

APPENDIX C

**COMMENTS AND RESPONSES TO COMMENTS ON DRAFT SUBSEQUENT
NEGATIVE DECLARATION**

APPENDIX C

FINAL SUBSEQUENT NEGATIVE DECLARATION

CONOCOPHILLIPS LOS ANGELES REFINERY

WILMINGTON PLANT

ULTRA LOW SULFUR DIESEL PROJECT

RESPONSE TO COMMENTS

INTRODUCTION

This Appendix, together with the Draft Subsequent Negative Declaration constitutes the Final Subsequent Negative Declaration for the ConocoPhillips Los Angeles Refinery Ultra Low Sulfur Diesel (ULSD) Project.

The Draft Subsequent Negative Declaration was circulated for a 30-day public review and comment period which started on June 21, 2005 and ended July 20, 2005. The Draft Subsequent Negative Declaration is available at the South Coast Air Quality Management District (SCAQMD), 21865 Copley Drive, Diamond Bar, California 91765-4182 or by phone at (909) 396-2039. The Draft Subsequent Negative Declaration can also be downloaded by accessing the SCAQMD's CEQA web pages at <http://www.aqmd.gov/ceqa/nonaqmd.html>.

The Draft Subsequent Negative Declaration included a detailed project description, the environmental setting for each environmental resource, and an analysis of the each environmental resource on the California Environmental Quality Act (CEQA) checklist including all potentially significant environmental impacts. Based on the Draft Subsequent Negative Declaration, no significant adverse environmental impacts were identified associated with the proposed ULSD project.

The SCAQMD received two comment letters on the Draft Negative Declaration during the public comment period. One comment letter was received after the public comment period. In addition, the SCAQMD received additional comments from Marc Joseph, Richard Drury, and Kevin Golden of Adams, Broadwell, Joseph, and Cardozo on September 9, 2005 as part of a request for a public hearing under SCAQMD Regulations XII. The September 9, 2005 comment letter raised many of the same issues that had been raised in comments on the 2004 Negative Declaration, 2004 Addendum and the 2005 Subsequent Negative Declaration, all of which were previously responded to. The SCAQMD Staff wanted to provide additional explanation and analysis in response to issues raised in the September 9, 2005 comment letter, which is included herein as comment letter no. 4.

Responses to each comment letter are presented in this Appendix. The comments are bracketed and numbered. The related responses are identified with the corresponding number and are included in the following pages.

In order to adequately address the comments raised in the comment letters, new information is provided to merely clarify, amplify or make insignificant modifications to the Subsequent Negative Declaration. Pursuant to CEQA Guidelines §15073.5(c)(2), recirculation is not necessary since the information is provided in response to written comments on the project's effects and does not identify any new, avoidable significant effects.

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July 20, 2005

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**Re: Comments on Subsequent Negative Declaration for
ConocoPhillips Los Angeles Refinery Selective Catalytic
Reduction Unit (SCR) Project and Ultra Low Sulfur Diesel
(ULSD) Project**

Dear Mr. Krause:

We are writing on behalf of the Southern California Pipe Trades District Council 16 and Steamfitters & Pipefitters Local 250 ("Commenters") to comment on the Subsequent Negative Declaration ("SND") that has been prepared as an addition to the two previous negative declarations already prepared for the ConocoPhillips Los Angeles Refinery Ultra Low Sulfur Diesel Project ("ULSD Project"). This third negative declaration proposes the Selective Catalytic Reduction Project ("SCR Project") that will allow ConocoPhillips to install and operate a Selective Catalytic Reduction ("SCR") unit with the new charge heater at the ConocoPhillips Wilmington Plant. We believe that there is a fair argument that the Project may have adverse environmental impacts and that an environmental impact report is therefore required.

The fact that three negative declarations have been required to analyze the same Project, each with successively more impacts and mitigation measures, is further proof of the need for an EIR to thoroughly analyze the Project. Rather than studying the whole Project in an EIR, the SCAQMD has piecemealed the Project

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into three phases, each with separate analysis and mitigation. CEQA prohibits such a piecemeal approach. The need to install pollution control equipment and to prepare a third Negative Declaration for the ULSD Project at this time, long after the ULSD Project was originally approved by the South Coast Air Quality Management District ("SCAQMD") in its Final Negative Declaration on June 18, 2004, and in its Addendum to the Final Negative Declaration on September 21, 2004, demonstrates that the Project as originally approved in fact had potential environmental impacts that were left unconsidered. With this very late proposal to install SCR pollution control equipment to reduce NOx emissions from the new B-401 charge heater, SCAQMD demonstrates that it neglected to consider the significant environmental impacts from the originally permitted ULSD Project that still has not been examined in an EIR. With this most recent SCR addition to the ULSD Project, the District also neglects to conduct proper environmental review for additional significant environmental impacts that may result from the operation of the newly proposed SCR unit.

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The members of the Commenters construct and maintain commercial, residential and industrial projects, primarily in the vicinity of Los Angeles County and often in and around the ConocoPhillips Wilmington Refineries themselves. The Commenters' members live in and use areas that suffer the impacts of the Refineries and other environmentally detrimental projects. Union members breathe the same polluted air that others breathe and suffer the same adverse health and safety impacts. Because they are often in close proximity to the ConocoPhillips Refineries and other polluting sources, their exposure is often at significantly higher levels than that of the general population.

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Union members are also concerned with environmentally sound land use in Los Angeles County. Poorly planned and environmentally detrimental projects may jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live here. Continued degradation can cause construction moratoriums and other restrictions on growth in the region that, in turn, reduce future employment opportunities. Finally, union members are concerned about projects that carry serious environmental risks without providing countervailing employment and economic benefits to local workers and communities. Therefore, the Unions and their members have a strong interest in enforcing environmental laws such as CEQA.

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I. LEGAL STANDARD.

“The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal.App.4th 98, 109.)

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report (“EIR”) except in certain limited circumstances. (See, e.g., Pub. Res. Code § 21100.) The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) A negative declaration may be prepared instead of an EIR when, after preparing an initial study, a lead agency determines that a project “would not have a significant effect on the environment.” (*Id.*, § 21080(c).) However, such a determination may be made only if “[t]here is no substantial evidence in light of the whole record before the lead agency” that such an impact may occur. (*Id.*, § 21080(c)(1).)

A negative declaration is improper, and an EIR is required, whenever substantial evidence in the record supports a “fair argument” that significant impacts may occur. Even if other substantial evidence supports the opposite conclusion, the agency nevertheless must prepare an EIR. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903; *Stanislaus Audubon v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597.) The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.) As a matter of law, “substantial evidence includes ... expert opinion.” (Pub. Res. Code § 21080(e)(1); CEQA Guidelines § 15064(f)(5).)

As discussed below, the negative declaration is legally and factually untenable. Dr. Phyllis Fox, P.E., Ph.D., an environmental and civil engineering expert, concluded in previous comments to SCAQMD that the ULSD Project may have adverse environmental impacts that must be analyzed in an environmental impact report (“EIR”).

Dr. Fox concluded that the SND continues to ignore the impacts identified in prior comment letters submitted by Dr. Fox and Matthew Hagemann, M.S., including:

1. Operational emissions of nitrogen oxides (NOx) of 560 pounds per day -- well above the SCAQMD significance threshold of 55 pounds per day;
2. Construction emissions of NOx of 160 pounds of NOx per day -- well above the significance threshold of 100 pounds per day;
3. Toxic chemical vapors from excavation of heavily contaminated soil that create a "potentially perilous situation for both construction workers and nearby neighbors, who may be unwittingly exposed to contaminated soils and vapors";
4. Cumulative air emissions of 8,755 pounds per day of NOx (far above the 55 pound per day threshold) and 5,663 pounds per day of sulfur oxides (far above the 150 pound per day threshold).

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We incorporate herein all comments previously made by experts Dr. Fox and Mr. Hagemann concerning the ULSD Project.

In addition to the impacts identified previously, there is a fair argument that the modification of the ULSD Project described in the SND may have additional significant adverse environmental impacts that must be prepared in an EIR, including Secondary PM10 formation from SCR and NOx emissions that remain significant.

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II. THE PROJECT WILL HAVE SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS.

As discussed above, CEQA requires the lead agency to prepare an environmental impact report ("EIR") when there is a fair argument that a project may have adverse environmental impacts. (*Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597.) Expert testimony is sufficient to create a "fair argument," even if other evidence contradicts the expert's conclusions. *Id.* In this case, our experts have conducted detailed analysis and file review and have concluded that the Project will have very significant impacts. An EIR must therefore be prepared.

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A. Operation of the SCR Project Will have Significant Environmental Impacts from Secondary Particulate Matter Formation

Operation of the selective catalytic reduction (“SCR”) unit will have significant environmental impacts from the emission of secondary particulate matter 10 (“PM10”). The SND did not consider Secondary PM10 emission in any way. Secondary PM10 emissions are a significant, unmitigated source of air pollution that must be evaluated in an EIR.

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As Dr. Fox explained in her comments on the SND (attached as exhibit A), secondary PM10 emissions result in the formation of byproduct particulate matter from two sources – the ammonia slip and oxidation of sulfur dioxide (“SO₂”) by the SCR catalyst. Given that the South Coast Air Basin already fails to meet the PM10 ambient air quality standards, the emission of more PM10 from the SCR is a significant environmental impact requiring environmental review in an EIR.

B. Significant NOx Emissions Increases from the ULSD Project Remain Unmitigated

As discussed in previous comment letters, the Project’s NOx emission increases of between 456 and 560 pounds per day (“ppd”) are significant and unmitigated. All prior expert and legal comments on the ULSD Project are reincorporated herein by reference.

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The District contends that the Project’s NOx emission will actually be 8.9 lb/day, rather than 560 ppd. We maintain that the ULSD Project will increase refinery emissions by as much as 560 ppd. However, even if the Project’s NOx emissions were found to be 8.9 ppd as alleged by the District, that emission level would still be significant for several reasons. First, the release of 8.9 additional lb/day of NOx would have a significant adverse environmental impact due to the already high level of NOx pollution from the refinery. Conoco’s NOx emissions in the most recent year are 3,567 lb/day. Adding another 8.9 lb/day to this already high level of emissions would contribute to unacceptably high NOx emissions and would be significant. This is particularly true given that the South Coast Air Basin is in extreme non-attainment for ozone, and NOx is an ozone precursor.

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Also, the addition of either 560 ppd or 8.9 ppd of NOx contributes to cumulatively considerable NOx emissions from Conoco’s Wilmington Refinery that

is significant. As explained by Dr. Fox in her comments on the SND, the addition of 8.9 ppd contribute to a cumulative emissions total of 8,103 ppd – far above the SCAQMD CEQA significance threshold of 55 ppd. Thus, even if the ULSD Project emissions are assumed to be 8.9 lb/day of NOx, ULSD Project emissions are cumulatively considerable, requiring the preparation of an EIR.

In on-going litigation, Conoco and SCAQMD have argued that a Project emission increase of 8.9 ppd of NOx is not significant because it is below the 55 ppd significance threshold. Recent case law directly contradicts such a conclusion.

In *Mejia v. City of Los Angeles* (Published June 16, 2005), 29 Cal.Rptr.3d 788 (“*Mejia v. LA*”), the Court held that an agency may not rely on thresholds of significance to avoid preparing an EIR if there is any evidence supporting a fair argument that the Project may have any significant impact. The court held that even if a project’s impacts fall below a CEQA significance threshold, an EIR is still required if there is any substantial evidence supporting a fair argument that the Project may have any adverse environmental impact.

In *Mejia v. LA* the City claimed that the 21-home development project could not have significant traffic impacts because the Department of Transportation had adopted a significance threshold that presumed that a project would not have significant traffic impacts if it had less than 40 homes.

Relying on *Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal.App.4th 98, 110-114, the *Mejia v. LA* court held that a threshold of significance is a one-way ratchet. The agency may use the threshold to determine that a project exceeding the threshold has a significant impact that must be analyzed in an EIR, but not to determine that the project would not have a significant impact. The court stated:

“A threshold of significance may be useful to determine whether an environmental impact normally should be considered significant. [Citations omitted.] A threshold of significance is not conclusive, however, and does not relieve a public agency of the duty to consider the evidence under the fair argument standard. (*Protect the Historic Amador v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-1109; *Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal.App. 4th 98, 110-114.) A public agency cannot apply a threshold of significance or regulatory standard ‘in a way that forecloses the

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consideration of any other substantial evidence showing there may be a significant effect.’ (*Communities for a Better Environment, supra*, at p. 114.) We conclude that the city improperly relied on a threshold of significance despite substantial evidence supporting a fair argument that the project may have a significant impact on traffic. . . in light of public comments.”

(*Mejia v. LA, supra* at 802 (emphasis added).)

Even if the ULSD’s emissions are below a threshold of significance (which they are not), the agency and a court must still determine whether there is any substantial evidence supporting a fair argument that the Project may have any adverse environmental impact. In this case, there is substantial expert evidence establishing that the ULSD Project may have adverse environmental impacts from increased operational emissions, construction emissions, and cumulative impacts, regardless of any significance thresholds. Thus, under *Mejia v. LA*, an EIR is required.

Mejia v. LA makes clear that even if the Project’s emissions were below a significance threshold (which they are not), an EIR is required since there is a fair argument that the ConocoPhillips Project may have adverse environmental impacts.

III. THE SCAQMD HAS IMPROPERLY PIECEMEAELED THE CONOCOPHILLIPS PROJECTS.

The separation of the CEQA review for the SCR and ULSD projects, pursuant to two separate negative declarations, when the two projects are part of the same refinery modernization project, violates the prohibition on project piecemealing. 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.

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

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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.)

By analyzing the 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. Why else would Conoco be placing NOx reducing pollution control equipment on the charge heater?

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 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, each of which is alleged to have little or no adverse impacts, the Air District is conducting precisely the type of piecemeal analysis prohibited by CEQA.

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IV. 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,

A handwritten signature in black ink, appearing to read "Kevin S. Golden", written in a cursive style.

Kevin S. Golden

KSG:bh

Attachment

cc: Sid Stolper

George Vasquez

1550-212a

Comments
on
Subsequent
Negative Declaration

CONOCOPHILLIPS
LOS ANGELES REFINERY
ULTRA LOW SULFUR DIESEL PROJECT

Prepared by

J. Phyllis Fox, Ph.D., P.E.
Consulting Engineer
Berkeley, CA

July 18, 2005

COMMENTS

I have reviewed the Subsequent Negative Declaration (“SND”) for the ConocoPhillips Los Angeles Refinery Ultra Low Sulfur Diesel Project (“ULSD Project” or “Project”), issued by the South Coast Air Quality Management District (“SCAQMD”) on June 21, 2005 and relevant supporting documentation. After reviewing the SND and other relevant information, I conclude that the ULSD Project may have adverse environmental impacts that must be analyzed in an environmental impact report (“EIR”).

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The SND continues to ignore the impacts identified in my prior comment letters and the comment letters submitted by Mathew Hagemann, M.S., including:

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1. Operational emissions of nitrogen oxides (NOx) of 560 pounds per day -- well above the SCAQMD significance threshold of 55 pounds per day;
 2. Construction emissions of NOx of 160 pounds of NOx per day -- well above the significance threshold of 100 pounds per day;
- 1-18

3. Toxic chemical vapors from excavation of heavily contaminated soil that create a “potentially perilous situation for both construction workers and nearby neighbors, who may be unwittingly exposed to contaminated soils and vapors;”
- 1-19

4. Cumulative air emissions of 8,755 pounds per day of NOx (far above the 55 pound per day threshold) and 5,663 pounds per day of sulfur oxides (far above the 150 pound per day threshold).
- 1-20

Mr. Hagemann and I have submitted detailed comments on the above impacts. I hereby incorporate by reference in their entirety all previous comments submitted on the ULSD Project. The SND does not address the impacts previously identified for the Project, and the prior comments therefore remain valid in all respects. Since the prior comments are already in the possession of the SCAQMD, there is no reason to resubmit the same comment letters again.

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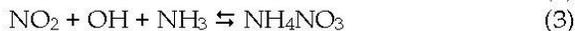
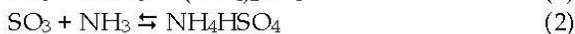
In addition to the impacts previously identified, there is a fair argument that the modification to the ULSD Project described in the SND may have additional significant adverse environmental impacts that must be analyzed in an EIR, including, but not limited to, those set forth below.

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I. SECONDARY PM10 FORMATION

The District selected selective catalytic reduction ("SCR") as best available control technology ("BACT") for nitrogen oxides ("NO_x"). The SCR results in the formation of particulate matter from two sources -- the ammonia slip (5 ppm) and oxidation of SO₂ by the SCR catalyst. The District did not consider secondary PM₁₀ formation and its resulting air quality, visibility, and public health impacts.

Excess residual ammonia downstream of the SCR system can react with SO₃, NO₂, and water vapor in the stack gases and downwind in the atmosphere to form ammonium sulfate, ammonium bisulfate, and ammonium nitrate according to the following reactions. (Seinfeld and Pandis 1998, pp. 529-534;¹ South Coast AQMD 6/12/98, p. 3-3; Matsuda *et al.* 1982;² Burke and Johnson 1982.³)



These equations can be used to estimate secondary PM₁₀ formation from ammonia slip. Secondary PM₁₀ can be formed by reaction of ammonia with SO₃ and NO₂ present in the stack gases and plume as well as additional SO₃ and NO₂ that are present downwind in the atmosphere.

In addition to secondary PM₁₀ formed from ammonia slip, it is well established that SCR catalysts oxidize sulfur combustion byproducts in the exhaust gases to sulfur trioxide ("SO₃"). Sulfur trioxide is converted into sulfate particulate matter both within the stack and downwind in the atmosphere. (Matsuda *et al.* 1982; Burke and Johnson 1982.)

The SND fails entirely to estimate secondary PM₁₀ formation from ammonia slip and oxidation of sulfur to sulfur trioxide across the SCR catalyst. There is at least a fair argument that such emissions may have significant adverse environmental impacts on existing air quality, visibility, and public health, particularly given

¹ John H. Seinfeld and Spyros N. Pandis, Atmospheric Chemistry and Physics, John Wiley & Sons, Inc., New York, 1998.

² S. Matsuda, T. Kamo, A. Kato, and F. Nakajima, Deposition of Ammonium Bisulfate in the Selective Catalytic Reduction of Nitrogen Oxides with Ammonia, Ind. Eng. Chem. Prod. Res. Dev., v. 21, 1982, pp. 48-52.

³ J.M. Burke and K.L. Johnson, Ammonium Sulfate and Bisulfate Formation in Air Preheaters, Report EPA-600/7-82-025a, April 1982.

that the South Coast Air Basin already fails to meet PM10 ambient air quality standards. Since the region already fails to meet PM10 standards, the Project's incremental contribution to this preexisting pollution may be significant.

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cont.

II. NOX EMISSIONS REMAIN SIGNIFICANT AND UNMITIGATED.

As discussed in my previous comment letters, the Project's NOx emissions of 560 pounds per day ("ppd") are significant and unmitigated. I reincorporate all prior comments on the Project herein by reference.

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The District contends that the Project's NOx emission will actually be 8.9 lb/day, rather than 560 lb/day. As discussed in my prior letters, the District's analysis is flawed. I reincorporate those comments by reference.

However, even if the Project's NOx emissions were 8.9 lb/day as alleged by the District, that emission level would still be significant for several reasons. First, the release of 8.9 additional lb/day of NOx would have a significant adverse environmental impact due to the already high level of NOx pollution from the refinery. Conoco's NOx emissions in the most recent year are 3,567 lb/day. Adding another 8.9 lb/day to this already high level of emissions would contribute to unacceptably high NOx emissions and would be significant. This is particularly true given that the South Coast Air Basin is in extreme non-attainment for ozone, and NOx is an ozone precursor.

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Also, as discussed in my previous comment letters, the cumulative impacts of the Project will be significant.

The Paramount DEIR referenced in my prior comments contains a summary of emissions from other projects that would be built in the general area and contribute to cumulative emissions. (Paramount DEIR,⁴ Chapter 5.0.) As demonstrated in the table below, the emissions from the ULSD Project are cumulatively significant, even if the ULSD Project emissions are assumed to be 8.9 lb/day of NOx.

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⁴ Environmental Audit, Inc., Paramount Refinery Clean Fuels Project Draft Environmental Impact Report, Submitted to the South Coast Air Quality Management District, December 2003.

CUMULATIVE OPERATIONAL EMISSIONS⁽¹⁾

(lb/day)

SOURCE	CO	VOC	NOx	SOx	PM10
Ultramar CARB Phase 3 Project	514	156	2,164	2,678	287
ConocoPhillips Ethanol Import & Dist. Project	9	-54 ⁽¹⁾	10	--	1
ConocoPhillips CARB RFG Phase 3	136	22	514	402	43
BP ARCO CARB Phase 3 Project	42	86	49	0	57
Shell CARB Phase 3 Project	2,213	482	2030	71	57
ExxonMobil CARB Phase 3 Project	29	288	138	12	103
ChevronTexaco CARB Phase 3 Project	393	347	3,103	2,498	843
Third Party Terminals	-	4	-	-	-
Paramount Clean Fuels Project	104	66	52	1	69
Industrial Warehouse Project (No. 10) ⁽²⁾	76	7	10	<1	5
Recreational Center Project (No. 11) ⁽²⁾	39	3	5	<1	3
Banco Popular Project (No. 13) ⁽²⁾	109	9	14	<1	8
Residential Development (No. 14 and 15) ⁽²⁾	80	25	5	<1	10
ConocoPhillips ULSD Project	330.5	2.8	8.9	>1	9.0
Cumulative Emissions	4,074.5	1,443.8	8,103	5,663	1,495
SCAQMD Thresholds	550	55	55	150	150
Significant (?)	YES	YES	YES	YES	YES

(1) Negative numbers represent emission reductions.

- Based on URBEMIS2002 Model, using default assumptions.

Table 3 indicates that cumulative emissions of all criteria pollutants exceed the SCAQMD's emission significance thresholds (in bold), even if the ULSD Project's NOx emissions are assumed to be 8.9 lb/day. The SND did not disclose that any emissions were cumulatively significant. These are new significant impacts that must be mitigated. An EIR should be prepared to evaluate these significant impacts.

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cont.

COMMENT LETTER NO. 1
ADAMS, BROADWELL, JOSEPH, & CARDOZO

Kevin S. Golden
July 20, 2005

Response 1-1

The SCAQMD acknowledges that the commentator is writing on behalf of the Southern California Pipe Trades District Council 16 and Steamfitters and Pipefitters Local 250. The comment incorrectly states that this is the third negative declaration prepared for the ULSD project. The SCAQMD certified an initial negative declaration for this project on June 18, 2004, referred to herein as the 2004 Final Negative Declaration. Thereafter, the project applicant made a minor clarification to the project, specifically, its estimate of the number of fugitive components (e.g., valves and connectors) increased slightly, resulting in a 4.9 pounds per day (lbs/day) increase in the estimated emissions of volatile organic compounds (VOCs) from the project, well below the SCAQMD's CEQA significance threshold of 55 lbs/day. Because the analysis of the minor modifications of the ULSD project did not identify any significant adverse impacts, it met the standard for preparation of an Addendum to the 2004 Final Negative Declaration (see 2004 Addendum, pages 2 and 4). On September 21, 2004, the SCAQMD re-certified the 2004 Final Negative Declaration and certified the Addendum, referred to herein as the 2004 Addendum. In addition to addressing the minor project clarification relating to the number of fugitive components, the 2004 Addendum also clarified a number of issues raised in petitions filed by this commentator and another petitioner requesting a hearing before the SCAQMD Governing Board pursuant to SCAQMD Regulation XII.

The Subsequent Negative Declaration is the second negative declaration prepared for this project. Based on the SCAQMD's review of the permit application for the replacement charge heater B-401, it was determined that the Best Available Control Technology (BACT) provision of SCAQMD Regulation XIII requires the emissions from the heater to be reduced using selective catalytic reduction (SCR) emission control technology, in addition to low NO_x burners as previously analyzed in the 2004 Final Negative Declaration. The Subsequent Negative Declaration evaluated the impacts from this change to the project. Preparation of a subsequent negative declaration was appropriate, rather than an EIR, for the reasons explained at pages 1-5 through 1-8 of the Subsequent Negative Declaration. The determination of the appropriate CEQA document was based on whether the modifications to the project will require major changes to the previous environmental document due to new significant adverse impacts not previously evaluated, or a substantial increase in a previously identified significant impact. As explained in the Subsequent Negative Declaration, in making this evaluation, the agency need not reexamine impacts that have already been reviewed in the 2004 Final Negative Declaration (see Subsequent Negative Declaration, pages 1-5 through 1-8). Rather, in accordance with the CEQA Guidelines, the agency is to focus on the changes to the project and the resulting impacts. Applying this standard, the SCAQMD concluded that a

subsequent EIR was not appropriate for the modified ULSD project, and that a subsequent negative declaration was required pursuant to Public Resources Code §21166 and CEQA Guidelines §15162.

Response 1-2

As noted in Response 1-1, the commentator mistakenly states that the Subsequent Negative Declaration is the third negative declaration prepared for the ULSD project and that there have been successively more impacts and mitigation measures in each successive CEQA document. This is only the second Negative Declaration for the ULSD project. Further, no mitigation was required for the project in the 2004 Final Negative Declaration because no significant impacts were identified. The 2004 Addendum identified a less than significant increase of 4.9 lb/day (see 2004 Addendum, Table 1) in VOC emissions due to refinement of the estimate of the number of fugitive components (valves, flanges, pumps, etc.) expected to be used in the project. Total VOC emissions in the 2004 Final Negative Declaration and the 2004 Addendum did not exceed the significance threshold for VOCs of 55 pounds per day. No additional mitigation was required because the emissions after the revision remained insignificant. The Subsequent Negative Declaration has been prepared to evaluate the environmental effects of adding SCR technology to the replacement charge heater B-401, in addition to low NO_x burners. As a result of addition of the SCR, NO_x emissions will be further reduced, not increased (see Subsequent Negative Declaration, pages 2-10 through 2-12 and Response 1-12). Accordingly, no mitigation will be required for NO_x emissions. Use of SCR technology raises issues relating to potential emissions of toxic air contaminants and hazards. The Subsequent Negative Declaration evaluated these and all other environmental resources in the environmental checklist (CEQA Guidelines Appendix G), and concluded that there would be no significant impact. Accordingly, no mitigation measures are required for the project modification evaluated in the Subsequent Negative Declaration.

The fact that changes to the project have prompted preparation of additional CEQA documents does not indicate that the project was piecemealed, as the commentator asserts. CEQA does not prohibit the refinement or modification of a project following certification of the CEQA document. In fact, the statute and regulations provide a framework for evaluating such project changes. CEQA requires that the lead agency consider the project changes and determine the appropriate document for evaluating those changes: addendum, subsequent negative declaration, or subsequent or supplemental EIR (CEQA Guidelines §§15162 through 15164). Likewise, an EIR is not required simply because a subsequent CEQA document has been prepared. Under CEQA Guideline §15162, a subsequent EIR is required only where the modifications to the project will require major changes to the previous environmental document due to new significant adverse impacts not previously evaluated, or a substantial increase in a previously identified significant impact. These conditions do not apply to the proposed project, so a subsequent EIR is not warranted or required. The Subsequent Negative Declaration does not ignore the impacts from the previous elements of the project, but rather discloses the impacts from the 2004 Final Negative Declaration, the 2004 Addendum and the current proposed project in Table 2-3. Further, no new significant impacts from the ULSD

project due to the project changes were identified (see Chapter 2 of the Subsequent Negative Declaration). Therefore, the assertion of “piece meal” does not apply.

Response 1-3

The project as originally proposed was properly analyzed and there were no environmental impacts that were unconsidered. Preparation of this Subsequent Negative Declaration does not demonstrate that the 2004 Final Negative Declaration and/or 2004 Addendum overlooked significant impacts associated with the project. CEQA requires the environmental review to be conducted at the earliest possible time in project development and the permitting process. The 2004 Final Negative Declaration and 2004 Addendum evaluated the project as proposed at the time, and an SCR unit was not part of the project at the time the 2004 Final Negative Declaration and 2004 Addendum were prepared and certified. Therefore, contrary to the commentator’s opinion, potential environmental impacts were not left unconsidered. An SCR unit was not required (and is not required) as mitigation under CEQA because the project will not result in a significant increase in NO_x emissions. The SCR unit is being required now, only after the SCAQMD received a permit application for the replacement charge heater and began evaluating the application under applicable SCAQMD rules. It is the assessment of BACT that requires the SCR Unit, not CEQA. There would be no significant increase in NO_x without SCR, so SCR is not a mitigation measure as defined pursuant to CEQA.

In addition, as discussed in the Subsequent Negative Declaration, no new significant impacts from the ULSD project were identified due to the project changes (addition of the SCR unit). Therefore, regardless whether it was considered at the time of the 2004 Final Negative Declaration, the 2004 Addendum, or now in the Subsequent Negative Declaration, the result is the same: No significant impacts will result from the project; therefore no EIR is required to review the impacts.

Response 1-4

The commentator's description of its members is noted, as is the commentator’s opinion that in general people in closer proximity to the refinery will be exposed to higher levels of pollution. However, as explained below, this assertion is not reflective of the project currently being analyzed.

The SCAQMD measured the concentration of toxic air contaminants (TACs) as part of its Multiple Air Toxic Exposure Study, referred to as the MATES-II study. The SCAQMD conducted air sampling at about 24 different sites for over 30 different TACs between April 1998 and March 1999. The SCAQMD has released a Final Report from this study which indicates the following: (1) cancer risk levels appear to be decreasing since 1990 by about 44 percent to 63 percent; (2) mobile source emissions dominate the risk; (3) approximately 70 percent of all risk is attributed to diesel particulate emissions; (4) about 20 percent of all risk is attributed to other toxics associated with mobile sources; (5) about 10 percent of all risk is attributed to stationary sources; and (6) no local “hot spots” were identified. The average carcinogenic risk in the Basin is about 1,400 per

million people. This means that 1,400 people out of a million are susceptible to contracting cancer from exposure to the known TACs over a 70-year period of time. The cumulative risk averaged over the four counties (Los Angeles, Orange, Riverside, San Bernardino) of the Basin is about 980 in one million when diesel sources are included and about 260 in one million when diesel sources are excluded. Of the ten monitoring sites in the MATES II study, Wilmington is the closest site to the Refinery. The cancer risk at the Wilmington site, based on monitoring data, was about 380 per million from stationary and mobile sources. The cancer risk from mobile sources (alone) was about 240 per million. The complete Final Report on the MATES-II Study is available from the SCAQMD (SCAQMD, 2000). Further, the ULSD project will contribute to reducing diesel particulate emissions (deemed carcinogenic by CARB) from both stationary and mobile sources by reducing the sulfur content of diesel fuel. The analysis in the Subsequent Negative Declaration, however, did not take any credit for the regional air quality benefits expected from the ULSD project.

The air quality in the vicinity of the refinery meets the federal and state health-based standards for NO_x. SCR is required to control and reduce NO_x emissions from the replacement charge heater B-401 because NO_x is a precursor to ozone, and portions of the district do not meet the health-based standards for ozone. The ULSD project will provide further NO_x emission reductions which will ultimately provide an air quality benefit to the community in the area, including the union members referenced in the comment.

The air quality in the vicinity of the refinery meets the federal health-based standards for PM₁₀ (based on SCAQMD 2004 ambient air quality data). The maximum PM₁₀ concentrations are found in Metropolitan Riverside County, many miles east of the refinery (SCAQMD 2003 Air Quality Management Plan). In addition, the addition of SCR is not expected to measurably increase PM₁₀ concentrations in the ambient air near the refinery because ammonia slip will be limited to five ppm or less (see Draft Subsequent Negative Declaration, page 2-14).

The localized impacts associated with ammonia emissions were evaluated in the Subsequent Negative Declaration (see pages 2-13 through 2-15), since the project will result in an increase in ammonia emissions. The Subsequent Negative Declaration concluded that the overall hazard index associated with the emissions evaluated in the 2004 Final Negative Declaration (as modified by the 2004 Addendum) plus the ammonia emissions associated with the proposed project modification are less than the significance threshold of 1.0 (Chronic Hazard Index of 0.0392 and Acute Hazard Index of 0.0125). Therefore, no significant adverse chronic or acute health impacts are expected due to exposure to ammonia emitted by the ULSD project, as modified.

Response 1-5

The stated concerns of the commentator's members are noted. The proposed project will occur at an existing facility and is not a new land use. The SCAQMD is not a land use authority, however, the SCAQMD rules and regulations are designed to reduce emissions

and environmental risk which the commentator expressed concern. Further, as noted in previous responses to comments, the project will not result in any significant environmental impacts and is expected to produce regional air quality benefits, including benefits to the residents of Wilmington, by reducing diesel particulate emissions. Finally, the CEQA Guidelines state that economic or social effects of a project shall not be treated as significant effects on the environment, unless physical changes are caused by economic or social changes (CEQA Guidelines §15131(a-c)). No significant physical impacts resulting from economic impacts have been identified for the ULSD project and no data regarding such impacts have been provided by the commentator. Per CEQA Guidelines §15131, economic and social effects do not need to be discussed.

Response 1-6

This comment cites provisions of the CEQA statute and Guidelines, and case law, that apply when an agency is deciding in the first instance whether an EIR or negative declaration should be prepared for a proposed project. Here, however, the SCAQMD is evaluating a modification to a project that has already been evaluated under CEQA and because the impacts from the modification along with the cumulative impacts from previous elements of the project are not significant, a Subsequent Negative Declaration is warranted. As explained in the Background Section of the Subsequent Negative Declaration, Section 1.4, the commentator filed a lawsuit challenging the preparation of the 2004 Negative Declaration and 2004 Addendum. Since the circulation of the Subsequent Negative Declaration, the court has issued a decision finding, among other things, that no fair argument has been made that significant impacts may occur from the ULSD project (Legal Case No. BS091275, consolidated with Case No. BS091276, Order Denying Motions for Peremptory Writ of Mandate and Statement of Decision, August 1, 2005).

Response 1-7

The SCAQMD disagrees with the comment that the negative declaration is untenable. Please see the responses below to the more detailed comments in Responses 1-8 through 1-27. The ULSD project does not have significant adverse environmental impacts and, thus, an EIR is not warranted or required. In addition, as noted in Response 1-8 below, the SCAQMD has already responded to the comments by Dr. Fox relating to the previous approval and CEQA review for the ULSD project, and the court has held that Dr. Fox's previous assertions, which are repeated in the attached letter do not constitute "substantial evidence of significant impacts" from the ULSD Project since the comments "are based on speculation, numerous inappropriate and unsupported assumptions and incorrect calculations."

Response 1-8

The comment summarizes comments that this commentator submitted in response to the Draft Negative Declaration on March 2, 2004, as well as to the SCAQMD Governing Board in the summer of 2004. See Response 1-7. Responses to these comments can be

found in the 2004 Final Negative Declaration and the 2004 Addendum. The project modification analyzed in the Subsequent Negative Declaration does not change the prior analysis and responses associated with points 1 through 4 in the comment:

1. As explained in the 2004 Final Negative Declaration (see Appendix C, and Responses 1-24 through 1-29) and 2004 Addendum (see pages 16-22), the commentator and Dr. Fox used an incorrect baseline in estimating an operational NOx increase of 560 pounds per day. Moreover, addition of SCR to the project does not change the NOx baseline, or increase NOx emissions from the project, but is expected to further reduce NOx emissions. Therefore, prior responses to point 1 remain sound and are not affected by the project changes. Accordingly, they do not need to be further discussed in the Subsequent Negative Declaration.
2. Based on the analysis in the 2004 Final Negative Declaration (see pages 2-9 and 2-10 and Appendix A) and the 2004 Addendum (see pages 14-16 and Attachment 2), the SCAQMD concluded that the construction emissions would not be significant. This analysis does not need to be repeated in the Subsequent Negative Declaration. Rather, the Subsequent Negative Declaration evaluates whether the addition of the SCR will increase construction emissions in a manner that will cause a new, significant environmental impact, and concludes that it will not. The commentator does not provide any information that contradicts this conclusion. Further, in the court case on the ULSD project (see Response 1-7), the court has issued a decision finding, among other things, that Dr. Fox's emission calculations were not "based on the actual facts" and that inappropriate emission factors were used (Legal Case No. BS091275, consolidated with Case No. BS091276, Order Denying Motions for Peremptory Writ of Mandate and Statement of Decision, August 1, 2005).
3. The 2004 Final Negative Declaration (see pages 2-30 and Appendix C, Responses 1-31 through 1-35) and the 2004 Addendum (see pages 25-28) evaluated whether excavation of preexisting petroleum-impacted soils at the site would cause a significant impact, and concluded that it would not. The project modifications reviewed in the Subsequent Negative Declaration do not require excavation beyond that which was already evaluated. See Subsequent Negative Declaration p. 2-26 for further discussion of soil contamination. Therefore, excavation of contaminated soils does not need to be evaluated in the Subsequent Negative Declaration.
4. The 2004 Final Negative Declaration (see Appendix C, Responses 1-30 and 1-36 through 1-38) and the 2004 Addendum evaluated the cumulative impact on air quality with respect to NOx and SOx. The addition of the SCR will reduce NOx emissions, and will have no impact on the amount of SOx associated with the project. As demonstrated in the Draft Subsequent Negative Declaration, NOx and SOx emissions from all activities related to producing ULSD will not result in project-specific or cumulative significant impacts, including NOx and SOx emissions.

Response 1-9

With regard to the commentator's opinion regarding potential adverse impacts from the proposed installation of the SCR Unit, see the responses to detailed comments below. See Responses 1-23 and 1-24 regarding secondary PM10 formation from ammonia slip.

Response 1-10

The comment refers to one of the published case decisions that sets forth the standard that an agency applies in determining whether an EIR is required, when a project is first proposed. Here, however, the ULSD project has already been approved, and the SCAQMD is evaluating a modification to that previously approved project. The modification generates no significance adverse impacts and, thus, a Subsequent Negative Declaration is warranted.

To summarize, CEQA Guidelines §15162 specifies that, when a negative declaration has previously been adopted for a project, then “no subsequent EIR shall be prepared for that project unless the agency determines, on the basis of substantial evidence in light of the whole record,” that substantial changes in the project or in project circumstances require major revisions of the negative declaration due to new or substantially more severe significant impacts, or new information that could not previously have been known demonstrates that there is newly feasible mitigation. Under this standard, which applies when project modifications are to be considered in a subsequent CEQA document, the substantial evidence must relate to a new significant impact or a substantial increase in a previously identified significant impact. CEQA defines substantial evidence as “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” CEQA §21082.2(c). Substantial evidence does not include “argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly erroneous or inaccurate.” *Id.*; CEQA Guidelines §15384. Also, “testimony” by an expert does not necessarily constitute substantial evidence; instead, such testimony must be based on proper facts and assumptions, and not be speculative. *See Citizens Committee to Save Our Village v. City of Claremont* (1995) 37 Cal. App.4th 1157 (holding that an expert’s opinions can “rise only to the level of reliability and credibility as the evidence constituting the foundation for those opinions,” and thus concluding that an expert’s analysis that was not based on accurate factual underpinnings could not constitute “substantial evidence”). Thus, contrary to the comment, expert testimony is not always sufficient to create a fair argument. In addition, the fair argument standard does not apply when an agency is evaluating changes to a project that have already been approved under CEQA.

Response 1-11

The SCR will have ammonia slip of no more than five parts per million (ppm) in the exhaust. (See Subsequent Negative Declaration page 2-14 and Appendix A.) This emission rate is consistent with what the SCAQMD has recently required through permit conditions for similar SCR units. This low ammonia emission rate will not result in

significant PM10 emission. See Response 1-23 for a more detailed explanation of why secondary PM10 impacts will not be significant.

Response 1-12

The comment does not relate to the project modifications analyzed in this Subsequent Negative Declaration. The comments pertain to the 2004 Final Negative Declaration and the 2004 Addendum. See Responses 1-7 and 1-8. The commentator repeats the assertion made in comments on the Draft Subsequent Negative Declaration that NOx increases associated with the project are between 456 and 560 lb/day. Further responses to this comment can be found in the 2004 Final Negative Declaration and the 2004 Addendum, which explain that the commentator relies on an incorrect baseline and other incorrect assumptions. In any event, the project modifications evaluated in the Subsequent Negative Declaration do not increase NOx emissions; therefore, this issue was not reopened for reconsideration in the Subsequent Negative Declaration.

The estimates of maximum emissions and emission reductions in the Draft Subsequent Negative Declaration at the "maximum firing rate" (see pages 2-10 to 2-11) were based on the maximum permitted firing rate for the B-201 heater of 34 MM Btu/hour compared to a maximum design firing rate for the B-401 heater of 41.3 MM Btu/hr. The maximum design rate was used for the B-401 heater because the SCAQMD had not yet completed the review of the permit application and so had not yet determined the maximum permitted firing rate. Now, the SCAQMD has determined that the replacement B-401 heater will be limited to firing no more than 34 MM Btu/hr. Emissions from the replacement B-401 heater at its maximum permitted firing rate of 34 MM Btu/hr will be less than the emissions presented in the Draft Subsequent Negative Declaration, and the total net reduction in emissions compared to the B-201 heater will be even greater than presented in the Draft Subsequent Negative Declaration. Therefore, the Subsequent Negative Declaration presents a conservative case and does not need to be revised. For completeness, the emissions comparison using the maximum permitted firing rate for the B-401 heater is presented below.

Assuming a maximum permitted firing rate of 34 MM Btu/hr for both the existing heater B-201 and the replacement heater B-401 would result in greater emission reductions than the comparison of average firing rates. Existing heater B-201 emits about 36.7 pounds per day of NOx at the maximum permitted firing rate. The use of ultra-low NOx burners in the B-401 heater is expected to reduce emissions to about 16.3 pounds per day (an estimated emission reduction of 20.4 pounds per day). The NOx emissions from the replacement heater B-401, following installation of the SCR Unit plus low NOx burners, are expected to be a maximum of five pounds per day (an estimated reduction of an additional 11.3 pounds per day). With the addition of SCR technology plus the use of low NOx burners, NOx emissions from operation of the replacement charge heater B-401 will be about 31.7 (36.7 - 5) pounds per day less than emissions from operation of the existing charge heater B-201 (see revised Table 2-3). Assuming a maximum permitted firing rate, overall ULSD Project NOx emission reductions would be 22.8 pounds per

day, which takes into account emission increases associated with increased truck deliveries (see revised Table 2-3).

REVISED TABLE 2-3
OPERATIONAL EMISSIONS INCREASES AND DECREASES

	EMISSIONS (lbs/day, 24 hr/day)				
	CO	PM10	VOC	NOx	SOx
EMISSIONS FROM 2004 FINAL NEGATIVE DECLARATION AS MODIFIED BY THE 2004 ADDENDUM⁽¹⁾					
New Equipment:					
Pumps	-	-	0.6	-	-
Valves	-	-	11.5	-	-
Flanges	-	-	3.2	-	-
Process Drains	-	-	1.3	-	-
Modified Storage Tank	-	-	0.2	-	-
Heater with Low NOx Emissions	-	-	-	-8.2 to -16.9 -20.4 ⁽²⁾⁽³⁾	-
Total Emissions from New Equipment	-	-	16.8	-	-
Removed Equipment:					
Valves	-	-	0.1	-	-
Flanges	-	-	0.4	-	-
Total Emissions from Removed Equipment	-	-	0.5	-	-
Emissions from Delivery Trucks	6.9	0.2	0.9	8.9	0.1
ULSD Project Emissions⁽¹⁾	6.9	0.2	17.2	0.7 to -8.0 -11.5 ⁽³⁾	0.1
EMISSIONS FROM CURRENTLY PROPOSED PROJECT MODIFICATION					
New SCR Unit	-	-	-	-6.8 to -12.8 -11.3 ⁽³⁾	-
Total Revised Project Emissions	6.9	0.2	17.2	-6.1 to -20.8 -22.8 ⁽³⁾	0.1
SCAQMD Threshold ⁽⁴⁾	550	150	55	55	150
Significant?	NO	NO	NO	NO	NO

- (1) Source: 2004 Final Negative Declaration as modified in the 2004 Addendum.
- (2) A negative number indicates emissions reduction. The actual emissions associated with the low NOx burners were not reported in the 2004 Final Negative Declaration or the 2004 Addendum but are estimated here for clarity.
- (3) Estimated emission reductions based on the range from average to maximum firing rate.
- (4) SCAQMD CEQA Threshold = threshold criteria for determining environmental significance of construction activities, as provided in the South Coast Air Quality Management District's 1993 Handbook for Air Quality Analysis.

Response 1-13

The comment does not relate to the project modifications analyzed in this Subsequent Negative Declaration. This comment asserts that the ULSD project will cause significant impacts due to increased NOx emissions. With respect to the comment that an increase of 560 lb/day NOx would be significant, see Responses 1-8 and 1-12, and the associated citations to the 2004 Final Negative Declaration and 2004 Addendum. With respect to the comment that even an increase of only 8.9 lb/day NOx would be significant, the commentator has based his comment and conclusions on incomplete, incorrect and/or obsolete information. The comment overlooks the NOx emission reductions that result from the use of ultra-low NOx burners and the SCR unit, discussed in the Subsequent Negative Declaration on pages 2-10 to 2-12 and in Response 1-12. With the addition of the ultra-low NOx burners and the SCR unit, the ULSD project overall will result in a **net reduction** in NOx from the refinery (see Table 2-3 on page 2-11 and revised Table 2-3 in Response 1-12). The commentator does not provide any information that calls into question the NOx reductions described in the Subsequent Negative Declaration.

By definition, an impact must be adverse to be significant (Public Resources Code §21068.). As discussed above and in the Subsequent Negative Declaration, there is no NOx emission increase associated with the project changes evaluated in the Subsequent Negative Declaration. Because there is no increase in NOx, there is no adverse NOx impact, and therefore no significant impact. In fact, with the use of ultra-low NOx burners and the SCR unit, the ULSD project will reduce NOx emissions compared to prior refinery operations, providing a beneficial impact. Accordingly, the discussion in Comment 1-13 of the NOx significance threshold and the case of *Mejia v. City of Los Angeles* is not relevant to the project impacts evaluated in the Subsequent Negative Declaration. The ULSD project changes evaluated in the Subsequent Negative Declaration will have a net benefit by reducing NOx emissions. The commentator has not raised a fair argument that there may be a significant impact. See Responses 1-6 through 1-8, 1-11, 1-12, and 1-16 through 1-25. Since there will be no adverse NOx impact, there is no need to determine how adverse an impact must be in order to be considered a significant adverse impact.

Response 1-14

Regarding the assertion that the SCAQMD has piecemealed the ULSD and SCR project, see Response 1-3. Environmental review of the ULSD project has not been piecemealed. Rather, The SCAQMD has conducted subsequent environmental review relating to project changes that occurred after the 2004 Final Negative Declaration and 2004 Addendum were certified.

The 2004 Final Negative Declaration and 2004 Addendum evaluated the project as proposed at the time, and SCR was not part of the project at the time those documents were prepared and certified. BACT for the project under consideration in 2004 was assumed to be low NOx burners. The comment suggests that the addition of SCR now is a sign that the project had significant NOx impacts for which the 2004 Final Negative

Declaration should have required mitigation. This is not correct. The threshold for CEQA significance is different from the threshold for requiring BACT. Pursuant to federal and SCAQMD New Source Review Programs, BACT must be required for any new or modified stationary source with a net emissions increase. The SCAQMD requires BACT for any net emission increase of one pound or more. See SCAQMD Best Available Control Technology Guidelines, updated December 5, 2003, page 8. BACT is required regardless whether CEQA applies to the project, and regardless whether the project's impacts might be considered significant under CEQA. Since the ULSD project will not cause a significant impact related to NOx emissions, SCR was not and is not required as CEQA mitigation. The SCR is being required now, only after the SCAQMD received a permit application for the replacement charge heater and began a detailed evaluation of the application under SCAQMD rules.

Finally, while the comment asserts that analyzing the impacts of the SCR project separately from the rest of the ULSD project has masked combined environmental impacts, the comment fails to identify any environmental areas where this has occurred.

With respect to the impact areas affected by the addition of SCR, the Subsequent Negative Declaration does not reveal a single instance in which the separate impacts would be insignificant but the combined impacts would be significant. The project's operational NOx emissions were determined to be less than significant in the 2004 Final Negative Declaration (see pages 2-9 through 2-11) and 2004 Addendum (see Table 1), and the Subsequent Negative Declaration (see Table 2-3) demonstrates that NOx emissions from the overall project will be even lower (indeed, a net reduction overall) with the addition of SCR. The Subsequent Negative Declaration explains that the operational emissions of all other criteria pollutants will be unchanged by the addition of the SCR. The project's construction emissions were determined to be less than significant in the 2004 Final Negative Declaration (see 2-9 and 2-10, and Appendix A) and 2004 Addendum (see page 6); the Subsequent Negative Declaration (see page 2-9) demonstrates that peak daily construction emissions for the ULSD project overall will not change as a result of the addition of the SCR, and that the peak construction period will be extended by only two weeks. The potential hazards from the ULSD project, and in particular the larger reactors in Unit 90, were determined to be less than significant in the 2004 Final Negative Declaration (see pages 2-28 through 2-30 and Appendix B) and 2004 Addendum (see page 11), and the Subsequent Negative Declaration explains that the addition of ammonia required for the SCR will not affect the hazards analysis for the Unit 90 reactors (see 2-25 through 2-27). The Subsequent Negative Declaration (see pages 2-26 through 2-20) also evaluates the potential hazards associated with the handling of ammonia, and concludes that these impacts will not be significant in light of the existing regulatory programs, industry protocols and refinery practices already in place. In each of these issue areas, the Subsequent Negative Declaration considers the changes resulting from the addition of the SCR *together with* the impacts originally identified in the 2004 Final Negative Declaration and 2004 Addendum. Moreover, the commentator does not take issue with or provide information contrary to the Subsequent Negative Declaration regarding any of these potential impacts.

The SCAQMD did not identify any impact area in which the combined impacts of the project as described in the 2004 Final Negative Declaration and Addendum, and the project modifications discussed in the Subsequent Negative Declaration would result in an adverse significant impact. The comment likewise identifies none.

Response 1-15

The ULSD project is not a multi-phased “refinery modernization” project, as the commentator asserts. Instead, the SCAQMD is now considering a modification to the previously approved project. This is not a situation where the project as initially proposed was to be developed in several discrete parts or phases. The case decisions in *Kings County Farm Bureau v. City of Hanford* and *Natural Resources Defense Council v. City of Los Angeles* relating to analysis of multi-phased projects are not relevant to this Subsequent Negative Declaration. As a result, the SCAQMD continues to assert that the installation of the SCR unit under evaluation is appropriately analyzed in this Subsequent Negative Declaration and does not constitute piecemealing as asserted by the commentator.

Response 1-16

This paragraph summarizes the opinion of the commentator. Responses to the commentator’s more detailed comments are provided below. Note that under CEQA Guidelines Section 15162, following certification of a negative declaration, a subsequent environmental impact report (EIR) is required only under specific circumstances. Specifically, a subsequent EIR may be prepared only if there is substantial evidence demonstrating that there is a new significant impact or a substantial increase in the severity of a previously identified significant impact due to a project change or a change in circumstances, or there is new information of substantial importance demonstrating new or substantially more severe significant impacts or newly feasible mitigation measures or alternatives that will lessen a significant effect. These circumstances are not present with respect to the modified ULSD project. The comment asserts that the modified ULSD project may have “adverse” impacts. But a subsequent EIR is not required due to “adverse” impacts; rather, a subsequent EIR is not required unless there are new, **significant** adverse impacts, or a substantial increase in a previously identified **significant** adverse impact. As discussed in the following responses, the SCAQMD staff disagrees with the commentator’s opinion that the proposed project may have any **significant** adverse environmental impacts that would require the preparation of a subsequent EIR. Further, no valid technical data have been provided by the commentator or anyone else to support the opinion that an EIR is required, and the SCAQMD has not identified any.

Response 1-17

Comments prepared by the commentator and Mathew Hagemann were addressed in previous CEQA documents prepared for the ULSD project, including the June 2004 Final

Negative Declaration and the September 2004 Addendum and are not responsive to this Subsequent Negative Declaration.

The comments related to Dr. Fox’s asserted NOx emission calculations were addressed in detail in the June 2004 Final Negative Declaration (see Appendix C, Responses 1-24 through 1-29) and the September 2004 Addendum (see pages 16 to 22). As detailed in those comments, the commentator used an incorrect baseline in estimating an operational NOx increase of 560 pounds per day. Those responses should be reviewed for details on the incorrect and inappropriate assumptions used to calculate 560 pounds per day of NOx.

The addition of the SCR Unit to the project does not change the NOx baseline, or increase NOx emissions from the project. The NOx emission calculations have been updated in the Subsequent Negative Declaration (see Table 2-3 of the June 2005 Subsequent Negative Declaration) to indicate that the revised proposed project will result in a reduction in NOx emissions. The proposed project is expected to result in an overall reduction of 6.1 to 20.8 pounds per day of NOx emissions, associated with the installation of ultra low-NOx burners and the proposed new SCR Unit, providing an overall air quality benefit. Table C-1 compares the NOx emissions estimates in the June 2004 Final Negative Declaration with the NOx emissions estimates in the Subsequent Negative Declaration.

TABLE C-1

SUMMARY OF OPERATIONAL NOx EMISSIONS

	NOx Emissions (lbs/day)
Estimated NOx Emissions as Reported in the Final Negative Declaration ⁽¹⁾	8.9
Estimated NOx Emissions as Reported in the Subsequent Negative Declaration ⁽²⁾	-6.1 to -20.8
Significance Threshold	55
Significant?	NO

(1) Source: 2004 Final Negative Declaration, Table 3.

(2) Source: Subsequent Negative Declaration, Table 2-3. Negative numbers indicate emission reductions.

No additional comments or data have been provided that would warrant change to the NOx emission estimates in the Subsequent Negative Declaration. Response 1-12 shows that the NOx reductions will be even greater. Accordingly, there is no new or substantially more severe significant impact that requires preparation of an EIR to evaluate this issue.

Response 1-18

This comment does not address the project modifications analyzed in this Subsequent Negative Declaration. The construction emissions calculated by Dr. Fox in prior comment letters were based on incorrect emission factors. The construction emissions were provided in the June 2004 Final Negative Declaration (see pages 2-9 and 2-10 and Appendix A) and were determined to be less than significant. The September 2004 Addendum (see pages 14-16 and Attachment 2) made some minor changes to the construction emissions using updated information from a construction contractor. The changes in the emission estimates did not reveal any new significant impacts associated with air quality during construction, or make any previously identified significant impacts substantially worse. The peak construction emissions were below the SCAQMD significance thresholds and determined to be less than significant.

The Subsequent Negative Declaration concluded that the peak construction emissions associated with the ULSD Project, including the installation of the SCR Unit will not change from the peak construction emission estimates provided in the 2004 Final Negative Declaration, as modified by the 2004 Addendum (see Subsequent Negative Declaration, page 2-9) because there would be no increase in the peak number of construction workers, peak number of construction equipment, or peak hours of operation. The installation of the SCR Unit is only expected to increase the period of peak construction activities by about two weeks. No additional construction equipment is needed for construction of the SCR Unit beyond what is currently required for the ULSD Project.

No additional data or comments have been provided that would warrant change to the construction emission estimates so no additional responses are required. There is no new or substantially more severe significant impact that requires preparation of an EIR to evaluate this issue.

Response 1-19

This comment does not address the project modifications analyzed in this Subsequent Negative Declaration. The potential for emissions from soil contamination was addressed in the June 2004 Final Negative Declaration (see page 2-30 and Appendix C, responses 1-31 through 1-35) and the impact was determined to be less than significant. The September 2004 Addendum (see pages 25 to 28) provided additional information on soil contamination, potential worker exposure, and worker safety, and concluded that the potential impacts associated with soil contamination remained less than significant.

The project modifications reviewed in the Subsequent Negative Declaration do not require excavation beyond that which has already been evaluated (see Subsequent Negative Declaration, page 2-26). Therefore, the impacts associated with contaminated soil have been evaluated previously. No additional data or comments have been provided that would change the impacts of soil contamination. There is no new or substantially more severe significant impact that requires preparation of an EIR to evaluate this issue.

Response 1-20

This comment does not address the project modifications analyzed in this Subsequent Negative Declaration. The potential for adverse cumulative air impacts was addressed in the June 2004 Final Negative Declaration (Appendix C, Responses 1-30, and 1-36 through 1-38) and were determined to be less than significant. The September 2004 Addendum (see pages 22 to 24) provided additional information on cumulative air quality impacts and concluded that impacts would remain less than significant.

The Subsequent Negative Declaration concluded that the addition of the SCR Unit will reduce NO_x emissions and will have no impact on the amount of SO_x associated with the project. Therefore, cumulative NO_x and SO_x emission impacts do not need to be further evaluated in the Subsequent Negative Declaration. Further, no additional data or comments have been provided that would change the conclusion regarding cumulative impacts so no additional responses are required. There is no new or substantially more severe significant impact that requires preparation of an EIR to evaluate this issue.

Response 1-21

This comment does not address the project modifications analyzed in this Subsequent Negative Declaration. As specifically noted in Responses 1-17 through 1-20, the comments raised by Mr. Hagemann and the commentator were responded to in the June 2004 Final Negative Declaration and the September 2004 Addendum. No additional responses are required because the recitation of there previously-addressed comments does not demonstrate any new or substantially more severe significant impacts, or a substantial new information requiring an EIR. Further, responses to previous comments submitted on the ULSD Project can be found in Appendix C of the 2004 Final Negative Declaration.

Response 1-22

See Response 1-10. CEQA requires an EIR to be prepared whenever substantial evidence in the record supports a fair argument that significant impacts may occur as a result of the project. However, once a negative declaration or EIR has been certified for a project, the standards in CEQA Guidelines Sections 15162 through 15164 apply, rather than the fair argument standard. In the case of project modifications to be considered in a subsequent CEQA document after a project has already been reviewed under CEQA, an EIR may be prepared only if the substantial evidence demonstrates that the circumstances described in CEQA Guidelines Section 15162 are present. See Response 1-16 for a summary of these circumstances. CEQA defines substantial evidence as “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” (CEQA § 21082.2(c)). Substantial evidence does not include “argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly erroneous or inaccurate.” (CEQA Guidelines §15384).

As discussed in Responses 1-17 through 1-20 and Responses 1-23 and 1-24, no substantial evidence has been provided that the project will have new or substantially more severe significant impacts. Therefore, the SCAQMD staff concludes that a subsequent negative declaration is the appropriate CEQA document to evaluate the project as modified pursuant to CEQA Guidelines §15162. In addition, even if the fair argument standard applied here, as discussed in the responses set forth above, there is no substantial evidence supporting a fair argument that the modifications to the ULSD project evaluated in the subsequent negative declaration will result in any significant adverse impacts.

Response 1-23

As part of its efforts to promulgate NO_x control rules over 15 years ago, the District recognized that the use of SCR control equipment would be a widespread method of complying with NO_x control rules. Further, as part of the CEQA documents prepared at that time by the District to address potential impacts from operating SCR units (e.g., Final EIR for Rule 1135, August 1989, SCH No. 88032315 and Final EIR for Rule 1134, August 1989, SCH No. 86121708), the District identified potential air quality impacts resulting from secondary particulate formation resulting from ammonia slip emissions. The District concluded in the CEQA documents identified above that secondary particulate formation from ammonia slip would not be considered a significant adverse air quality impact if ammonia slip was limited to 10 ppm or less. This conclusion is explained in more detail in the following paragraphs.

Anticipating that SCR units would become widespread to comply with the NO_x control rules under development over 15 years ago, the CEQA documents prepared by the District for these new NO_x control rules evaluated the potential for secondary PM₁₀ formation from SCR systems. As part of analyses prepared for the EIRs for the NO_x control rules, the District conducted an extensive literature review and contacted a number of SCR manufacturers and vendors. The results of this data collection effort indicated that ammonia slip depends on a variety of factors including space velocity, ammonia to NO_x molar ratio, temperature, and NO_x inlet concentration.

The analysis also indicated that, SCRs in use at that time typically had an ammonia slip level ranging from approximately 10-20 ppm. Ammonia slip levels in this range were the result of the following factors. First, to ensure maximum NO_x reduction efficiency, SCR operators at that time typically injected excess ammonia, that is, a higher ammonia to NO_x molar ratio, into the flue gas to ensure achieving the appropriate NO_x reduction reaction. The excess ammonia that does not react with the NO_x passes or “slips” through the reactor vessel and is released into the atmosphere. With a decline in catalyst activity, to achieve the same NO_x reductions, it often became necessary to increase the amount of ammonia injected into the flue gas, which in turn increases ammonia slip. Similarly, the analysis found that one of the main operational problems that contributed to ammonia slip was the uneven distribution of NO_x in the duct ahead of the catalyst, creating a non-uniform mixture of ammonia and NO_x over the entire cross-section of the duct and resulting in high levels of ammonia slip. Finally, the early NO_x control EIRs indicated

that formation of ammonium nitrate (NH_4NO_3) could be a problem if temperatures were less than 169°C .

The early NO_x control EIRs concluded that ammonium nitrate (NH_4NO_3) formation would not be a significant adverse air quality impact if ammonia slip is reduced to 10 ppm or less by maintaining uniform ammonia injection. Ensuring adequate mixing of ammonia in the flue gas can alleviate this problem. Ammonia slip can also be reduced by maintaining the proper ammonia to NO_x molar ratio, decreasing the exhaust gas flow rate, maintaining consistent exhaust velocity, and maintaining an optimal temperature regime (District, 1990).

Since the preparation of the EIR for Rule 1135, the SCR technology has progressed such that ammonia slip can now be limited to five ppm. For example, SCR vendors have developed better injection systems that result in a more even distribution of NO_x ahead of the catalyst so that the potential for ammonia slip has been reduced. Similarly, ammonia injection rates are more precisely controlled by model control logic units that are a combination of feed-back control and feed forward control using a proportional/integral controller that sets flow rates by predicting SCR outlet ammonia concentrations and calibrating them to a set reference value.

Secondary PM_{10} formation related to oxidation of SO_2 to SO_3 in SCR systems also was reviewed more than 15 years ago in conjunction with the adoption of Rule 1135 and other NO_x control rules. SO_3 is highly reactive, thus, enhancing the formation of secondary particulates. As discussed in the 1989 EIR for Rule 1135, for example, this type of secondary PM_{10} formation is affected by the amount of sulfur in the fuel (sulfur can oxidize to SO_2 and subsequently to SO_3), nitrogen dioxide (NO_2), and ammonia. In addition, the early EIRs for the NO_x control rules evaluated the potential for SCR catalysts to enhance the oxidation of SO_2 to SO_3 . SCR units were first used in a wide-scale application on large, coal-fired heaters and boilers in Japan. Coal has inherently high sulfur content and the sulfur can clog and poison the catalyst, reducing catalyst efficiency. When the control efficiency degraded, the operator typically would increase the amount of ammonia injected, in turn increasing the potential for ammonia slip and thus secondary particulate formation. Sulfur particulates are primarily a problem with coal-fired units, of which there are none in the South Coast Air Basin (SCAQMD, 1989). The 1989 EIR for Rule 1135 concluded that catalyst clogging from sulfur particulates would not create a significant adverse air quality impact for units firing natural gas or low sulfur fuels, such as fuels meeting the sulfur limits in District Rules 431.1 and 431.2 (Final Environmental Assessment for District Rules 431.1 and 431.2, District No. 900504SK). Limiting the problems that cause clogging and poisoning the catalyst, e.g., high sulfur fuels, increases catalyst efficiency and reduces the amount of ammonia required, thus, reducing the potential for ammonia slip.

Subsequent to the preparation of the early EIRs for the District's NO_x control rules, catalyst research has focused on reducing SO_2 oxidation. Even 15 years ago, SCR vendors reported that SO_2 oxidation of their catalyst was less than one to four percent (SCAQMD, 1990). SO_2 to SO_3 conversion has been reduced by decreasing the amount

of active ingredient (typically vanadium pentoxide), adding an active element as a promoter and improving the dispersion of active elements. SCR vendors have indicated that problems with ammonium particulates tend to be minimal if the amount of ammonia slip in the flue gas averages less than 5 to 10 ppm. Particulate problems with ammonium bisulfate (NH_4HSO_4), and ammonium sulfate ($(\text{NH}_4)_2\text{SO}_4$), can be alleviated by reducing ammonia slip (SCAQMD, 1990), as will be done for the SCR unit for the B-401 by imposing a five ppm ammonia slip limit on the District permits.

In summary, in the early EIRs for the District's NOx control rules, e.g., the EIR for Rule 1135, District staff determined that the impacts related to secondary PM10 formation would be less than significant if ammonia slip were limited to five to 10 ppm, because ammonia would then be a limiting factor in producing secondary particulates. Based on substantial improvements in the SCR control technology, as well as improvements in ammonia monitoring equipment, minimizing ammonia slip to five ppm or less is feasible and is now a standard design parameter for SCR and catalyst manufacturers. For all of the reasons identified above, the District no longer evaluates secondary particulate emissions from SCR units in its CEQA documents as this has ceased to be a potentially significant adverse air quality impact with the standard imposition of ammonia limits less than 10 ppm

The District has permitted numerous SCR systems within the Basin since the early 1990's and, therefore, has a longstanding practice of imposing permit conditions limiting ammonia slip. The current District limit for ammonia slip for new, modified, or relocated equipment is five ppm. The District will impose a five ppm ammonia limit on the SCR unit for the B-401 heater, as discussed on page 2-14 of the Subsequent Negative Declaration. Ammonia slip emissions will be reduced further because, in addition to the SCR unit, the B-401 heater will also be required to use low-NOx burners, discussed in the Subsequent Negative Declaration on pages 1-10 to 2-12. Reducing NOx emissions from the burners reduces the amount of ammonia necessary to meet the applicable NOx control requirement, thus, minimizing the potential formation of secondary particulates, ammonium nitrate, in particular.

Based on the above, no new or substantially more severe significant air quality impacts related to ammonia emissions and secondary PM10 formation from the ULSD project are expected. The five ppm limit will be included as an enforceable permit condition on the District permit to construct/operate. ConocoPhillips will be required to monitor ammonia slip by conducting an annual source test and maintain a continuous monitoring system to accurately indicate the ammonia-to-emitted-NOx mole ratio at the inlet of the SCR.

Response 1-24

See Response 1-23. The SCR Unit will be required to comply with the SCAQMD's limitation of ammonia slip to five ppm through enforceable permit conditions. This avoids any potential significant adverse impact.

In 2003, the state PM10 standard was revised from an annual geometric mean of less than 30 ug/m³ to an annual arithmetic mean of less than 20 ug/m³. However, the state 24-hour average PM10 standard did not change. Since the SCAQMD CEQA thresholds are based on daily (24-hour) emissions, the CEQA significance thresholds for PM10 did not change because the 24-hour average PM10 standard did not change.

Response 1-25

Regarding previously submitted comments on NO_x emissions from the ULSD Project, see Responses 1-8, 1-12 and 1-17. The commentator repeats the assertion made in comments on the 2004 Draft Negative Declaration that NO_x increases associated with the project are between 456 and 560 lb/day. These comments are not responsive to impacts addressed in this Subsequent Negative Declaration. Responses to this comment can be found in detail in the June 2004 Final Negative Declaration (see Appendix C, Responses 1-24 through 1-29) and the September 2004 Addendum (see pages 16-22), which explain that the commentator relies on an incorrect baseline and other incorrect assumptions. As detailed in those comments, the commentator used an incorrect baseline in estimating an operational NO_x increase of 560 pounds per day. Those comments should be reviewed for details on the incorrect and inappropriate assumptions used to calculate 560 pounds per day of NO_x.

In any event, the project modifications evaluated in the Subsequent Negative Declaration do not increase NO_x emissions; and will result in additional NO_x emission reductions, as noted at page 2-8 of the Subsequent Negative Declaration and Responses 1-12 and 1-17 herein. The project modification thus does not result in any new or substantially more severe significant impact.

Response 1-26

These comments are not responsive to impacts addressed in this Subsequent Negative Declaration. See Responses 1-12, 1-13, 1-17 and 1-25 regarding emission increases associated with the project as discussed in the June 2004 Final Negative Declaration and September 2004 Addendum. The project modifications evaluated in the Subsequent Negative Declaration do not increase NO_x emissions during operations; therefore there is no new or substantially more severe significant impact that requires further analysis under CEQA. Moreover, the comment overlooks the NO_x emission reductions that result from the SCR, discussed in the Subsequent Negative Declaration on pages 1-10 to 2-12 and Responses 1-12 and 1-17 herein. With the addition of the SCR, the project overall will result in a net reduction in NO_x from the refinery. The commentator does not provide any information that calls into question the NO_x reductions described in the Subsequent Negative Declaration. Thus, the commentator has based her comment and conclusions on incomplete, incorrect and/or obsolete information.

Response 1-27

These comments are not responsive to impacts addressed in this Subsequent Negative Declaration. See Responses 1-13 and 1-25 regarding emission increases associated with the project as discussed in the June 2004 Final Negative Declaration and September 2004 Addendum. The commentator repeats the assertion made in comments on the 2004 Draft Negative Declaration that cumulative impacts are significant and provides the same information that was previously provided. Responses to this comment can be found in detail in the June 2004 Final Negative Declaration (Responses 1-30, 1-36 and 1-42) and the September 2004 Addendum (see pages 22-24), which explain that the commentator relies on outdated information as most of the projects identified in the table have completed construction and became operational at least two years ago and, therefore, are now part of the baseline. Further, as discussed in the Subsequent Negative Declaration (see pages 1-10 to 2-12), the SCR Unit will reduce NO_x emissions and will have no impact on the amount of SO_x associated with the project. Therefore, there is no new or substantially more severe significant impact relating to cumulative NO_x and SO_x emissions that need to be evaluated in an EIR. Further, no additional data or comments have been provided that would change the prior conclusion regarding cumulative impacts.