

***Palos Verdes/South Bay Audubon Society***

*P.O. Box 2582, Palos Verdes, CA 90274*

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April 22, 2002

Attn: Ms. Kathy Stevens  
CEQA-Planning Officer  
South Coast Air Quality Management District  
21865 E. Copley Drive  
Diamond Bar, CA 93765

Re: SCH #2000061113, Ultramar Project Draft Subsequent EIR

Dear Ms. Stevens,

The Palos Verdes/South Bay Audubon Society, which represents more than 1000 families in Wilmington, Carson and other communities of the South Bay, is concerned with the protection of the human environment, as well as that of the birds and wildlife that live around us. Therefore, we appreciate this opportunity to comment on the draft environmental document, titled Draft Subsequent Environmental Impact Report for: Ultramar, Inc. Wilmington Refinery CARB Phase 3 Proposed Project, which deals with an expansion of the Ultramar facilities in Wilmington. This is a project that leaves us seriously concerned for its unmitigated, environmentally damaging effects and lack of adequate public notice.

6-1

Air quality in the Harbor Region has been severely affected in recent years by the combined increases in shipping and other business operations. After many years of improvement in local air quality, there has been a noticeable decline of late. Human health, to say nothing of the region's quality of life is being affected, and something must be done to stop current trends. Thus it is insupportable that a project which will dump added tons of pollutants into the air in perpetuity is permitted at all. That this is to be done with no mitigation, because it is "not feasible" is unconscionable.

6-2

Audubon has not had time to analyze this document, so must take it at its word that on-site offsets for the added pollution cannot be done. However, this is far from being able to conclude that no mitigation is possible! Far from it. If nothing is done on-site, then let's have the mitigation provided off-site. One possibility would be through the purchase of non-polluting trucks, or retrofitting older vehicles, for the transportation of fuels on and off site, or even elsewhere in the harbor area. Another feasible mitigation measure would be to fund education programs to reduce the use of motor fuels, either through "smart growth" initiatives or by convincing automotive manufacturers to produce more fuel efficient cars, as should have been done long ago.

6-3

We are also concerned to find that public notice for this proposed project appears to have been inexcusably limited. Nowhere on the short list of groups consulted do we find the Cities of Los Angeles or Long Beach, to say nothing of community groups such as the Wilmington Neighborhood Council. Yet it is the residents of these cities that must bear the brunt of the pollution engendered by the Ultramar project. If there was a public meeting in Carson, why none in Wilmington? In San Pedro? In Long Beach? We believe that, at a minimum, all of these should be held, and public comment solicited, before the project is approved.

6-4

Audubon is also concerned about the cumulative impacts of all related projects. The draft document lists a few other projects as relevant in a cumulative impact analysis. But is a few enough? The overall expansion of activity in the Los Angeles and Long Beach Harbors needs to be part of this equation. The citizens of Wilmington, especially, but also of all other communities in the South Bay face a severe and growing health hazard over the next two decades from what is happening in the harbors. To suppose that any project can be excepted from providing the mitigation that must offset this hazard, is not acceptable.

6-5

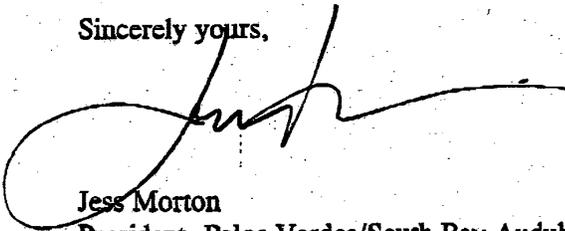
Yet, on page 4-49, we find the following: "The impacts of the proposed project on hazards are expected to be significant prior to mitigation. Compliance with existing regulations and implementation of the recommended safety measures would further minimize the potential impacts associated with a release, but are not expected to eliminate the potential hazard impacts. No additional feasible mitigation measures were identified to further reduce significant adverse hazard impacts. Therefore, the impacts of the proposed project on hazards and hazardous materials are expected to remain significant." Not only is that not good enough, that is not even a beginning towards the mitigation that must be provided.

6-6

Until these issues, at a minimum, are addressed, the Palos Verdes/South Bay Audubon Society is opposed to the issuance of a permit or the approval of this draft document.

6-7

Sincerely yours,



Jess Morton  
 President, Palos Verdes/South Bay Audubon Society  
 Jmorton@igc.org

Cc: Sen. Debra Bowen, State of California  
 Councilwoman Janice Hahn, City of Los Angeles 15th District  
 Assemblyman Alan Lowenthal, State of California  
 Jesse Marquez, Wilmington Coalition  
 Assemblywoman Jenny Oropeza, State of California

**COMMENT LETTER NO. 6**  
**PALOS VERDES/SOUTH BAY AUDUBON SOCIETY**

Jess Morton  
April 22, 2002

**Response 6-1**

The comments regarding the Palos Verdes/South Bay Audubon Society are noted. The SCAQMD strongly disagrees with the comment that the project has damaging unmitigated environmental impacts and lacks adequate public notice. It should be noted that the proposed project is part of an overall project to comply with the Governor's Executive Order to remove MTBE from gasoline to eliminate MTBE as a source of groundwater contamination. Further, the total project is also being undertaken to comply with state-mandated reformulated gasoline specifications. The proposed project is not being undertaken to increase refinery throughput capacity as implied in the comment. With regard to mitigation, see Response 6-2. See Response 6-4 regarding public notice.

**Response 6-2**

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

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

All new and modified components are required to comply with the SCAQMD's best available control technology (BACT) requirements as part of the proposed project. BACT, by definition, is control equipment with the lowest achievable emission rate. The use of BACT controls emissions to the greatest extent feasible for the new and modified emission sources. Therefore, additional emission reductions for stationary sources through mitigation measures are not feasible, i.e., there is no other feasible control equipment. "Feasible" as used here is based on the definition contained in CEQA Guidelines §15364, which states "'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors."

### **Response 6-3**

Your comments regarding offsets needs to be clarified.

Emission offsets are required for new and modified permitted emission sources by SCAQMD Regulation XIII and/or Regulation XX. Emission offsets are required for all emission increases associated with stationary sources, thus minimizing the impacts associated with emissions from stationary sources. Per the requirements of SCAQMD Rule 1304(c)(4), offsets are not required for projects that are needed to comply with state or federal regulations provided that there is no increase in equipment rating. The proposed project is required to comply with state-mandated reformulated fuels requirements and the Governor's Executive Order to phase-out MTBE. Therefore, emission offsets are not required for the reformulated fuels projects identified in this EIR, as long as there is no increase in the crude capacity of the Refinery. The proposed project is not expected to result in an increase in crude capacity at the Refinery. Two naphtha tanks at the Olympic Tank Farm (299-TK-1002 and 299-TK-501) are being constructed to replace tanks that were lost due to the reduction in size of the Marine Terminal and are not directly related to the CARB Phase 3 project. Therefore, offsets will be provided for the emission increases associated with these two tanks.

The major portion of the emissions from the proposed project is from indirect emission sources, including trucks, railcars, and marine vessels, primarily used to transport ethanol (trucks and railcars) and gasoline blending components (marine vessels). The NOx emissions from marine vessels, railcars and trucks are expected to be significant. The U.S. EPA and CARB have regulatory authority over emissions from railcars.

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

The SCAQMD must act within the constraints of the admiralty clause, and the supremacy clause of the United States Constitution. Under the supremacy clause, the SCAQMD could be prohibited from regulating ship emissions, if Congress has explicitly or implicitly foreclosed the regulation of ship emissions. The Ports and Waterways Safety Act ("PWSA") preempts the SCAQMD from regulating engine design, construction and operation of machinery to the extent that such regulation would interfere with vessel safety or protecting the marine environment. Similarly, on September 26, 1997, the United States approved Annex VI to MARPOL 73/78 regarding NOx emissions from marine diesel engines. Under the admiralty clause, the SCAQMD is prohibited from adopting and enforcing regulations, which interfere with the proper harmony and uniformity of maritime law.

The Clean Air Act does not preempt "in-use" mitigation measures. However, "in use" measures do not mitigate air quality impacts or are infeasible since, as previously evaluated in the Mobil Draft EIR (SCAQMD, 1998) they have a tendency to increase emissions. The following "in-use"

measures were considered and found to be infeasible or found to be ineffective as mitigation: limiting the hours of use or the number of engines used; prohibiting railcar visits during first or second stage smog alerts; imposing fuel specifications; and reducing rail speeds. It was determined that imposing these types of mitigation measures would not be expected to be effective in reducing emissions in the Basin since they would only apply to one company. Other companies would be able to transport the materials into the Basin without any such restrictions. Therefore, no real emission benefits would be expected. The Final SEIR has been revised to include more detailed information on the SCAQMD's authority to regulate mobile sources (see Final SEIR, Chapter 4, Section A – Air Quality).

There are some local marine vessels that have been voluntarily repowered. The SCAQMD has developed a protocol for obtaining NO<sub>x</sub> credits for repowering or retrofitting marine vessels (Rule 1631 – Pilot Credit Generation Program for Marine Vessels). Marine retrofit or repowering projects, however, are all voluntary projects to generate NO<sub>x</sub> credits applicable to the RECLAIM program. Based on exhaustive research conducted by the SCAQMD as part of the Mobil CARB Phase 2 reformulated gasoline EIR (SCAQMD, 1998), the SCAQMD does not have authority to directly regulate marine vessel emissions and the SCAQMD cannot require retrofitting, repowering or controlling emissions from marine vessels unrelated to stationary source equipment.

The U.S. EPA has established emission standards for NO<sub>x</sub>, VOCs, CO, particulate matter, and smoke for newly manufactured and remanufactured diesel-powered locomotives and locomotive engines which have been previously unregulated. Three separate sets of emission standards have been adopted, with applicability of the standards dependent on the date a locomotive is first manufactured. The first set of standards (Tier 0) apply to locomotives and locomotive engines manufactured from 1973 through 2001. The second set of standards (Tier 1) applies to locomotives and locomotive engines manufactured from 2002 through 2004. The final set of standards (Tier 2) apply to locomotives and locomotive engines manufactured in 2005 and later (U.S. EPA, 1997). With the new national emission standards for both newly manufactured and remanufactured locomotives originally built after 1972, future locomotive emission rates are projected to be much lower than the current emission rates. The U.S. EPA estimates that the NO<sub>x</sub> emissions will be reduced by about 62 percent from their current levels for locomotives manufactured after 2004 (U.S. EPA, 1997). This would reduce project-related NO<sub>x</sub> emissions from railcars from 84 lbs/day to about 32 lbs/day. The actual emission reductions are a function of the date that new locomotives come into service and are used to transport materials to/from the terminals. Since the date at which this conversion actually happens is uncertain and not guaranteed, the NO<sub>x</sub> emissions from project-related railcars are expected to remain significant. These regulations preempt state and local authorities from establishing emission standards for new or rebuilt engines.

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

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

#### **Response 6-4**

Public notice of the proposed project was provided per the requirements of the California Environmental Quality Act (CEQA). The Public Resources Code (PRC) §21092 requires that notice “shall be given to the last known name and address of all organizations and individuals who have previously requested notice and shall also be given by at least one of the following procedures:” (A) Publication in a newspaper of general circulation in the area affected by the proposed project. “If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.” (B) posting of the notice on- and off-site in the area where the project is to be located; and (C) direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

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

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

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

### **Response 6-5**

The cumulative impact analysis includes projects for which public agencies have been provided information. As required by CEQA (14 CCR §15130(b)(1)(A), the EIR includes a “list of past, present, and probable future projects producing related or cumulative impacts, including if necessary, those projects outside the control of the agency . . .” The cumulative impacts analysis includes numerous projects including all of the refinery CARB Phase 3 projects (five other projects), projects within the Ports of Los Angeles/Long Beach (about seven other projects), the Alameda Corridor Transportation Authority projects (about 10 projects), projects within the City of Carson (three projects); projects within the City of Long Beach (three projects); and projects at third party distribution terminals (two projects).

The cumulative impact analysis includes overall expansion activity in the Los Angeles and Long Beach Harbors (see the list of projects within the Ports of Los Angeles/Long Beach, as well as the Alameda Corridor projects).

The cumulative impact analysis in the SEIR has included over 20 different projects in the area, including the Port of Los Angeles/Port of Long Beach 2020 Plan (2020 Plan) (see page 5-9). The 2020 Plan includes the expansion of the ports through the year 2020. Therefore, the overall expansion of ports has been included as a cumulative project and the cumulative impacts associated with the port projects are included in the SEIR (see Final SEIR, Volume I, Chapter 5 – Cumulative Impacts).

### **Response 6-6**

The SCAQMD disagrees with the commentator’s opinion that the mitigation measures for hazards are inadequate. CEQA requires that an “EIR shall describe feasible measure which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy” (CCR, Title 14 §15126.4). As noted in the EIR, the potential fire radiation zone associated with modifications to several tanks at the Olympic Tank Farm was considered to be potentially significant. The area surrounding the Olympic Tank Farm is heavy industrial so residents in local neighborhoods are not expected to be exposed to the fire radiation. Based on the location of the Olympic Tank Farm, no residential areas are expected to be impacted. However, in order to provide a conservative analysis, the hazards are considered to be potentially significant.

There are a number of rules, regulations, and laws that Ultramar has complied or must comply with that serve to minimize the potential adverse impacts associated with hazards at the facility. Under federal OSHA, regulations have been promulgated that require the preparation and implementation of a Process Safety Management (PSM) Program (40 CFR Part 1910, Section 119, and Title 8 of the California Code of Regulations, Section 5189). Risk Management Programs (RMP) are covered under the California Health and Safety Code Section 25534 and 40 CFR Part 68, and Section 112r, by the Clean Air Act.

A PSM that meets the requirements of the regulations and is appropriately implemented is intended to prevent or minimize the consequences of a release involving a toxic, reactive, flammable, or

explosive chemical. A PSM review of new and modified equipment related to the proposed project is required as part of the proposed project to comply with state and federal OSHA requirements. The primary components of a PSM to be completed for the equipment associated with the proposed project include the following components:

- Compilation of written process safety information to enable the employer and employees to identify and understand the hazards posed by the process;
- Performance of a process safety analysis to determine and evaluate the hazard of the process being analyzed;
- Development of operating procedures that provide clear instructions for safely conducting activities involved in each process identified for analysis;
- Training in the overview of the process and in the operating procedures is required for facility personnel and contractors. The training should emphasize the specific safety and health hazards, procedures, and safe practices; and
- A pre-start up safety review for new facilities and for modified facilities where a change is made in the process safety information.

The PSM must be completed before the operation of the new equipment and is summarized in an Operations Manual that is required to be available at the Refinery.

An RMP is required for certain chemicals at the Refinery. The RMP consists of four main parts: hazard assessment that includes an off-site consequence analysis, five-year accident history, prevention program, and emergency response program. The Refinery's existing RMP will need to be reviewed and revised to include the propane/propylene storage vessels. The revised RMP will be submitted to the City of Los Angeles Fire Department for approval.

No additional feasible mitigation measures have been identified, over and above the extensive safety regulations that currently apply to the Ultramar Facilities. Further, the commentator has not suggested any additional feasible mitigation measures for consideration.

Also, see Response 6-3 with regard to mitigation measures for the proposed project.

### **Response 6-7**

Responses to these comments (and all other comments) submitted on the proposed project have been prepared to respond to issues raised by the commentator(s). Responses to all comments received on the proposed project are incorporated into Volume IV of the Final SEIR prior to certification (approval) of the Final SEIR by the SCAQMD's decision making body.