. (CEQA Guidelines § 15125(a), (d).) Air quality attainment plans, such as the 2003 AQMP, constitute regional plans contemplated by CEQA. (CEQA Guidelines § 15125(d).) A significant impact on land use and planning would occur if the Project would "conflict with or obstruct implementation of the applicable air quality plan." (CEQA Guidelines Appendix G, section III(a).)

Thus, under CEQA, a project results in a significant effect on the environment if the project is inconsistent with an applicable air quality plan adopted for the purpose of avoiding or mitigating environmental effects.

B. The Project is Inconsistent with the 2003 Air Quality Plan

3-7 cont.

The 2003 AQMP EIR prohibits the use of anhydrous ammonia as an SCR catalyst. In Subchapter 4.3 of the 2003 AQMP EIR addressing Hazards, SCAQMD has stated plainly "the impacts associated with the use of anhydrous ammonia are potentially significant."[12] To mitigate the potentially significant impacts associated with anhydrous ammonia, SCAQMD has required mitigation measures including the prohibition of using anhydrous ammonia: "Rules encouraging the use of SCRs or permits for SCRs shall limit the catalyst to aqueous ammonia or its equivalent." (Id.)

The SND proposes the use of an anhydrous ammonia catalyst for the SCR unit as a back-up to liquid ammonia. (SND, 1-12). The use of anhydrous ammonia, however, clearly contradicts the 2003 AQMP EIR's prohibition on utilizing anhydrous ammonia. The use of anhydrous ammonia therefore constitutes a significant impact for two reasons.

The inconsistency with the 2003 AQMP constitutes a significant impact, which must be addressed in an EIR. (CEQA Guidelines Appendix G, section III(a).) The use of anhydrous ammonia itself also constitutes a per se significant impact as

[12] Final Program Environmental Impact Report to the 2003 Draft AQMP, State Clearinghouse No. 2002081137, Subchapter 4.3, Hazards, p. 4.3-21, *available at* Hhttp://www.aqmd.gov/CEQA/documents/2003/aqmd/finalEA/aqmp/14_ch4_hazards.docH.

clearly stated by the 2003 AQMP EIR.[13] Therefore, SCAQMD must prepare an EIR to evaluate and mitigate these significant impacts

3-7 cont.

VI. CONCLUSION

For all of the above reasons, we urge the SCAQMD to prepare an environmental impact report for the ULSD Project and the newly proposed SCR Project and to analyze the Project's impacts together with other past, present and future projects that will have a cumulative impact. We reserve the right to supplement these comments at a later date.

Sincerely,

Kevin S. Golden

KSG:bh
Attachments
cc: Sid Stolper
George Vasquez

[13] Final Program Environmental Impact Report to the 2003 Draft AQMP, State Clearinghouse No. 2002081137, Subchapter 4.3, Hazards, p. 4.3-21, *available at* Hhttp://www.aqmd.gov/CEQA/documents/2003/aqmd/finalEA/aqmp/14_ch4_hazards.docH

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