COMMUNITIES FOR A BETTER ENVIRONMENT

July 19, 2005

VIA US MAIL, FAX, and EMAIL

South Coast Air Quality Management District
Attn: Michael Krause
21865 Copley Drive
Diamond Bar, CA 91765-4182
Facsimile: (909) 396-3324
MKrause@aqmd.gov

RE: Comments on the Subsequent Negative Declaration for the ConocoPhillips Los Angeles Refinery Ultra Low Sulfur Diesel Project

Dear South Coast Air Quality Management District:

CBE submits these comments on the Subsequent Negative Declaration (SND) for the Conocophillips Los Angeles Refinery Wilmington Plant Ultra Low Sulfur Diesel (ULSD) Project ("Project") issued by the South Coast Air Quality Management District ("SCAQMD") on June 21, 2005. CBE continues to believe that CEQA requires the preparation of an environmental impact report ("EIR") for the Project in order to allow the public an opportunity to fully and meaningfully participate in the CEQA process and to assure the public that SCAQMD is adequately protecting the environment and public health. 2-1

CBE joins in the comments to be submitted by Adams, Broadwell, Joseph & Cardozo, including comments by Dr. Phyllis Fox. The Project's operational emissions of nitrogen oxides (NOx) of 560 pounds per day – is well above the SCAQMD significance threshold of 55 pounds per day. Construction emissions of NOx of 160 pounds of NOx per day are well above the significance threshold of 100 pounds per day. Toxic chemical vapors from excavation of heavily contaminated soil have not been mitigated. 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). The Project's NOx emissions of 560 pounds per day ("ppd") are significant and unmitigated. The Project is not being required to use BACT. All of these significant environmental impacts require preparation of an EIR. 2-2

Should you have any questions regarding this matter, please do not hesitate to contact CBE Legal Director Scott Kuhn at 323-826-9771 ext 108.

Sincerely,

Scott Kuhn
CBE Legal Director

5610 Pacific Blvd., Suite 203 • Huntington Park, CA 90255 • (323) 826-9771
In Northern California: 1440 Broadway, Suite 701 • Oakland, CA 94612 • (510) 302-0430

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COMMENT LETTER NO. 2
COMMUNITIES FOR A BETTER ENVIRONMENT

Scott Kuhn
July 19, 2005

Response 2-1

See Response 1-1. Based on the review of the permit application for the replacement charge heater B-401, the SCAQMD determined that the Best Available Control (BACT) provision of SCAQMD Regulation XIII requires the emissions from the heater to be reduced using selective catalytic reduction (SCR) emission control technology. The Subsequent Negative Declaration reviews this change to the project. Preparation of a subsequent negative declaration was appropriate, rather than an EIR, for the reasons explained at pages1-5 through 1-8 of 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. Rather, the analysis encompasses changes to the project and the resulting impacts. Applying this standard, the SCAQMD concluded that a subsequent EIR was not appropriate for the ULSD project, and that a subsequent negative declaration was required pursuant to CEQA Guidelines §15162.

Response 2-1

See Responses 1-1 through 1-27 for responses to the letter from Adams, Broadwell, Joseph & Cardozo, with the attached comments from Phyllis Fox.

Specifically, see Responses 1-8, 1-11, 1-12, 1-13, and 1-17 regarding the NOx emissions. The comments related to the NOx emissions 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 16-22). As detailed in those comments, the commentator used an incorrect baseline in estimating an operational NOx 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 NOx.

See Response 1-18 regarding construction emissions. 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 input 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 existing impacts substantially worse and the peak construction emissions were below the SCAQMD significance thresholds and determined to be less than significant.

See Response 1-19 regarding emissions from contaminated soil. The potential for emissions from soil contamination were addressed in the June 2004 Final Negative Declaration (see page 2-30 and Appendix C, responses 1-31 through 1-35) and were determined to be less than significant. The September 2004 Addendum (see pages 25-28) 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. Also, a discussion of soil contamination with regards to the SCR can be found on page 2-26 of the Subsequent Negative Declaration.

See Response 1-20. The potential for cumulative air impacts were 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 22-24) provided additional information on cumulative air quality impacts and concluded that impacts would remain less than significant. Further, the Subsequent Negative Declaration concluded that the addition of the SCR Unit will reduce NOx emissions associated with the project. Therefore, cumulative NOx emissions do not need to be evaluated in the Subsequent Negative Declaration.

No information has been provided by the commentator to support the claim that "(the) project is not being required to use 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. Based on the SCAQMD's review of the permit application for the replacement charge heater B-401, it was determined that the BACT provision of SCAQMD Regulation XIII requires the emissions from the heater to be reduced using SCR emission control technology (see Subsequent Negative Declaration, pages 1-1, 1-2, 1-6, 2-13 and 2-14). BACT for other portions of the ULSD project were addressed in the 2004 Final Negative Declaration (see pages 2-9 and 2-14). Clearly, the SCAQMD has required the use of BACT for the ULSD project.

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037
TEL: (650) 589-1660
FAX: (650) 589-5062
kgolden@adamsbroadwell.com

SACRAMENTO OFFICE
1225 8th STREET, SUITE 550
SACRAMENTO, CA 95814-4810
TEL: (916) 444-6201
FAX: (916) 444-6209

DANIEL L. CARDOZO
RICHARD T. DRURY
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
OSHA R. MESERVE
SUMA PEESAPATI
GLORIA D. SMITH

FELLOW
KEVIN S. GOLDEN

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL

August 12, 2005

VIA FACSIMILE, ELECTRONIC MAIL & U.S. MAIL

Mr. Michael Krause, Air Quality Specialist
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4182
mkrause@aqmd.gov
FAX: (909) 396-3324

Re: Supplemental 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 Carlos Valdez, Salvador A. Guerrero, Salvador P. Guerrero, Jason Guerrero, Jose Guerrero, the Southern California Pipe Trades District Council 16 and Steamfitters & Pipefitters Local 250 ("Commenters") to provide supplemental comments 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"), and the Negative Declaration prepared for the ConocoPhillips Los Angeles Refinery Carson Plant SCR Unit Project ("Carson SCR Project"). These comments supplement and incorporate by reference our comment letter submitted to the South Coast Air Quality Management District ("SCAQMD") on July 20, 2005, and all written and oral comments previously submitted to the SCAQMD, the SCAQMD Governing Board, the SCAQMD Hearing Board and any other entities related to the SCAQMD concerning the USLD Project and the Carson SCR Project and concerning the CEQA documents prepared for those projects. 3-1

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The fact that four 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, as required by CEQA, the SCAQMD has piecemealed the Project into four phases, each with separate analysis and mitigation. CEQA prohibits such a piecemeal approach. The need to install pollution control equipment and to prepare a fourth Negative Declaration for the ULSD Project at this time, long after the ULSD Project was originally approved by the SCAQMD in its Final Negative Declaration on June 18, 2004, and in its Addendum to the Final Negative Declaration on September 21, 2004, as well as the Negative Declaration for the Carson SCR Project 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.

3-1 cont.

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").

3-1 cont.

Our July 20, 2005 letter addressed five impacts that the SND continues to ignore, 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); and
5. Emissions from Secondary Particulate Matter formation

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

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In addition to these environmental impacts, the SND fails to consider potentially significant environmental impacts from the transportation, storage, and use of ammonia and anhydrous ammonia in the Selective Catalytic Reduction ("SCR") unit, cumulative impacts associated with increased transportation, storage and use of ammonia and anhydrous ammonia at the Los Angeles refinery, and potentially significant environmental impacts from terrorism and sabotage. The SND fails to consider important and feasible alternatives to the use of liquid ammonia and anhydrous ammonia as catalysts for the SCR units. The SND also impermissibly piecemeals the ULSD Project by considering this SCR proposal in a separate environmental review document from the rest of the ULSD Project, including the SCR proposal for the Carson site of the Los Angeles refinery. 3-1 cont.

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.

A. Impacts of Ammonia and Anhydrous Ammonia Releases to Workers and Residents

The proposed SCR Project proposes to dramatically increase the use of ammonia and anhydrous ammonia at the ConocoPhillips refinery. As explained by Dr. Fox in Supplemental Comments on the Subsequent Negative Declaration for ConocoPhillips Los Angeles Refinery Ultra Low Sulfur Diesel Project ("Fox Supplemental Comments") (Attached as Exhibit A), aqueous ammonia and anhydrous ammonia release large amounts of toxic ammonia fumes when they are spilled. (Fox Supplemental Comments, p. 2.) Large amounts of these types of ammonia will be transported to the site, stored on site, and used in the proposed SCR. Releases from potential accidents may result in significant impacts to residents and workers at and around the refinery as well as along the transportation routes used to carry ammonia to the ConocoPhillips refinery ("Refinery"). (Id.) (*See also* Final 3-2

Staff Assessment for the proposed Potrero Unit 7 Project, 5.5-9 (Attached as Exhibit C).)[1]

1. Ammonia and Anhydrous Ammonia Pose Severe Health and Environmental Risks.

Ammonia gas is a severe eye and respiratory tract irritant. Brief exposure to high concentrations can cause pulmonary edema, a potentially fatal accumulation of fluid in the lungs. Pulmonary edema is a condition in which the lungs fill with liquid, potentially causing the victim to drown in his or her own bodily fluids. Long-term respiratory system and lung disorders have been observed following severe short-term exposures to ammonia. (Fox Supplemental Comments, p. 1)

The State of California has found: "Persons with asthma and other respiratory ailments including underlying cardiopulmonary disease (Shim and Williams, 1986) and persons with no tolerance, developed from recent exposures to ammonia (Ferguson et al. 1977), may be more susceptible to the toxic effects of ammonia."[2]

3-2 cont.

The U.S. Department of Health found: "If you were exposed to very high levels of ammonia, you would experience more harmful effects. For example, if you walked into a dense cloud of ammonia or if your skin comes in contact with concentrated ammonia, your skin, eyes, throat, or lungs may be severely burned. These burns might be serious enough to cause permanent blindness, lung disease, or death." [3]

The Department of Health found that leaks and spills from production and transportation of ammonia can cause high exposure: "Outdoors, you may be exposed to high levels of ammonia gas in air from leaks and spills at production

[1] Available at Hhttp://www.energy.ca.gov/sitingcases/potrero/documents/2002-02-13_POTRERO_FSA.PDFH.
[2] OEHHA (Office of Environmental Health Hazard Assessment, CalEPA), Determination of Acute Reference Exposure Levels for Airborne Toxicants, March 1999, ACUTE TOXICITY SUMMARY, AMMONIA (exhibit 1 to Fox Supplemental Comments).
[3] Toxicological Profile for Ammonia, U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry, September 2004, page 6, (exhibit 2 to Fox Supplemental Comments).
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plants and storage facilities, and from pipelines, tank trucks, railcars, ships, and barges that transport ammonia."[4]

2. The Project May Have Significant Project-Specific Risks From Use and Transport of Ammonia and Anhydrous Ammonia.

The Initial Study evaluated the impact of a release from cylinders of anhydrous ammonia and concluded that it was insignificant. However, the analysis did not analyze in any fashion the impacts to workers or residents along the transportation route. As Dr. Fox concluded in her Supplemental Comments, lethal concentrations of ammonia would be present within seconds at up to 45 feet from the site of an accident (p. 3), and ammonia concentrations considered to be significant by SCAQMD would occur at up to 80 feet from an accident site. (Id.). Because refinery workers are frequently within 45 to 80 feet of ammonia storage and handling units, and residents and businesses are frequently within 45 to 80 feet of roadways used to transport the ammonia, Dr. Fox concluded that the transport, storage and use of anhydrous ammonia may result in significant worker and public health impacts, including death of workers and residents. (Id.) The SND failed to analyze or mitigate these impacts, thus an EIR must be prepared.

3-2 cont.

The South Coast Air Quality Management District itself has found that the use and transport of anhydrous ammonia is potentially significant, in it's CEQA evaluation of SCR projects:[5]

> Transportation Release Scenario: Use and transport of anhydrous ammonia involves greater risk than aqueous ammonia because it is stored and transported under pressure. In the event of a leak or rupture of a tank, anhydrous ammonia is released and vaporizes into the gaseous form, which is its normal state at atmospheric temperature and pressure, produces a toxic cloud. Aqueous ammonia is a liquid at ambient temperatures and pressure, and gas is only produced when a liquid pool from a spill evaporates." (Final Program Environmental Impact Report to the 2003 Draft

[4] Id. at 4.
[5] The California Energy Commission has also highlighted the potential health, safety, and environmental impacts and the means to study and mitigate them (Final Staff Assessment for the proposed Potrero Unit 7 Project, 5.5-11-12 (Exhibit C)).
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AQMP, State Clearinghouse No. 2002081137, Subchapter 4.3, Hazards, p. 4.3-21, ("2003 AQMP EIR").[6]

Although trucking of ammonia and other hazardous materials is regulated for safety by the U.S. DOT, there is a possibility that a tanker truck could be involved in an accident spilling its contents. The factors that enter into accident statistics include distance traveled and type of vehicle or transportation system. Factors affecting automobiles and truck transportation accidents include the type of roadway, presence of road hazards, vehicle type, maintenance and physical condition, and driver training. A common reference frequently used in measuring risk of an accident is the number of accidents per million miles traveled. Complicating the assessment of risk is the fact that some accidents can cause significant damage without injury or fatality." (2003 AQMP EIR, 4.3-20.)

The actual occurrence of an accidental release of a hazardous material cannot be predicted. The location of an accident or whether sensitive populations would be present in the immediate vicinity also cannot be identified. In general, the shortest and most direct route that takes the least amount of time would have the least risk of an accident. Hazardous material transporters do not routinely avoid populated areas along their routes, although they generally use approved truck routes that take population densities and sensitive populations into account." (2003 AQMP EIR, 4.3-21.)

The hazards associated with the transport of regulated (CCR Title 19, Division 2, Chapter 4.5 or the CalARP requirements) hazardous materials, including ammonia, would include the potential exposure of numerous individuals in the event of an accident that would lead to a spill. Factors such as amount transported, wind speed, ambient temperatures, route traveled, distance to sensitive receptors are considered when determining the consequence of a hazardous material spill." (Id.)

3-2 cont.

[6] A*vailable at* Hhttp://www.aqmd.gov/CEQA/documents/2003/aqmd/finalEA/aqmp/14_ch4_hazards.docH) (exhibit 10 to Fox Supplemental Comments).