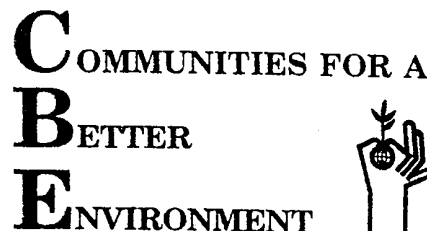


VIA HAND DELIVERY AND U.S. MAIL

June 20, 2002

South Coast Air Quality Management District
Attn: Kathy Stevens
21865 E. Copley Drive
Diamond Bar, CA 91765-4182



RE: **CBE Reply Comments to SCAQMD Response to Comments on Ultramar
Wilmington Refinery Expansion for Phase III Clean Fuels SEIR**

Dear SCAQMD:

Communities for a Better Environment (CBE) submits the following comments to SCAQMD on the Draft Subsequent EIR (SEIR) for the Ultramar Wilmington Refinery Phase III Clean Fuels Project ("Project"). These comments are in reply to SCAQMD's Preliminary Response to Comments dated June 20, 2002.

I. Lack of Adequate Time for CBE to Review SCAQMD's Preliminary Responses to Comments

CBE appreciates SCAQMD holding a public hearing on the project in Wilmington. CBE is concerned that SCAQMD only provided CBE with its Preliminary Responses to Comments on June 18, 2002 at 4:00 p.m. – barely 48 hours prior to the public hearing. This is despite SCAQMD's previous commitment to provide the comments to CBE on June 14, 2002. CBE will supplement this reply to SCAQMD's responses to comments in the future.

45-1

II. CBE Reply to SCAQMD Response 7-1. page 55

"The proposed project is expected to result in air quality benefits associated with a decrease (both criteria and TAC's) in emission from mobile sources that use the fuels." This statement is not substantiated by any calculations that show the benefits to the Wilmington community. Furthermore the author of this response is not aware or familiar with the Environmental Justice Commitments of SCAQMD

45-2

III. CBE Reply to SCAQMD Response 7-4

"There is no requirement at this time to focus the analysis in an EIR on any specific groups." Again the position of SCAQMD by expressing this statement is in conflict with the Environmental Justice Principles of SCAQMD

45-3

IV. CBE Reply to SCAQMD Response 7-8

"The cancer risk from mobile sources alone in Wilmington was about 240 per million." The author is looking at the wrong number at MATES II. The 240 cancer risk in a million **does not include the diesel toxicity risk**. As is clear in Table 5-3 of the MATES II, the correct cancer

45-4

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In Northern California: 1611 Telegraph Avenue, Suite 450 • Oakland, CA 94612 • (510) 302-0430

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June 20, 2002

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risk per million in Wilmington including **all sources** is 1531 in one million. See attached pages of MATES II. The SEIR should be changed to reflect this correct information. The MATES II did not include direct air monitoring in Wilmington. The Air Resources Board is currently finalizing the results of its air monitoring conducted in Wilmington. See www.arb.ca.gov/ch/air_result/wilmington/wilmington.htm. The ambient air quality monitoring was taken performed at Wilmington Park Elementary School in Wilmington. The SEIR should include this air monitoring data from CARB and its results.

45-4
cont'd

V. CBE Reply to SCAQMD Response 7-23

This response is not substantiated by any calculations. It is merely the opinion of the author without any objective criteria such as the size of the tank, expected emissions, etc.

45-5

VI. CBE Reply to SCAQMD Response 7-26

Community members have repeatedly voiced their demand around the hazard of using HF as a catalyst and our comments reflect the desire of our members for banning of HF as one of the mitigation measures associated with any Ultramar project in Wilmington. SCAQMD's response to this important demand follows along the path of previous responses of doing the minimum under a very narrow interpretation of the CEQA guidelines.

45-6

VII. Valero Now Owns Refinery

CBE understands that Valero now owns refinery. Indeed a Valero sign on the facility has replaced the prior Ultramar sign. The SEIR must be changed to indicate that Valero owns the refinery.

45-7

VIII. CBE Reply to Response 7-25

The State Lands Commission has adopted Marine Oil Terminal Physical Security Program, 2 CCR §2351. This regulation requires each terminal to prepare a Marine Oil Terminal Security Plan (MOTSP) and submit it to the California State Lands Commission (CSLC) for review and approval. SCAQMD states that Ultramar has prepared a MOTSP, which is currently under review by the CSLC. The SEIR should not be certified until the MOTSP is approved and its requirements made binding mitigation measures. The SEIR should discuss the requirements of the MOTSP so the public will know what is being done to protect the security of the marine terminal. What about security plans for the refinery itself and the tank farms? What requirements are applicable to those locations? It appears that the SEIR does not include any specific discussion of a security plan for the refinery and tank farm. CEQA Guidelines section 15043 requires the City to make a "fully informed and publicly disclosed decision that" there is no way to lessen or avoid the significant effect. Without waiting for the MOTSP to be approved, SCAQMD cannot make a fully informed and publicly disclosed decision.

45-8

IX. CBE Reply to Response 7-57

SCAQMD claims that Pub. Res. Code §21178(g) exempts CARB Phase III projects from the requirements of analyzing project alternatives. However, the Clean Air Act and SCAQMD SIP-approved Rules 2005 and 3003 require that prior to issuing a permit to a new source of air pollutant emissions, the SCAQMD must require an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs to be attributed to the proposed source. 42 U.S.C. §7503(a)(5); *Oregon Environmental Council v. Oregon Dept. of Environmental Quality*, 1992 U.S. Dist. LEXIS 14842, *5.(1992). California's Public Resources Code cannot override a requirement of the Clean Air Act. SCAQMD's failure to require a full alternatives analysis for the location of the tanks and the project violates the Clean Air Act and California SIP-approve Rules implementing New Source Review including Rule 2005 and 3003.

45-9

X. CBE Reply to Response 7-56 and 7-61

CBE disagrees with SCAQMD's position that it is prevented from regulating emissions from marine vessels and associated emissions in relation to this Project. CBE disagrees with SCAQMD's position that the Supremacy Clause, the Ports and Waterways Safety Act, the Clean Air Act, the Admiralty Act, and/or the Annex VI to MARPOL 73/78 prohibit SCAQMD from regulating emissions from marine vessels associated with this project. SCAQMD's response indicates that the District Counsel has reviewed the responses to comments and that the responses reflect the opinion of SCAQMD's District Counsel. (Response 7-61, pg. 80). SCAQMD claims that it does not have the authority to require retrofitting, re-powering, or controlling emissions from marine vessels unrelated to stationary source equipment. (Response 7-56). The marine vessels are calling on terminals to load and unload products from the Ultramar refinery and tank farm. Thus, like with Rule 1142, SCAQMD has the authority under the Clean Air Act to regulate emissions from the marine vessels. CBE hereby gives notice to the SCAQMD that CBE will consider litigation in federal court to resolve the issue of SCAQMD's regulatory authority over marine vessel emissions resulting from this project.

45-10

XI. Impacts from Potential Terrorist Attack

In response to CBE's discussion of the risk from terrorist attacks, SCAQMD provides basically a non-response. The risk from a possible terrorist attack is a much different risk from an accident during normal operations. The risks modeled do not take into account the risk from terrorists attacking multiple sites at the refinery and tank farm at the same time. Nor does the SEIR consider the risk from hijacking truck shipments of hazardous and toxic chemicals to the refinery. Numerous recent articles in the Los Angeles Times and other publications have discussed the danger posed by potential attacks on Los Angeles area petrochemical facilities. The SEIR does not consider the possibility of terrorist attacks and does not discuss mitigations from possible attacks. The SEIR fails to consider under risk of upset or hazard impacts the threat

45-11

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posed by a potential terrorist attack related to increased tanker truck tanks. These risks must be analyzed and mitigated.

45-11
cont'd

XII. Information Regarding Other Permits Must be Included – Reply to Responses 7-80 through 7-86

In response to CBE's request for information about Coastal Development Permits, building permits, grading permits, plumbing and electric permits, hazardous materials permits, and Cal OSHA construction permits, (see Responses 7-80 through 7-86) the SCAQMD responds that it is "uncertain" whether these various permits will be required and claims that CEQA review is not required for any of these approvals. CBE disagrees with SCAQMD's conclusions and requests that the information about whether these permits will be required be included in the EIR. Moreover, obtaining these permits should be required by the SEIR. CEQA Guidelines section 15043 requires the City to make a "fully informed and publicly disclosed decision that" there is no way to lessen or avoid the significant effect. Without knowledge of these permits and reports, a fully informed decision is not possible.

45-12

XIII. CBE Reply to Response 7-99

CBE disagrees with SCAQMD that the dismantling and remediation of the Ultramar Marine Terminal and tanks that are being abandoned because of the loss of the lease with the Port of Los Angeles is a separate project. CEQA §21003 states that it is the policy of the state to integrate the requirements of CEQA "with planning and environmental review procedures otherwise required by law" so that all "those procedures, to the maximum extent possible, run concurrently, rather than consecutively." SCAQMD states that the Port is currently evaluating the need for a CEQA document. Thus the project is reasonably foreseeable and must be evaluated in this CEQA process. SCAQMD is illegally piecemealing the project in violation of CEQA. SCAQMD's "approach is inconsistent with the mandate of CEQA that a large project shall not be divided into little ones because such division can improperly submerge the aggregate environmental considerations of the total project." Citizens Association for Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal.App.3d 151, 167. A basic tenet of CEQA is that an "environmental analysis should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design[.]" Guidelines §15004; Laurel Heights Improvement Assoc. v. Regents of the Univ. of Calif. (1988) 47 Cal.3d 376, 394.

45-13

Even when a project applicant seeks separate permits for different stages of a project, CEQA does not permit piecemeal review. "The term 'project' does not mean each separate governmental approval." (14 CCR § 15378(c).) "The term '*project*' refers to the underlying activity and not the governmental approval process." Natural Resources Defense Council v. Arcata National Corp. (1976) 59 Cal.App.3d 959, 969 (emphasis in original).

45-14

Here the activity is moving the storage facilities from the marine terminal which is subject to the lost lease to another location. Clearly the tanks and facilities on the portion of land that is leased from the Port must be dismantled and remediated. CBE requests that all documents prepared by the Port related to the possible dismantling and remediation of the Ultramar marine terminal facility that is losing its lease be made part of the administrative record of this project. CBE requests that SCAQMD contact and meet with the Port to discuss the dismantling and remediating of the Ultramar marine terminal facility.

45-15

XIV. Failure to Comply with CEQA §21153

CEQA §21153 requires that prior to completing an environmental impact report, the lead agency shall consult with, and obtain comments from any public agency that has jurisdiction by law with respect to the project. CEQA Guidelines §15086(a)(3), which implements CEQA §21153, requires lead agencies to consult with federal agencies. US EPA is a federal agency. It does not appear that the draft SEIR was sent to US EPA.

45-16

XVI. CBE Reply to Response 7-104

The project fails to comply with the Clean Air Act, New Source Review, the SIP-approved Rules governing New Source Review, state and federal environmental justice and civil rights laws including Title VI of the Civil Rights Act of 1964, Government Code § 11135, 22 CCR § 98101, and all other laws and regulations discussed in CBE's comment letters.

45-17

XVII. CBE Reply to Response 7-105

This response is totally counter to the SCAQMD's own statements regarding environmental justice and with the efforts to achieve environmental justice at the local, state and federal level. CBE would have hoped that SCAQMD had something more compelling to say about environmental justice than quoting Pete Wilson vetoing an environmental bill that has since been approved and signed into law in a similar form. It is SCAQMD's actions on projects like this one in Wilmington where the agency's commitment, or lack thereof, to environmental justice is demonstrated.

45-18

XVIII. CBE Reply to Response 7-106

CBE finds it ironic that SCAQMD published notice of the SEIR and public hearing in Spanish and plans to have Spanish translations at the public hearing, but did not translate the document itself into Spanish. Many of the people most affected by this Project will be unable to participate meaningfully in the CEQA process if the documents are not translated into Spanish. CBE therefore requests that the SEIR, and all CEQA documents, be translated into Spanish and that public proceedings be conducted with simultaneous Spanish and English translation.

45-19

XVIII. CBE Reply to Response 7-3

While SCAQMD admits that the project will increase gasoline production (Response 7-3, pg. 56) to make up for loss of volume by switching from MTBE to ethanol, it claims that because there is not an increased crude throughput exemptions in Rule 1304(c)(4) apply. CBE disputes that the language "no increase in maximum rating" means an increase in crude throughput. Ultramar is increasing its gasoline production and there will be more gasoline produced than prior to the project. The project thus constitutes an increase in maximum rating and no Rule 1304 (c)(4) exemption should apply.

45-20

Finally, CBE requests a written response to these comments.

45-21

Should you have any questions, please contact me at 323-826-9771 ext. 108.

Sincerely,



Scott Kuhn, CBE Staff Attorney

COMMUNITIES FOR A BETTER ENVIRONMENT

Table 5-3. Comparison of the Network Averaged Modeled Risk to Measured Risk
at the Ten MATES-II Sites

	Benzene	1,3 Butadiene	Other	Diesel	Total
Anaheim	119	87	161	963	1330
Burbank	93	62	164	842	1161
Compton	96	65	147	994	1302
Fontana	48	19	120	752	939
Huntington Park	88	61	179	867	1195
Downtown L.A.	94	65	170	1176	1505
Long Beach	88	58	138	920	1204
Pico Rivera	77	43	142	869	1131
Rubidoux	57	26	107	797	987
Wilmington	81	46	222	1182	1531
Modeled Average	84	53	155	936	1228
Modeled Average*	83	53	147	898	1182
Monitored Average*	92	118	187	1017	1414

* Eight monitoring site average excluding Wilmington and Compton where elemental carbon was not measured.

*Cancer risks
in a million*

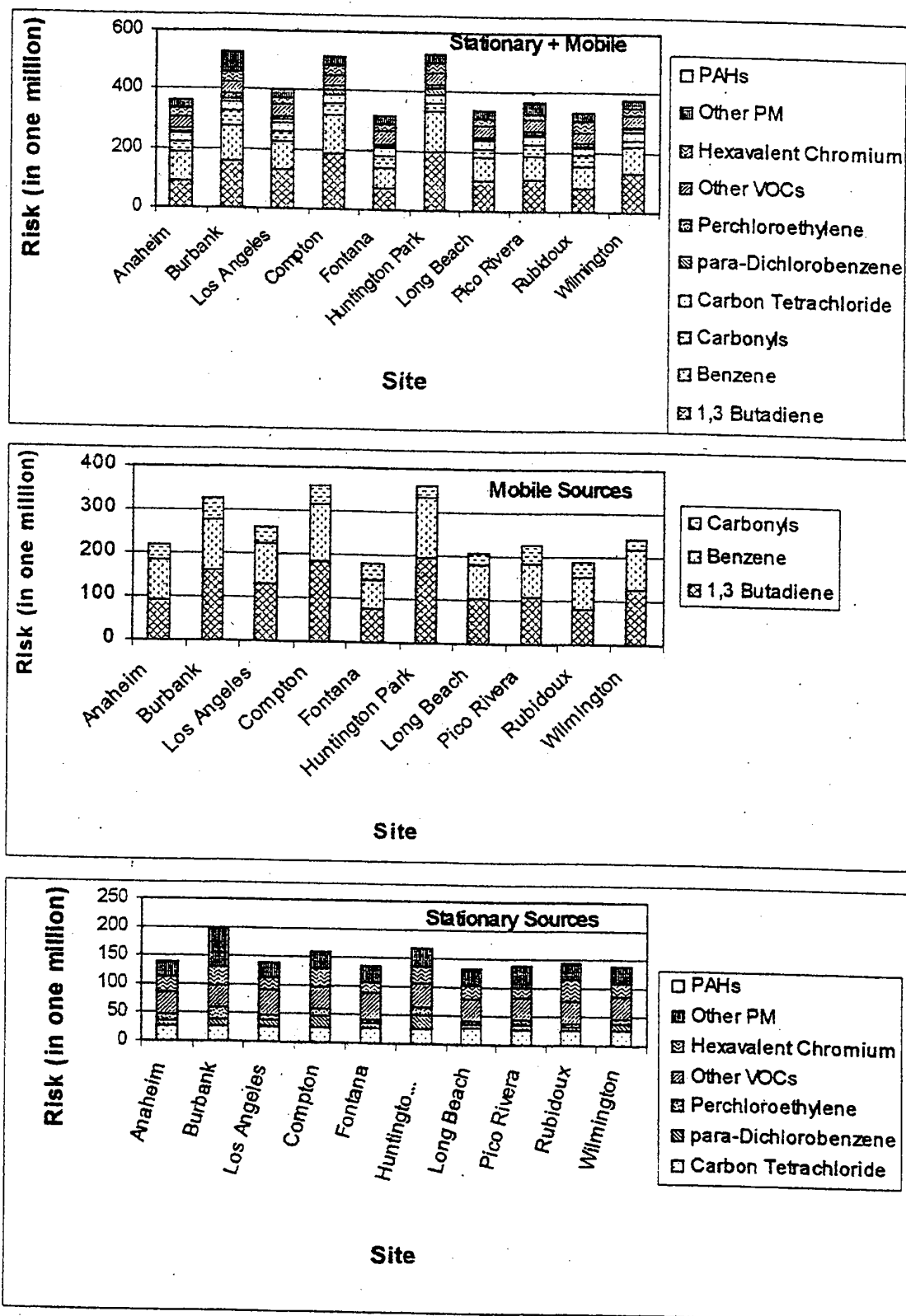


Figure 3-3. Cancer Risks at the MATES-II Fixed Sites.
 Risks are shown for all sources (top), mobile sources (middle),
 and stationary sources (bottom), all excluding diesel toxicity.

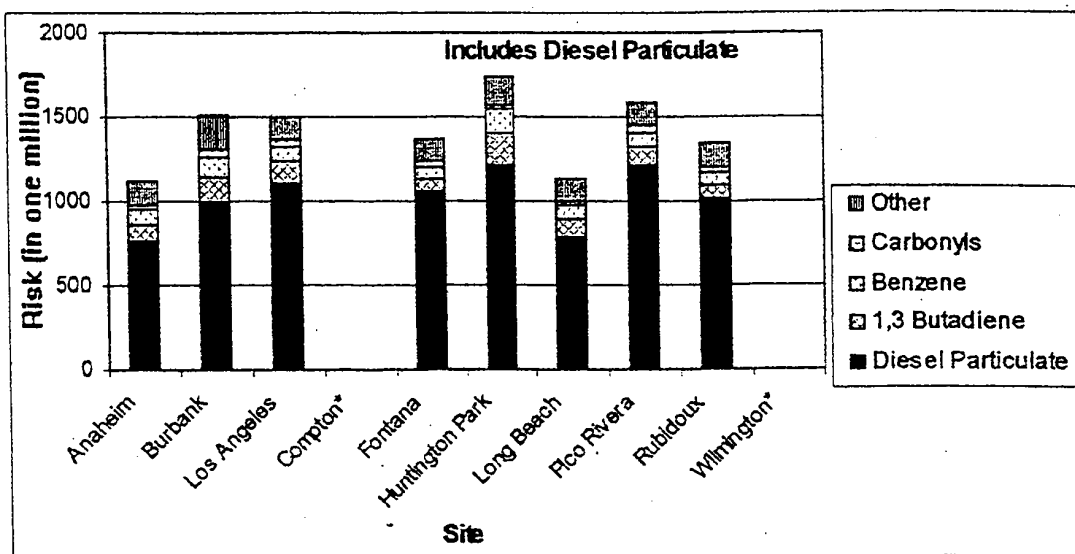


Figure 3-4. Cancer risks including diesel particulate toxicity at the MATES II fixed sites.

*No elemental carbon measured at these sites

3.2.4 Seasonal Variability

Monthly network mean concentrations and their 10th and 90th percent two-tailed confidence intervals are shown in Figure 3-5 for 18 of the measured pollutants.

Not all the pollutants exhibit a seasonal pattern but those that do follow two discernible patterns. Benzene, 1,3 butadiene, methylene chloride, perchloroethylene, methyl ethyl ketone, lead, and elemental carbon exhibit wintertime maximum and summertime minimum concentrations. This pattern is due to local seasonal meteorological conditions. Typically in late fall and winter, light winds result in reduced ventilation and late night and early morning surface inversions trap emissions from ground-level sources, such as on-road vehicles, and inhibit the vertical dispersion of pollutants, whereas, increased ventilation is typical of the summertime months. Stronger land breeze/sea breeze circulation and increased insulation results in increased wind speeds and increased vertical atmospheric dispersion and subsequently reduced ambient concentrations.

Formaldehyde, acetaldehyde, p-dichlorobenzene, and nickel exhibit a different seasonal pattern, which is a summer/fall maximum and a winter/spring minimum. Depending on the pollutant there are two potential causes for this pattern. Much of the measured formaldehyde and acetaldehyde are secondarily formed through photochemical reactions and thus the pattern follows cycle of increasing solar radiation. The peak is delayed since summertime is also the time of increased ventilation and vertical mixing which tends to reduce concentrations. However, late summer/early fall is a time of high insulation but somewhat reduced ventilation and vertical dispersion.

It is speculated that wind blown or mechanically disturbed crustal material is an important source



Wilmington

Air Monitoring Results

This page updated June 18, 2002.

-
- The Wilmington community of Los Angeles was selected for air quality monitoring due to the location of high-risk facilities within the community and the proximity of these facilities to schools in the area. Wilmington is home to several oil refineries. It is also situated near the ports of Los Angeles and Long Beach, which are sources of diesel and fugitive emissions from bulk transport activities. There are about 12 schools and childcare facilities in the area.
 - In the initial phase of the study, ambient air quality monitoring near Wilmington Park Elementary School in Wilmington began in May 2001, and is expected to continue through May 2002. At the Mahar Charity House across from the school, we collect information on approximately 70 air pollutants. These pollutants are known or suspected to cause cancer or other serious illnesses. Some have health-based standards established; a standard is a level above which a pollutant is known to cause adverse health effects in humans. The data presented represent the first several months of monitoring for organic gases and particulate matter. Data for some of the 70 air pollutants monitored at Wilmington are presented here. The Air Resources Board Laboratory is still reviewing data for some of the pollutants. Diesel particulate matter, a main contributor to the overall health risk, is not directly measured since a method is still being developed. We will be analyzing the elemental carbon (surrogate used for approximating diesel particulate emissions) data collected at Wilmington. For monitoring details, including a map and some real-time information, click [here](#).
 - Ambient levels of toxic air contaminants are routinely monitored at approximately twenty sites in the California air toxics monitoring network. Closest to Wilmington are North Long Beach, Los Angeles-North Main, and Burbank in Los Angeles County. In addition, gaseous pollutants are routinely monitored at these 3 sites plus Hawthorne and Azusa.
 - These data represent only a portion of the data that is being collected as part of this study. No conclusions about the overall meaning of these data should be made until all of the data are collected and fully reviewed.

Some air pollutants have health-based standards established. Information on these so-called criteria pollutants can be obtained below:

- [Ozone](#)
- [Carbon Monoxide](#)

- Oxides of Nitrogen
- Particulate Matter

Since only limited data from 5 months are available, the information is insufficient for meaningful calculations of the total cancer risk at Wilmington. Cancer risk estimates represent the chance in excess cancer cases in one million people, assuming these people breathe the average levels of the pollutant over a 70-year lifetime. Cancer risk is commonly expressed as the number of potential chances in a million people of contracting cancer. In many locations with long-term monitoring data, several pollutants make up most of the cancer risk. Information on these specific pollutants can be obtained below:

- Acetaldehyde
- 1,3-Butadiene
- Benzene
- Carbon Tetrachloride
- Formaldehyde
- Hexavalent Chromium
- Methylene Chloride
- Para-Dichlorobenzene
- Perchloroethylene

Due to location of refineries in the community, some metals were of particular interest in this study. Information on these metals are below:

- Arsenic
- Lead
- Manganese
- Nickel

Polycyclic aromatic hydrocarbons (PAHs) and dioxins have been identified as toxic air pollutants that may disproportionately impact infants and children. Benzo[a]pyrene is one of the six PAHs monitored in this study. Currently there are no measurements for dioxins in the Wilmington study area. Dioxin measurements will begin for the Wilmington area in January, 2002; the link below provides information on current activities. Information on PAHs and other compounds can be obtained below:

- Benzo(a)pyrene
- Dioxins

For a complete data set in Microsoft Excel format:

- All Data

Real-time hourly data for criteria pollutants and meteorological information are available below:

COMMENT LETTER NO. 45
LETTER FROM COMMUNITIES FOR A BETTER ENVIRONMENT

Scott Kuhn
June 20, 2002

Response 45-1

The SCAQMD made a good faith effort to provide responses to comments to CBE prior to the June 20, 2002 public meeting. All comments received on this project have been included in the Volume IV, Responses to Comments and responses have been prepared for all comments received on the Draft SEIR. These include comments received during the public comment period, comments received after the close of the public comment period, and comments received at the public meeting. The SCAQMD could not provide responses sooner because of the time it took to respond to the comments received from CBE including those received after the public meeting. Therefore, public comments have been received on the proposed project from March 8, 2002 until the present time (August 29, 2002). The SCAQMD has gone beyond what is required by CEQA by holding a public meeting and providing preliminary responses to comments submitted by the public, neither of which is required by CEQA (CEQA Guidelines §15202).

Response 45-2

Please see the Final SEIR page 5-20 regarding the calculations for the air quality benefits associated with use of the CARB Phase 3 reformulated gasoline. The emission benefits are taken from the CARB Proposed California Phase 3 Reformulated Gasoline Regulations, Staff Report : Initial Statement of Reasons, dated October 22, 1999. CARB has provided statewide estimates on the air quality benefits; however, due to variations in driving, types of vehicles driven, miles driven, the air quality benefits to the Wilmington community (or any other community in California) has not been calculated.

Response 7-1 is a general response on the comments provided in the April 22, 2002 letter. This response does not include responses to the environmental justice issue, other than to refer the reader to the response (Response 7-105) that responds to the environmental justice issue. Therefore, the comment that the “author of this response is not aware or familiar with the Environmental Justice Commitments of the SCAQMD” seems misplaced.

This comment states that the response to Comment 7-1 fails to substantiate what benefits will result to the Wilmington community. The proposed project will allow Ultramar to comply with CARB’s Phase 3 Reformulated Fuels requirement. These requirements will reduce motor vehicle emissions of hydrocarbons by about one-half ton per day, NOx by about 19 tons per day, and toxics by 7.2%. While exact impacts have not been calculated, it is expected that a roughly proportional reduction in motor vehicle emissions will occur in the Wilmington area. Since significant reductions in mobile source emissions are essential to attain ozone and PM10 standards, this project will contribute to air quality benefits in Wilmington and throughout the region. This comment also states that the author of the response is not familiar with SCAQMD’s Environmental Justice

commitments. For a discussion of SCAQMD's Environmental Justice Initiatives, see Response to Comment 44-2.

Response 45-3

The SCAQMD disagrees with the commentator's opinion that Response 7-4, which states in part, "There is no requirement at this time to focus the analysis in the EIR on any specific groups," conflicts with the environmental justice initiatives. Response 7-4 is correct with respect to the CEQA requirements and guidelines for preparing an EIR.

The commenter asserts that the statement in Response 7-4 that there is no requirement to focus the analysis in an EIR on any specific group is in conflict with the Environmental Justice Principles of SCAQMD. The SCAQMD disagrees. Although CEQA does not require an analysis that focuses on any specific group, it does require that any significant adverse environmental impact be identified and mitigated to the extent feasible. Thus, under CEQA any impacts caused by the project will be eliminated to the extent feasible. The commenter appears to be concerned about cumulative impacts that may adversely affect communities of color. However, in discussing remedies for disproportionate adverse impacts, U.S. EPA has stated that "denial or revocation of a permit is not necessarily an appropriate solution . . ." (65 Fed.Reg. at 39683, June 27, 2000), and a programmatic effort that "focuses on all contributions to the disparate impact" will provide the most effective long-term solutions. (*Id.* at 39662.) As described in Response to Comment 44-2, the SCAQMD is implementing such a comprehensive program.

The four guiding environmental justice principles endorsed by SCAQMD's governing board are:

- All basins residents have the right to live and work in an environment of clean air, free of airborne health threats;
- Government is obligated to protect public health;
- The public and private sectors have the right to be informed of scientific findings concerning hazardous and toxic emission levels, and to participate in the development and implementation of adequate environmental regulations in their communities; and
- The AQMD governing board is to uphold the civic expectation that the public and private sectors of the basin will engage in practices that contribute to a healthy economy and truly livable environment.

Similarly, the 10 environmental justice initiatives adopted by the Governing Board do not address CEQA requirements for analyzing environmental impacts from a project. In adopting the environmental justice initiatives the Chairman of the SCAQMD board indicated the following: "Today's action should leave no doubt in the minds of Southland residents about this board's commitment to clean air, a commitment that extends to all communities and all corners of our four-county jurisdiction." The environmental justice initiatives adopted by the board do not require that an EIR focus the analysis on any specific groups but rather that it include all groups. Finally, the 23 Environmental Justice enhancements proposed by the Governing Board at the July 12, 2002

Board meeting would further strengthen the SCAQMD's Environmental Justice Program. However, none of the proposed Environmental Justice Enhancements affect or alter in any way existing CEQA requirements for analyzing environmental impacts from a project. Therefore, Response 7-4 does not conflict with any SCAQMD policies.

Response 45-4

The MATES-II study consists of several different elements. It consisted of a comprehensive monitoring program, an updated emissions inventory of toxic air contaminants, and a modeling effort to characterize Basin risk. The data quoted in Response 7-8 is from the actual monitoring program and is taken from Figure 3-3 of the MATES-II study. The monitoring did not include analysis for elemental carbon at the Wilmington site so that risk estimates associated diesel particulate matter were not estimated. The data quoted in Comment 45-4 are based on emission estimates of toxic air contaminants in the Basin and subsequent air quality modeling of the toxic emissions. Therefore, the data in Response 7-8 are not incorrect, only based on different portions of the study.

Nonetheless, Response 7-8 has been revised to referred to the summary of the MATES II study contained in the Final SEIR which indicates that the average carcinogenic risk in the Basin is about 1,400 per million. Further, the SEIR correctly cites the appropriate data.

It should also be noted that the MATES II study indicates that the cancer risks in the Basin have decreased by 44 to 60 percent since 1990. The improvement is primarily from reductions in benzene and 1,3-butadiene concentrations (70 to 80 percent) as a result of state and federal reformulated gasoline requirements and control of stationary sources and secondarily from decreases in hexavalent chromium concentrations (8 to 20 percent).

Response 45-5

The comment that "this response is not substantiated by any calculations" is incorrect. The original comment made by CBE (referred to as Response 7-23 in the CBE April 22, 2002 letter) is as follows:

"Ultramar proposes to build new storage tanks very close to residences. The SEIR fails to consider under risk of upset of hazard impacts the threat posed by a potential terrorist attack on these tanks. The risks must be analyzed and mitigated."

The Response 7-23 referred the commentator to Response 7-22 which indicated that the hazards associated with the proposed project were comprehensively addressed in the Final SEIR Volume 1, Chapter 4, Section C and Volume III. Volume III of the Final SEIR contains detailed calculations of the hazard impact zones and those calculations are summarized in Volume I of the Final SEIR (see Table 4-20, page 4-71). The hazard calculations are based on the volume of material in the tank, the type of material, the vapor pressure of the material, the volume of the containment area, and the meteorological conditions for the area, among other considerations.

Response 45-6

The SCAQMD is aware of the concerns of the community regarding the use of HF acid at the Ultramar Refinery. However, Response 7-26 is accurate because the proposed project does not include modifications to the alkylation unit or any other unit associated with the use of HF. The proposed project will not result in a change in the use, amount transported, amount stored or hazards related to the use of HF. In absence of a significant impact, mitigation measures cannot be imposed on a project under CEQA (CEQA Guidelines §15126.4(a)(3)). Therefore, mitigation measures related to the use of HF cannot be imposed under the CARB Phase 3 Proposed Project SEIR because no new equipment that uses HF or modifications to existing equipment that uses HF are included as part of the proposed project.

As indicated at the June 20, 2002 public meeting, the SCAQMD is exploring other avenues to regulate HF acid at the Ultramar Refinery. One of these measures could include reviving SCAQMD Rule 1410 – Hydrofluoric Acid which could place additional controls, including elimination of the use of HF acid or requiring the use of modified HF. The SCAQMD released the AQMD’s Environmental Justice Program – Proposed Enhancements for FY2002-03 for public review at its July 12, 2002 Governing Board meeting. One of the proposed enhancements includes the re-adoption of SCAQMD’s Rule 1410 requiring the use of modified HF or alternative processes that eliminate the use of concentrated unmodified HF. Further control of HF acid at Ultramar is currently being investigated, however, it is being done outside the context of the current SEIR.

Response 45-7

The SEIR recognized that the Refinery was owned by Valero. Please see the first sentence of page 1-1 of the Final SEIR which reads as follows: “The proposed project includes modifications to the Ultramar Inc. (a Valero Energy Company) Wilmington Refinery (Refinery), Marine Tank Farm, Olympic Tank Farm, and Marine Terminal necessary to produce cleaner-burning reformulated gasoline for use in motor vehicles.” Irregardless of who owns the Refinery and tank farms under consideration, the proposed project is unaffected and the environmental analysis remains valid.

Response 45-8

This comment is not related to the environmental analysis in the SEIR. The MOTSP is not subject to a discretionary action under CEQA so that the SEIR is not used as the environmental review document for this process.

Representatives from the CSLC indicate that Ultramar has prepared and submitted a MOTSP. The preparation of the MOTSP is required pursuant to Title 2 CCR §2351 and is not part of the CEQA process. The CSLC has the authority for regulating and enforcing the requirements of the MOTSP and the requirements of Title 2 CCR §2351 are already binding on Ultramar and other companies that own marine oil terminals. As indicated in Response 7-25, the information regarding the MOTSP will be incorporated into the Final SEIR.

It should be noted that the only modifications proposed for the Ultramar marine terminal is to install a secondary seal on the tank and change the service of the tank to allow the storage of

naphtha and other organic liquids. No new storage tanks are expected at the marine terminal. The changes required by the proposed project (change in service of the tank) have been included in the facility's MOTSP.

Please see Response 7-25 regarding the requirements of the MOTSP. It should be noted that the information contained in MOTSPs is considered sensitive as it would provide detailed information on the security measures in place at a marine terminal. MOTSPs are specifically not for release to the public. Title 2 CCR §2351 includes the requirement that the Marine Oil Terminal Security Officer “must restrict the distribution, disclosure, and availability of information contained in the Marine Oil Terminal Security Plan to those who have been determined by the marine oil terminal operator to have a strict need to know.” Therefore, the MOTSPs are not public documents.

The MOTSP is only applicable to marine oil terminals and is not applicable to tank farms or refineries. Ultramar has developed security plans, emergency response plans, and evacuation plans for all of its facilities. These security plans include requirements to prevent unauthorized access, prevent the introduction of any weapons, incendiary, or explosive devices into the facility, and training of security personnel. For the reasons discussed above, the details of security plans are considered sensitive information and, for security reasons, are not public documents.

Response 45-9

This comment has misconstrued Response 7-57. Response 7-57 does not state that Public Resources Code §21178(g) exempts CARB Phase 3 projects from the requirements of analyzing project alternatives. CEQA requires that an alternatives analysis be completed to avoid or substantially lessen any of the significant effects of the project (CEQA Guidelines §15126.6). As indicated in Response 7-57, no significant hazard impacts were associated with the marine terminal activities so there is no need to evaluate alternative locations for the marine terminal. Further, Public Resources Code §21178(g) exempts projects that will enable the production of CARB Phase 3 compliant fuels from the requirements of analyzing a no project alternative and alternative sites. However, the SEIR included the review of alternative locations for the storage of petroleum products (see Final SEIR pages 6-3 through 6-5). In general, the alternative locations alternatives analysis indicated that the significant effects of the project (air quality and hazards) would not be avoided or substantially lessened by putting the project at another location. “Only locations that would avoid or substantially lessen any of the significant effects of the project need to be considered for inclusion of the EIR” (CEQA Guidelines §15126.6 (f)(2)(A)). The storage of petroleum products at other locations is expected to result in the same air quality and hazard impacts as the proposed project. Therefore, an alternative site is not expected to avoid or lessen a significant adverse impact.

SCAQMD Rule 2005 does apply to the proposed project as there is no increase in stationary source of emissions of NO_x or SO_x from a RECLAIM facility. The Refinery is the only facility that is part of the project that is a RECLAIM source and subject to Rule 2005. The only stationary source equipment that is a source of NO_x or SO_x (i.e., RECLAIM pollutants) is an emergency diesel pump at the Olympic Tank Farm. The Olympic Tank Farm is not a RECLAIM facility and not subject to SCAQMD Rule 2002. Please note that SCAQMD Rule 2005(g)(3)(C) indicates that “if the proposed project has been analyzed by an environmental impact report pursuant to Public

Resources Code Section 21002.1 and Title 14 California Code of Regulations, Section 15080 et seq., paragraph (g)(2) shall be deemed satisfied.” Rule 2005(g)(2) requires that a new, relocated or modified major stationary source submit an analysis of alternative sites.

SCAQMD Rule 3003 applies to the Refinery, since the Refinery is subject to the requirements of Title V. However, Rule 3003 has no provision that requires that “prior to issuing a permit to a new source of air pollutant emissions, the SCAQMD must require an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs to be attributed to the proposed source.”

Response 45-10

The issue of authority to regulate marine vessels has been a part of a lawsuit on the Mobil CARB Phase 2 EIR (State Clearinghouse No. 93011009, SCAQMD, 1998) and the issue has already been subject to legal review. As indicated in the Final SEIR, since marine vessels are large contributors to significant air quality impacts, the SCAQMD evaluated whether or not it had jurisdictional authority to regulate marine vessel emissions. As indicated in the SEIR, the SCAQMD has little or no authority to regulate marine vessel emissions. The Final SEIR has been revised to include additional details on: (1) why the SCAQMD has no authority to regulate marine vessel emissions; and (2) the measures the SCAQMD could impose would not reduce emissions. See Chapter 4, Air Quality of the Final SEIR for further details.

SCAQMD Rule 1142 does not control emissions from marine engines but controls VOC emissions associated with the loading and unloading operations for certain petroleum products. The SCAQMD has the authority to regulate these emissions because they do not involve the marine engine.

Response 45-11

It is recognized that a terrorist attack is different than an accident during normal operations. The proposed project will occur at existing facilities so a terrorist attack and resulting effects would in large be part of the existing setting. Further in response to the September 11, 2001 terrorist attacks in New York, increased/enhanced safety/security measures are being put into place or are already in place (see Responses 4-2 and 7-25).

However, in the hazard analysis, a “worst-case” analysis of potential upsets were evaluated, and not an accident during normal operations. For example the hazard analysis associated with any of the modified tanks included a complete release of material from the tanks and the ignition of the material creating a fire. This is a worst-case analysis and the consequence of an accident created by human error or a terrorist attack could be no worse. The hazard analysis was completed for all tanks that are part of the proposed project and the detailed results of the hazard analyses are included in Volume III of the Final SEIR. The hazard footprint created by any and all of these hazards is also included in Volume III of the Final SEIR. For example, see Figure 4-7, page 4-15 of Volume III of the Final SEIR for the hazard footprint associated with all the tanks at the Olympic Tank Farm. The maximum distance that a fire hazard could migrate off-site from the

Olympic Tank Farm is about 60 feet, as reported in the Final SEIR (see age 4-70). Since this is the maximum distance that fire radiation could migrate, the distance will not change, whether the upset condition is accidental or intentional or whether one or more tanks are involved.

Hazards associated with the proposed project at the refinery and the Olympic Tank Farm (or other tank farms or terminals) would not overlap. The hazards that could migrate off-site associated with the refinery include a hydrogen sulfide release and a BLEVE from the propane/propylene bullets. The maximum distance for these releases is about 300 feet. The Olympic Tank Farm is located about 0.5 mile (approximately 2,600 feet from the Refinery. Therefore, the hazards related to the proposed project at the Olympic Tank Farm and Refinery would not overlap.

The hazards related to the potential hijacking of truck shipments of hazardous and toxic chemicals is not a hazard specifically related to the proposed project but is part of the existing setting, i.e., the potential hazard exists today and is not related to new impacts associated with the proposed project. However, the December 2001 Final EIR addressed the hazards associated with the transportation of hazardous materials that would change because of the proposed project including ethanol, MTBE, high octane blending components, and propane/propylene. As indicated in Response 7-24, a summary of the transportation hazards from the December 2001 Final EIR will be included in the Final SEIR. The project as revised in the SEIR does not include any new transportation hazards that were not previously addressed in the December 2001 Final EIR.

Response 45-12

This comment has misrepresented the responses provided in Responses 7-80 through 7-86. The SCAQMD did not respond that it was uncertain whether Coastal Development Permits, building permits, grading permits, plumbing and electric permits, hazardous materials permits and Cal OSHA construction permits would be required. Only in Response 7-84 did the SCAQMD respond that it was uncertain whether a plumbing and electrical permit and a Cal OSHA permit will be required. Rather the timing on some of these permits is uncertain. Most of these permits will not be submitted until after the SEIR process is completed and the date that the SEIR will be complete is not known. Therefore, the timing of the permits is uncertain.

The following details are now known for the proposed project regarding the permits mentioned in Responses 7-80 through 7-86:

- There is no change in Response 7-80 regarding the Coastal Development Permit.
- There is no change in Response 7-81 regarding a building permit from the Port of Los Angeles.
- Response 7-82 has been modified because no grading permit will be required from the Port of Los Angeles for the proposed project.
- Response 7-83 has been modified because no franchise permit will be required from the Port of Los Angeles for the proposed project.

- Response 7-84 has been modified because no plumbing or electrical permits are required from the Port of Los Angeles for the proposed project.
- There is no change in Response 7-85 regarding a hazardous materials business plan.
- Response 7-86 has been modified because it is expected that a CalOSHA permit may be required for construction of the pipeline. The timing for the submittal of this permit will be after the certification of the SEIR and is expected to be in December 2002.

With the exception of the Coastal Development Permit, none of the above actions are considered discretionary. The Coastal Development Permit is a discretionary action, however, the Coastal Commission has a certified regulatory program and conducts environmental analyses equivalent to CEQA review.

Ultramar is required by other regulations and statutes to obtain these permits, e.g., the California Coast Act and the related regulations require that the project be reviewed by the Coastal Commission. The SEIR does not need to require that these permits be obtained because other statutes already require that they be obtained. Finally, CEQA Guidelines §15043 refers specifically to being fully informed, etc., regarding the conclusions that there is no way to lessen significant effects of a project and discussing the fact that the benefits of a project should outweigh the policy of reducing or avoiding significant environmental impacts from the project. This section contains no requirements related to obtaining permits.

Response 45-13

The SCAQMD disagrees with the commentator's opinion that the Ultramar's proposed project and the Port of Los Angeles' remediation project at the Marine Terminal are one large project. As the SCAQMD previously stated in Response 7-101, there are two clear and distinct projects that are unrelated in the sense that one involves complying with state-mandated requirements to phase out the use of MTBE, replace it with ethanol, and comply with other CARB Phase 3 reformulated gasoline specifications. The SCAQMD is the lead agency for this project because it has primary approval authority over refinery and terminal modifications to comply with CARB phase 3 reformulated gasoline.

The project at the Marine Terminal is part of the Port's overall redevelopment plan which includes remediation and clean up of contamination found at the site. According to the Port, it is likely that the Regional Water Quality Control Board would be the agency responsible for site remediation due to its jurisdictional authority over projects with potential groundwater contamination. Except for enforcement of Rule 1166 – Volatile Organic Compound Emissions from Decontamination of Soil, the SCAQMD has no approval authority over site remediation projects. Further, because it has primary approval authority over projects at the Marine Terminal, the Port, which is the appropriate lead agency under CEQA, has indicated that it is in the process of preparing an EIR for the redevelopment plan, which will include site remediation impacts as well as reuse of the Ultramar site and adjacent terminals as a general cargo terminal. With regard to the CEQA document, the Port is currently preparing the initial study for the project.

The SCAQMD contacted the Port on July 30, 2002 to obtain an update on the status of the site remediation project at the Marine Terminal. According to the Port, Ultramar has prepared a remediation feasibility study that identifies the goals of the site remediation project, that is, what levels of contamination are considered to be “clean,” which is then reviewed for approval by the Office of Environmental Health Hazard Assessment (OEHHA). This feasibility study does not identify specific tasks or strategies for cleaning up the site, simply the cleanup goals to be achieved. OEHHA has reviewed and returned the feasibility study with comments to Ultramar. Ultramar is currently in the process of revising the feasibility study. Once the specific site remediation goals are approved by OEHHA, then a site remediation plan will be developed that evaluates the specific remediation tasks, activities, and technologies available for use in cleaning up the site. The potential impacts associated with the remediation activities can only be determined once the specific remediation activities have been determined. The specific remediation activities that will occur at the Marine Terminal have not yet been determined.

As can be seen from the preceding information, remediation and redevelopment of the Marine Terminal by the Port does not rely on Ultramar’s CARB Phase 3 project and, therefore, is unrelated. Further, aside from the Port’s request to Ultramar to dismantle and remediate the site, specific remediation activities and any resulting impacts are unknown at this time. As a result, to attempt to analyze impacts from the Port’s project would be speculative at this time. CEQA Guidelines §15145 states, “If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.”

Because Ultramar must comply with state-mandated CARB Phase 3 requirements no later than December 31, 2003, it is necessary to proceed with processing this project. Since the Port is in the early phases of site remediation for its project at the Marine Terminal, it is speculative to consider impacts from the remediation project and subsequent general cargo terminal project until these projects become better defined. Consequently, to avoid engaging in speculation the SCAQMD will not consider the Port’s project further. Once the Port has further defined its Marine Terminal project, including site remediation and construction and use of the general cargo terminal, it will likely analyze cumulative impacts, if any, as part of preparing the EIR for this project. The SCAQMD has expressed its willingness to cooperate with the Port with regard to preparing the EIR for its Marine Terminal project. Most of the information it would need from the SCAQMD, however, can be found in the Subsequent EIR for Ultramar’s CARB Phase 3 project.

Response 45-14

The SCAQMD disagrees with the commentator’s opinion that the, “SCAQMD is illegally piecemealing the project...” Piecemealing generally refers to segmenting a single project into smaller projects to avoid identifying significant adverse impacts so that negative declarations can be prepared for the individual projects. The SCAQMD has prepared a comprehensive Subsequent EIR that identifies significant adverse impacts (and mitigation measures) in the following areas: construction air quality, operation air quality, and hazards. Therefore, the charge of piecemealing is without merit relative to the CEQA document for Ultramar’s CARB Phase 3 project.

Response 45-15

As mentioned in response to comment 45-13, the Port's Marine Terminal project is a separate and unrelated project to Ultramar's CARB Phase 3 project. The SCAQMD contacted the Port most recently on July 30, 2002, to discuss the current status of the project. As already noted in response to comment 45-13, a site remediation plan has not yet been prepared for the site, so site cleanup activities and technologies are not yet known. Further, the Port has not yet completed a project description for the project at the Marine Terminal and, therefore, is not in a position to release information on the project. Finally, should the Port wish to discuss its project at the Marine Terminal, the SCAQMD is available to answer questions related to air quality analysis in the Port's EIR.

Response 45-16

Section 15086(a)(1-3) of the CEQA Guidelines indicates that the lead agency shall consult with and request comments on the draft EIR from: "(1) Responsible agencies, (2) Trustee agencies with resources affected by the project, and (3) Any other state, federal, and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project." Although the U.S. EPA does not have any direct jurisdiction over the project, the SCAQMD routinely sends environmental documents to the U.S. EPA for their review and input. The U.S. EPA was sent copies of the June 2001 Notice of Preparation/Initial Study, the June 2001 Draft EIR, the December 2001 Final EIR, and the March 2002 Draft SEIR. The U.S. EPA has been sent copies of all CEQA documents related to the Ultramar CARB Phase 3 Proposed Project.

Response 45-17

The SCAQMD strongly disagrees with the commentator's opinion that the project fails to comply with laws, rules, etc., listed in the comment. Further the comment does not specify in what ways the proposed project does not comply with the various laws and rules identified, nor does it identify which SIP approved rules the project violates. The comment does not specify ways that the proposed project does not comply with civil rights laws including Title VI of the Civil Rights Act. See response 45-9 regarding NSR. See Responses 7-4, 7-105, 44-1, 44-2, 45-3 and 45-18 regarding environmental justice issues.

Response 45-18

This comment states that the Response to Comment 7-105 was counter to SCAQMD's own statements regarding environmental justice at the local, state and federal level. That response stated that there was no discrimination in the selection of the project location, and that the air toxics impacts of the proposed project were concluded to be less than significant. These statements are still considered to be correct. However, it should also be noted that SCAQMD has undertaken a comprehensive effort to address environmental justice concerns and to reduce pollution impacts in the port areas. See Response to Comment 44-2. The SCAQMD has adopted a definition stating "Environmental Justice means equitable environmental policymaking and enforcement to protect the health of all persons who live or work in the South Coast Air Quality Management District, regardless of age, culture, ethnicity, gender, race, socioeconomic status, or geographic location,

from the health effects or air pollution.” The SCAQMD stands by this commitment, and continues to propose environmental justice measures that will specifically benefit the area to be impacted by the proposed Ultramar project, as described in Response to Comment 44-2.

Response 45-19

See Response 7-106 regarding public notice and the need for Spanish translation. Due to requests by the public, Spanish translation was provided at the June 20, 2002 public meeting for the proposed project. At its July 12, 2002 meeting, the SCAQMD Governing Board released its Proposed Enhancements to the SCAQMD’s Environmental Justice Program for review and comment by the public. Enhancement II-15 describes the SCAQMD’s commitment to increase the involvement of minority communities in SCAQMD town hall or other meetings by making “further efforts to translate pertinent public notices into multiple languages, as applicable, to the cultural and ethnic populations of individual neighborhoods and communities.” At this time, Enhancement II-15 does not apply to complex technical documents, such as CEQA documents.

Response 45-20

The comment that the project’s goal is to increase gasoline capacity is not correct. The proposed project is being undertaken to comply with the CARB Phase 3 reformulated fuels specifications. As indicated in the SEIR, the proposed project will not result in an increase in crude throughput capacity (see Final SEIR, page 2-9). Replacing MTBE with ethanol reduces the volume of gasoline up to about 10 percent. By altering the mix of blending components, Ultramar can make up some of the loss in gasoline volume. The SEIR made conservative assumptions to make sure that the impacts associated with all portions of the project were adequately evaluated and only assumed the increase in gasoline blending components and not the decreased volume associated with the removal of MTBE. Therefore, the statement cited from page 1-7 of the Draft SEIR will be clarified in the Final EIR to indicate that increasing gasoline production is to make up for the loss of volume by switching from MTBE to ethanol.

Response 45-21

Pursuant to Public Resources Code §21091(2)(4), a lead agency may respond to comments submitted after the close of the comment period, but is not required to respond. The SCAQMD has evaluated all comments on environmental issues received from persons who reviewed the Draft SEIR and has prepare written responses to all comments, even those submitted after the close of the public comment period. Responses will be sent to the commentator.