

April 21, 2002

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Barry Wallerstein
Executive Officer

Ms. Kathy Stevens
Planning-CEQA

Ref: Ultramar, Inc. (SCH No. 2000061113)
Sub: Opposition To Draft Subsequent Environmental Impact Report
(SEIR) And Issuance Of Permit To Ultramar, Inc.

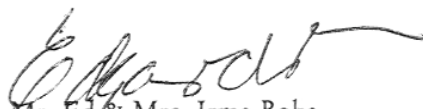
I and my wife live in Wilmington and we have recently been informed of the above Draft SEIR regarding the proposed issuance of a permit by SCAQMD to Ultramar, Inc. and I wish to inform you that we are against the issuance of a permit for the following reasons:

1. The air quality in Wilmington is terrible and needs to be cleaned-up by the companies responsible for polluting it.
2. Ultramar proposes no significant reduction or elimination of the air pollution it is causing.
3. No representative of Ultramar or SCAQMD came to any Wilmington community meeting to inform us of this proposed expansion.
4. SCAQMD and Ultramar did not hold a Public Hearing in Wilmington so that local residents could be informed of the project and its impact.

We want a legitimate Mediation Plan to be prepared by Ultramar that addresses the negative environmental impact and negative health impact they are causing on our community. We want this plan to be approved and voted upon by Wilmington residents.

I request that a Public Hearing be held in Wilmington immediately and the public comment time be extended another forty-five days from the date of the Public Hearing.

Sincerely,


Mr. Ed & Mrs. Irma Boke
146 West Lomita Blvd.
Wilmington, CA 90744

COMMENT LETTER NO. 19
LETTER FROM MR. AND MRS. BOKE

April 21, 2002

Response 19-1

Ambient air quality data for the Long Beach area (the closest air quality monitoring station, which is downwind from the Wilmington area) are shown in Table 3-2 (page 3-5) of the Final SEIR. The data indicate that the concentration of criteria air pollutants in the area has been consistent or has shown a decrease in concentrations (e.g., carbon monoxide, nitrogen dioxide, and PM10).

While the proposed project is expected to result in emission increases, the project also is expected to result in regional emission reductions (see Final SEIR, Table 5-3, page 5-20) associated with vehicles that use the reformulated fuels. The benefits of improved air quality were not included in the calculated emissions estimates because they occur over a wide area, not just in the vicinity of the proposed project. However, air quality benefits resulting from lower vehicle emissions will also accrue in the local area of the Refinery and terminals. Please note that a number of mitigation measures have been imposed on the construction phase of the proposed project (see Final SEIR, page 4-28).

Response 19-2

Feasible mitigation measures were identified for potential significant impacts. Feasible mitigation measures for air quality impacts are addressed in the Final SEIR (see pages 4-28 through 4-55). Mitigation measures were identified for air quality impacts during the construction phase (see pages 4-28 through 4-30). Most of the emissions due to operation of the proposed project are from indirect emission sources, including trucks, railcars, and marine vessels, primarily used to transport ethanol (trucks and railcars) and gasoline blending components (marine vessels). The NO_x emissions from marine vessels, railcars and trucks are expected to be significant. The U.S. EPA and CARB have regulatory authority over emissions from railcars. The Final SEIR has been revised to include more detailed information on the SCAQMD's authority to regulate mobile sources (see Final SEIR, Chapter 4, Section A – Air Quality).

CEQA Guidelines §15040(b) states, “CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws.” Due to state and federal regulations, the SCAQMD has no authority to directly regulate emissions from marine vessels or locomotive engines. As a result, the SCAQMD has extremely limited authority to indirectly control emissions from these sources. Neither the SCAQMD nor Ultramar own and control off road marine or locomotive sources, the SCAQMD cannot require these sources be retrofitted or their engines replaced.

The SCAQMD must act within the constraints of the admiralty clause, and the supremacy clause of the United States Constitution. Under the supremacy clause, the SCAQMD could be prohibited

from regulating ship emissions, if Congress has explicitly or implicitly foreclosed the regulation of ship emissions. As explained in the Mobil Final EIR, the Ports and Waterways Safety Act ("PWSA") preempts the SCAQMD from regulating engine design, construction and operation of machinery to the extent that such regulation would interfere with vessel safety or protecting the marine environment. Similarly, on September 26, 1997, the United States approved Annex VI to MARPOL 73/78 regarding NOx emissions from marine diesel engines (Mobil Revised Draft EIR, Volume VII, p. 30). Under the admiralty clause, the SCAQMD is prohibited from adopting and enforcing regulations, which interfere with the proper harmony and uniformity of maritime law.

The Clean Air Act does not preempt "in-use" mitigation measures. However, in-use measures do not mitigate air quality impacts or are infeasible since, as previously evaluated in the Mobil Draft EIR (SCAQMD, 1998) they have a tendency to increase emissions. The following "in-use" measures were considered and found to be infeasible or found to be ineffective as mitigation: limiting the hours of use or the number of engines used; prohibiting railcar visits during first or second stage smog alerts; imposing fuel specifications; and reducing rail speeds. It was determined that imposing these types of mitigation measures would not be expected to be effective in reducing emissions in the Basin since they would only apply to one company. Other companies would be able to transport the materials into the Basin without any such restrictions. Therefore, no real emission benefits would be expected.

There are some local marine vessels that have been voluntarily repowered. The SCAQMD has developed a protocol for obtaining NOx credits for repowering or retrofitting marine vessels (Rule 1631 – Pilot Credit Generation Program for Marine Vessels). Marine retrofit or repowering projects, however, are all voluntary projects to generate NOx credits applicable to the RECLAIM program. Based on exhaustive research conducted by the SCAQMD as part of the Mobil CARB Phase 2 reformulated gasoline EIR (SCAQMD, 1998), the SCAQMD does not have authority to directly regulate marine vessel emissions and the SCAQMD cannot require retrofitting, repowering or controlling emissions from marine vessels unrelated to stationary source equipment.

The U.S. EPA has established emission standards for NOx, VOCs, CO, particulate matter, and smoke for newly manufactured and remanufactured diesel-powered locomotives and locomotive engines which have been previously unregulated. Three separate sets of emission standards have been adopted, with applicability of the standards dependent on the date a locomotive is first manufactured. The first set of standards (Tier 0) apply to locomotives and locomotive engines manufactured from 1973 through 2001. The second set of standards (Tier 1) applies to locomotives and locomotive engines manufactured from 2002 through 2004. The final set of standards (Tier 2) apply to locomotives and locomotive engines manufactured in 2005 and later (U.S. EPA, 1997). With the new national emission standards for both newly manufactured and remanufactured locomotives originally built after 1972, future locomotive emission rates are projected to be much lower than the current emission rates. The U.S. EPA estimates that the NOx emissions will be reduced by about 62 percent from their current levels for locomotives manufactured after 2004 (U.S. EPA, 1997). This would reduce project-related NOx emissions from railcars from 84 lbs/day to about 32 lbs/day. The actual emission reductions are a function of the date that new locomotives come into service and are used to transport materials to/from the terminals. Since the date at which this conversion actually happens is uncertain and not guaranteed, the NOx emissions from project-

related railcars are expected to remain significant. These regulations preempt state and local authorities from establishing emission standards for new or rebuilt engines.

Emissions from trucks are regulated by the U.S. EPA and the CARB. The SCAQMD has limited authority over truck emissions. The U.S. EPA and the CARB have implemented regulations to control on-road diesel engines and emission benefits associated with these regulations are expected as these regulations come into effect.

Based on the above there are no other feasible mitigation measures to minimize or eliminate the significant emissions from mobile sources related to the proposed project.

Also, note that the proposed project is expected to result in air quality benefits associated with a decrease in emissions (both criteria and toxic air contaminants) from mobile sources that use the fuels. Therefore, the use of the CARB Phase 3 fuels is expected to provide air quality benefits to all portions of southern California, including the proposed project area.

Response 19-3

Public notice of the proposed project was provided per the requirements of the California Environmental Quality Act (CEQA). CEQA does not require that representatives be sent to community meetings. The Public Resources Code (PRC) §21092 requires that notice “shall be given to the last known name and address of all organizations and individuals who have previously requested notice and shall also be given by at least one of the following procedures:” (A) Publication in a newspaper of general circulation in the area affected by the proposed project. “If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.”; (B) posting of the notice on- and off-site in the area where the project is to be located; and (C) direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

Public notice of the availability of the Draft SEIR was provided in several different ways. First, notice was given via direct mailing to the last known name and address of all organizations and individuals who have previously requested notice, including all individuals and agencies that previously provided comments on the previous Notice of Preparation and the previous Draft EIR (§21092(b)(3)). Second, notice was provided in the Los Angeles Times, the newspaper of largest circulation on March 8, 2002. These actions comply with the minimum CEQA requirements. In addition to these minimum requirements, additional noticing was provided as follows. Per PRC §21092(b)(3)(B), the notice was posted off-site at the Los Angeles County Clerk’s Office (see also CEQA Guidelines §15187(d)). The notice was provided via electronic mail to a number of interested entities including environmental groups, public agencies and interested individuals that have expressed interest in receiving SCAQMD environmental notices. Finally, the document itself was available online at the SCAQMD’s website the first day of the public comment period and also hardcopies of the document were available the first day of the public comment period at the SCAQMD’s headquarters located at 21865 E. Copley Drive, Diamond Bar, California.

Based on the above, public notice has been provided on the proposed project in a manner that meets and exceeds the CEQA requirements for public notice on the availability of an EIR.

Response 19-4

CEQA does not require that a public hearing be held as part of the CEQA process for a proposed project. CEQA Guidelines §15202 states in part “CEQA does not require formal hearings at any stage of the environmental review process. Public comments may be restricted to written communication” (CEQA Guidelines §15202). At a meeting with Mr. Marquez on April 23, 2002 at the SCAQMD headquarters, the SCAQMD’s Executive Officer agreed to hold a public meeting on the proposed project in the Wilmington community on June 20, 2002. The meeting focused on the Draft SEIR for the proposed project and SCAQMD responses to comments on the Draft SEIR. Further, a town hall meeting was held in Wilmington on July 31, 2002 to obtain additional input from the Wilmington community on air quality issues, including Ultramar’s proposed project, and the proposed environmental justice enhancements.

Response 19-5

The commentator does not identify how a Mediation Plan would be considered a feasible mitigation measure, i.e., how it could reduce significant impacts. Mediation would not be required under the requirements of CEQA because it would not provide mitigation of a potentially significant impact. Mediation would be outside of the CEQA process and the commentator should contact Ultramar directly to discuss this issue

Response 19-6

See Response 19-4 regarding the public hearing. The request for an extension of the public comment period was considered. Although Governor Davis has extended the date one-year for MTBE phase-out, the project has not changed since the Draft SEIR was released for public review, and it is still necessary to move forward with the proposed project as quickly as possible for a number of reasons. First, the currently proposed project is in response to unexpected contingencies faced by Ultramar that threatened to compromise its ability to meet the original phase-out deadline. Second, given the engineering complexities of the previously proposed project components of Ultramar’s CARB Phase 3 project, as well as the currently proposed components, Ultramar must still proceed expeditiously to comply with the new CARB Phase 3 requirements and deadlines. Third, it is anticipated that the petroleum industry will move forward with the MTBE phase-out ahead of the revised compliance schedule because of the environmental problems associated with MTBE. Because Ultramar relies on third party distribution systems, it will be necessary for Ultramar to comply with the industry imposed phase-out date which may be different from the state imposed phase-out date.

The Ultramar Draft Supplemental EIR document has been available for immediate public review and download from the SCAQMD’s web site since March 8, 2002 (www.aqmd.gov/ceqa/documents/2002/nonaqmd/ultramar/draft/ultDEIRhtml).

In light of the above information, extending the public review period for this document would not serve the public’s interest to expeditiously provide cleaner-burning gasoline and phase-out the use of MTBE to eliminate the possibilities of future ground water contamination by this chemical. As a result, extending the public comment period will not be considered further. It should be noted that

the SCAQMD responded to and considered all written comments on the Draft EIR, including those received after the close of the public comment period, and considered comments from the public made at the June 20, 2002 public meeting.

It should be noted, however, that if it can be determined that the SCAQMD has not complied with any substantive or procedural CEQA requirement during the public comment period for the proposed project that ended April 22, 2002, the problem will be corrected and the Draft SEIR will be recirculated for a second 45-day public comment period. To date, the SCAQMD has evaluated assertions of impropriety, but has not discovered any such problems and, therefore, will proceed with finalizing the CEQA document for the proposed project.