

CHAPTER 1

Introduction

1.1 Purpose of This Document

This Environmental Impact Report (EIR) discloses to the public and the City's decision-makers the environmental consequences of the proposed Valero Benicia Refinery's Crude by Rail project (Project). This document assesses the environmental impacts that might result from the Project, as it is described in the application to the City, as well as the cumulative environmental impacts in the vicinity of the Project area. The analysis and conclusions in this document do not require that the Project be approved or denied. Rather, this document provides information about the Project's environmental impacts to assist the City in deciding whether to approve the project. This document is based upon Valero's application and supplemental materials that Valero submitted to the City of Benicia and the Bay Area Air Quality Management District (BAAQMD).

1.2 Project Overview

The Project would allow the Refinery to receive crude oil by rail. Currently, these crudes are not readily accessible at the Refinery. The crudes would originate at sites in North America. Union Pacific Railroad (UPRR) would transport the crudes in tank cars using existing rail lines to Roseville, California, and then to the Refinery.

The Project involves the installation of a new tank car unloading rack, rail track spurs, pumps, pipeline, and associated infrastructure at the Refinery. The Project would allow the Refinery to accept up to 100 tank cars of crude oil a day¹ in two 50 tank car trains. The trains would enter the Refinery on an existing rail spur crossing Park Road outside the southern boundary of the Refinery. The crude oil unloaded from the tank cars would be pumped to the existing crude oil storage tanks in the Refinery via a new pipeline connected to existing piping infrastructure.

The Project would allow Valero to receive up to 70,000 barrels² per day of the crude oil by rail. Based on Valero's current plans, Valero would reduce its shipments of crude by marine vessel by the same amount. The crude oil delivered to the Refinery by tank car would not displace the crude oil delivered by pipeline.

Assuming an average ship holds 350,000 barrels, and the Project displaces the maximum of 70,000 barrels per day of waterborne crude, the Project could displace as many as 73 ship

¹ A day here is defined as a 24 hour period, midnight to midnight.

² One barrel = 42 gallons of crude oil.

deliveries per year. (70,000 x 365 days/yr / 350,000 barrels /average ship = 73 ships/year.) The Project could displace the total quantity of crude oil delivered by marine vessel to the Refinery by as much as 25,550,000 barrels in a 365 day year. Based on a three-year baseline period from December 10, 2009 to December 9, 2012, annual marine vessel deliveries could be reduced by as much as 82 percent.

The Project would not include, nor would it require, any changes to existing Refinery operations or process equipment, other than installation and operation of the Project unloading rack and other Project components. The Project would not change the Refinery's crude oil processing rate³ or increase the Refinery's air emissions, except for emissions from the unloading of crude.

The Project would consist of the following primary components:

- Installation of a single tank car unloading rack capable of offloading two parallel rows of 25 crude oil tank cars.
- Construction of two parallel, offloading rail spurs to access the tank car unloading rack along with a parallel departure track to store tank cars in preparation for departure, for a total of 8,880 track-feet of new track on Refinery property.
- Installation of approximately 4,000 feet of 16-inch diameter crude oil pipeline and associated components and pump infrastructure between the offloading rack and the existing crude supply piping.
- Replacement and relocation of approximately 1,800 feet of existing tank farm dikes.
- Relocation of an existing firewater pipeline, compressor station, and underground infrastructure.
- Relocation of groundwater wells along Avenue "A."
- Construction of a service road adjacent to the proposed unloading rack.

Construction activities are scheduled to begin in 2014 and are expected to take approximately 25 weeks. Implementation of the Project would result in the addition of approximately 20 new permanent refinery personnel (four crews of five).

1.3 Project Background

The City of Benicia, serving as Lead Agency under CEQA prepared an Initial Study (see Appendix A) in accordance with CEQA Guidelines Section 15063 to determine the potential environmental consequences of approval and implementation of the Project. The Initial Study concluded that although the Project could have a significant effect on the environment, there would not be a significant effect in this case because mitigation measures were added to the Project that would avoid or reduce all impacts to a less than significant level. Mitigation measures

³ The Refinery's crude oil processing rate is limited to an annual average of 165,000 barrels per day (daily maximum of 180,000 barrels per day) by BAAQMD permit. This permit limit would remain unchanged.

were included to avoid potentially significant effects in the areas of air quality, biological resources, cultural resources, geology and soils, hydrology and water quality, and transportation and traffic.

On May 31, 2013 the City of Benicia issued a Notice of Intent (NOI) to adopt an Initial Study / Mitigated Negative Declaration (IS/MND) for the Project. The issuance of the NOI began a 30-day public comment period, which concluded on July 1, 2013. On July 11, 2013, the Planning Commission held a public meeting on the Project.

In light of the comments received on the IS/MND, the City subsequently determined that an EIR should be prepared pursuant to CEQA Guidelines Section 15064. On August 9, 2013, the City published and distributed a Notice of Preparation (NOP) to advise interested local, regional, and state agencies, and the public, that an EIR would be prepared for the Project. The NOP solicited both written and verbal comments on the EIR's scope during a 30-day comment period.

In addition to the NOP, the City notified the public about a public scoping meeting through two newspaper notices (1/4 page advertisement and a legal notice) and the City website. Notifications provided basic Project information; the date, time, and location of the scoping meeting; and a brief explanation of the public scoping process.

On September 12, 2013, a public scoping meeting was held by the Planning Commission. The scoping process provides the means to determine those issues that interested participants consider to be the principal areas for study and analysis in the EIR. Written comments were also collected during the comment period that ended on September 13, 2013. Eighteen commenters submitted written comments during the scoping period and eight oral comments were received at the scoping meeting. Additional comments and letters have been received after the IS/MND comment period. The Scoping Report (included as Appendix B) provides an overview and a summary of the written and oral comments provided by agencies and individuals during the scoping period for the Project, and includes all of the comments received during both the IS/MND comment period and the EIR scoping period.

1.4 Key Areas of Environmental Concern

The Initial Study (see Appendix A) prepared for the Project included analysis of all the topics listed in the CEQA Environmental Checklist (CEQA Guidelines Appendix G): Aesthetics, Agriculture and Forestry Resources, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, Transportation and Traffic, and Utilities and Service Systems.

Based on the results of the Initial Study, the City has determined that the Project would not result in impacts to the following topics and these criteria have not been carried forward for further analysis in the EIR:

- Agriculture and Forestry Resources
- Mineral Resources

The Initial Study also concluded that the following topics would result in less than significant impacts and have not been carried forward for further analysis in the EIR:

- Aesthetics
- Population and Housing
- Public Services
- Recreation
- Utilities and Service Systems

1.5 Public Comment on the Draft EIR

This Draft EIR is being circulated to state and local agencies and interested individuals who may wish to review and comment on the report. Written comments may be submitted to the City of Benicia during the 45-day public review period. Written comments on this Draft EIR will be accepted via regular mail, fax, and e-mail and at a public meeting that will be noticed under separate cover. All comments received will be addressed in a Response to Comments document, which, together with this Draft EIR, will constitute the Final EIR for the Project.

1.6 Areas of Controversy

In addition to the key areas of environmental concern considered in the EIR as described above, public comment received on the IS/MND and during scoping (see Appendix B) has identified a number of areas of controversy on potential environmental impacts of the Project that this EIR intends to address in the following sections. Specifically these are:

1. The geographic area of study considered for impact analysis of the Project and potential indirect impacts of the Project.
2. The source of the Project's crude feedstocks, potential changes in the quality of the feedstocks, and potential impact on Refinery operations and/or emissions.
3. Relationships between the Valero Improvement Project, a previous project at the Refinery, and the Project.
4. Railroad hazardous material operational safety and tank car specification information.
5. Cumulative impacts of the Project and other similar refinery or oil terminal projects within the State of California.

Item 2 is addressed in Appendices C.1 and C.2 while the rest are addressed within the body of this Draft EIR.

1.7 Confidential Business Information

Under CEQA, a lead agency may require an applicant to submit data and information that is necessary to determine whether the proposed project may have a significant effect on the

environment. (Public Resources Code § 21160.) If any or all of the information submitted is a "trade secret" as defined in Government Code Section 6254.7, the lead agency is prohibited from including the information in the CEQA document or otherwise disclosing the information. (*Id.*) Government Code Section 6254.7 defines trade secret to include:

"any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it." (Government Code § 6254.7(d).)

At the City's request, Valero has provided the City with data and information regarding the proposed project. Valero has designated the following information to be confidential under Section 21160:

- The specific North American crudes that Valero plans to purchase and ship by rail (publicly identified only as light sweet);
- The properties (weight, sulfur content, vapor pressure, and acidity) of specific crudes delivered to Valero in the past;
- The properties (weight, sulfur content, vapor pressure, and acidity) of specific crude blends processed at the refinery;
- Data purchased by Valero showing the weight and sulfur content of specific crudes, including North American crudes;
- Data generated by Valero showing the weight and sulfur content of specific crudes, including North American crudes;
- Detailed information regarding the weight and sulfur content of crude blends suitable for processing at the Benicia refinery based on the refinery's unique configuration; and
- Detailed daily measurements of the weight and sulfur content of crude blends processed at the Benicia refinery in the past.

As explained more fully in Appendix D, the City has determined that all of the information described above meets the definition of trade secret under Government Code Section 6254.7. All of the information has competitive value, and has been protected from disclosure by Valero. Thus, under PRC Section 21160, the City is prohibited from disclosing the information in this EIR or otherwise.

Moreover, the disclosure of confidential business information could potentially expose Valero and possibly other refiners to a claim or suit for violation of the antitrust laws. Generally, antitrust laws prohibit competitors from sharing price, output, and other competitively sensitive information that may enable anticompetitive coordination in pricing or production that harms consumers. Price-fixing agreements are per se unlawful. (*Todd v. Exxon Corp.*, 275 F.3d 191,198 (2d Cir. 2001).) Even in the absence of direct "smoking gun" evidence of a price-fixing

agreement, however, a price-fixing agreement may be inferred based on "parallel" conduct among competitors accompanied by "plus factors." Courts have stated that exchanging information of competitive value can constitute a "plus factor" for assessing parallel behavior under the antitrust laws. (*See id.* ("Information exchange is an example of a facilitating practice that can help support an inference of a price-fixing agreement.")) The FTC has explained as follows:

"One area for concern is exchanging price or other sensitive business data among competitors Any data exchange or statistical reporting that includes current prices, or information that identifies data from individual competitors, can raise antitrust concerns if it encourages more uniform prices than otherwise would exist."

Information about future plans should be closely guarded; disclosing future plans outside the company could alter competitors' decisions and raise antitrust concerns." (Federal Trade Commission, Guide to the Antitrust Laws, Dealings with Competitors: Spotlight on Trade Associations, http://www.ftc.gov/bc/antitrust/trade_associations.shtm.)

1.8 Organization of the Document

This document is organized into the following chapters:

- **Chapter 1 – Introduction**
- **Chapter 2 – Summary of Environmental Impacts:** Summarizes environmental impacts that could result from implementation of the Project. The summary of each resource area indicates the level of significance of potential impacts to those resources.
- **Chapter 3 – Project Description:** Provides a detailed description of the Project, including its location, background information, major objectives, and technical characteristics.
- **Chapter 4 – Environmental Settings, Impacts, and Mitigation Measures:** Contains an analysis of environmental resource areas. Describes the general approach to analysis of the Project. Discussion of each resource area is divided into: a) the setting, which describes environmental conditions and regulatory information; b) the standards of significance for determining the degree or level of potential environmental impacts for each issue; c) potential impacts, which indicate the environmental effects that are anticipated from the Project, and d) mitigation measures, if needed.
- **Chapter 5 – CEQA Statutory Sections:** Provides discussions of various CEQA-mandated considerations including significant and unavoidable environmental impacts, cumulative impacts, and growth-inducing impacts.
- **Chapter 6 – Analysis of Alternatives:** Describes alternatives to the Project and analyzes their associated environmental effects.
- **Chapter 7 – Report Preparation:** Lists report authors by section and City staff that assisted with the preparation and review of the EIR as well as agencies and organizations consulted.
- **Chapter 8 – Glossary and Acronyms:** Provides a number of technical terms used in the refining industry to describe the operations and equipment that are in use at the Refinery. The glossary includes selected definitions and in some cases expanded descriptions of these

terms that allow the reader of this document who is unfamiliar with the refining industry to understand the basic operations within a refinery.

- **Chapter 9 – References:** Lists of references used in the entire document.
- **Appendices:** Project background information, including the Notice of Preparation, Initial Study / Mitigated Negative Declaration, Scoping Report, Areas of Controversy, and Technical Reports for Air Quality, Hazards, and Transportation.

1.9 Use of this Document by Agencies

In accordance with CEQA, as amended, the City of Benicia must consider the Project's environmental impacts as disclosed in this EIR before the City may approve Valero's application for a Use Permit. BAAQMD also may rely on this EIR when considering the Authority to Construct permit and when preparing amendments to the Refinery's Title V Permit.

1.10 Permits and Approvals

The Project will require permits and approvals before construction and operation can begin. Among them are the Use Permit as well as grading and building permits not covered by the Annual Permit Agreement with the City. A BAAQMD Authority to Construct permit would also be required. In addition, the Project will be included in the Refinery's Title V Permit at the time the Title V Permit is revised.

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