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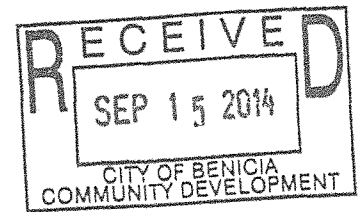
Benicia City Council

Mayor Elizabeth Patterson

City of Benicia

250 East L Street

Benicia, California 94510



September 14, 2014

Ms. Million, Mr. Kilger, Commissioners, Council Members and Madam Mayor;

Please accept this addition to the Public Comments on the Valero Crude By Rail Draft Environmental Impact Report (DEIR).

In the interest of time I will focus my comments on the following project Impact areas:

- I. 4.7 Hazards and Hazardous Materials
- II. 4.11 Transportation and Traffic
- III. 4.1 Air Quality
- IV. 4.6 Greenhouse Gas Emissions

I. Hazards and Hazardous Materials 4.7.

According to 4.7.3, based on CEQA Guidelines a project would cause adverse impacts related to hazards and hazardous materials if it would create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. Paragraph 4.7.3.1 states that the risk of release of hazardous materials is subject to a qualitative evaluation, meaning that a quantitative threshold has not been established. The analysis concludes that an accidental release of crude oil from a train travelling from Roseville to Benicia can be considered insignificant. Neither the

weak evidence provided in the analysis nor a growing literature on the safety of crude transfer by rail support this opinion.

The central tenet of this conclusion is that the risk of release of crude oil from a tank car on this route would be very low, based on an analysis found in Appendix F by C.P.L Barkan, PhD and colleagues. This document has been criticized by many, most recently by the Sacramento Area Council of Governments, and I will not reiterate. Basically the analysis is felt to be simplistic and based upon historical data preceding the explosive growth of crude by rail in California, which increased by 506% in 2013. The wording of the document at times appears biased toward the applicant and the comparison in section 3.4 of train to motor vehicle accident rates is laughable, making it appear as if we are contemplating transferring the crude from Roseville in private vehicles rather than by train.

On the other hand we have a wealth of non-biased public literature on the dangers of transport of crude by rail from many sources.

On March 6, 2014, the Honorable Christopher A Hart, Vice Chairman on behalf of the National Transportation Safety Board, in addressing a United States Senate subcommittee, stated that "...DOT-111 tank cars, or tank cars of any successor specification, that transport hazardous materials should incorporate more effective puncture-resistant and thermal protection systems".

The May 25<sup>th</sup>, 2014 edition of the Benicia Herald quoted U.S Rep Mike Thomson on Valero's CBR project as saying, "I want to make sure it's done safely, so damage is minimal, if not nonexistent." Regarding the tank cars that transport crude he stated "They do need to be as safe as they possibly can, to protect public safety and the environment and wildlife."

Later Thomson and Reps George Miller, John Garamendi and Doris Matsui wrote DOT secretary Anthony Fox stating "We are especially concerned with high risks involved with transporting lighter, more flammable crude in densely populated areas" and asking to "tighten regulations on crude oil by rail" according to the Martinez News-Gazette. July 6, 2014.

The State of California Interagency Rail Safety Working Group released a report on June 10, 2014 reviewing crude transport by rail, tabulating major train accidents related to oil by rail transport prior to May 9, 2014 and documenting 90 rail incidents nationally up to that point in 2014 alone. They conclude that "...while the federal actions taken to date are significant, they do

not go far enough to address the risks of increased oil by rail transit." A number of specific recommendations are made for improving the safety of crude transport by rail, including implementation of Positive Train Control on routes that crude oil trains are expected to run on and the use of electronically-controlled pneumatic brakes (ECP).

In response to nationwide concern with the risk of rail transportation of crude oil following a series of derailment-related catastrophic fires and explosions, the U.S. Department of Transportation has released a comprehensive rulemaking proposal designed to improve the safety of transfer of flammable materials by rail. These proposals are now open to public comment and final rules are expected by early 2015. They include considerations toward enhanced standards for new and existing tank cars (which may exceed those of the 1232 cars that the applicant proposes to employ), enhanced braking, reduced operating speeds and rail routing risk assessment, among others. It has been estimated that 80,000 DOT-111 cars built before 2011 may require upgrades or scrapping within two years.

According to an article in the Denver Post of August 17, 2014 by Bob Tita of Dow Jones Newswires "With production capacity for new tank cars at about 35,000 cars annually, industry analysts say the car industry could have difficulty expanding production fast enough to accommodate the short time frames proposed by regulators for ushering older tank cars out of flammable liquid service. Meanwhile the capacity for conducting extensive retrofits on cars is even murkier". Mr. Tita also states that the current delivery date for new cars is 2016.

In a prior DEIR public comment by James Bolds August 14, 2014 he states that "My role for Valero in the acquisition of these CPC-1232 tank cars is to development (sic) and recommend tank car specifications, review construction drawings for new tank cars, and inspect the tank cars through the fabrication and construction process." This conveys the impression that Valero may be in the early phases of completing its fleet of 1232 cars and would therefore be vulnerable to the potential delays in providing these cars as outlined by the Post article.

Based on these considerations and those outlined by many others, I believe that the weight of the evidence suggests that the current DEIR underestimates the likelihood of the project creating a significant hazard to the public and the environment through reasonably foreseeable upset and

accident conditions involving the release of hazardous materials into the environment and should be revised.

Furthermore, the DEIR should find this hazard beyond mitigation by the applicant at the present time on the following basis:

Union Pacific Railroad (UPRR) says in their Preemption Statement (Appendix L) that the city of Benicia will have no control over "..... the volume of product it ships or the frequency, route or configuration of such shipments". Moreover, in a letter to the Sacramento Area Council of Governments (SACOG) dated August 14, 2014, written in reaction to SACOG's DEIR response letter, Melissa B Hagan, on behalf of UPRR, writes "Neither SACOG nor its member agencies has authority to impose the mitigation measures or conditions proposed in the Draft Comment Letter on Valero Crude By Rail Project Environmental Impact Report". She goes on to quote California Attorney General Kamala Harris as stating that the Interstate Commerce Commission Termination Act (ICCTA) "preempts state environmental preclearance requirements such as those in the California Environmental Quality Act (CEQA)."

In summary, any language in the DEIR that purports to mitigate potential environmental damage related to rail transportation of crude by local, regional or state regulatory agencies, requests by Valero or voluntary measures by UPRR will be meaningless and should not become a part of the final DEIR. The only avenue for mitigation of these risks would be through federal regulations.

The transport of crude by any means necessarily involves risk, but that risk should be reduced to the greatest extent possible before this project is approved. This will require the finalization and implementation of pending new federal guidelines for high hazard flammable trains, design of new, safer tank cars (such as the Greenbrier HM-251, which has been described as twice as safe as a fully jacketed and insulated CP-1232 as judged by probability of release of cargo in a derailment), and possible pre-treatment of the crude oil to reduce its explosive potential. The implementation of Positive Train Control on routes that crude oil trains are expected to run on and the use of electronically-controlled pneumatic brakes (ECP) may also help reduce the risks of crude oil transportation.

Beyond regional, national and international concerns with crude by rail, we have a significant local issue that the DEIR should also discuss which is that of UPRR train derailment in Benicia.

On November 4, 2013 three train cars leaving the refinery derailed at Park Road, on the same spur line that is proposed to convey flammable/explosive North American crude. At the time it was described as a “sobering incident” by Diane Bailey of the Natural Resources Defense Council. Not sobering enough, apparently as two more cars left the UPRR track near the refinery on May 17, 2014. Stunningly a third derailment in Benicia occurred on September 7, 2014 when two locomotives derailed near the Benicia port.

The odds of three separate train derailments in such a small geographic area over such a brief period of time should be extremely small, suggesting the possibility that they occurred other than by chance alone. Is there an issue with track quality in Benicia ? If human error was involved will the same humans be supervising the oil trains ? These derailments, their causes and a detailed plan from UPRR for preventing any future similar derailments should form a part of the DEIR as they relate directly to 4.7.3.

## II. Transportation and Traffic 4.11

I believe the DEIR to be inaccurate in assessing Significance criteria 4.11.3 'a' and 'b'.

The analysis is tainted by assuming that Valero's unit trains will be scheduled to cross Park Road only between 9:00 AM and 4:00 PM and 7:00 PM to 6:00 AM based upon the statement that Valero "would ask" UPRR to schedule their trains to cross Park during other than commute hours. My understanding of UPRR's Preemption Statement (Appendix L) is that in reality Valero may have no control over when the trains cross Benicia, and neither will the city of Benicia.

Under these circumstances it would seem more appropriate for the analysis to assume the worst case scenario in assessing significance, specifically the impact of the first daily train crossing between 7:15 and 8:15 and the second between 4:00 PM and 5:00 PM.

### III. Air Quality 4.1

I don't believe that the DEIR adequately assesses the impact of the Project on local air quality. Although the study carefully lays out the baseline levels of air pollutants in Benicia based upon the Tuolumne Street monitor in Vallejo there is no direct discussion of how these levels would change if the Application were approved and what the incremental effect on air quality in Benicia would be. This omission has resulted in the widespread misconception that the Project will improve air quality here. It will not. Reading closely, emissions from the new unloading rack alone will generate 1.88 tons of fugitive ROG emissions yearly. Locomotives transporting the crude will generate another 1.7 tons of ROG, 33.04 tons of NO<sub>x</sub>, 5.6 tons of CO, and smaller amounts of PM<sub>10</sub>, PM<sub>2.5</sub> and SO<sub>x</sub>. These amounts, when averaged over the 6,000 square mile Bay Area Air Basin, are generally offset by a decrease in maritime emissions, but they will not be when averaged out over the 12.9 square land miles of Benicia. No data are provided on the current level of maritime pollutants reaching Benicia so it is not possible to say what the net effect of the project would be on local air quality. Logic would suggest that our exposure from a source within the city limits will be substantially greater than that from the downwind shipping lanes.

Without specific information on the effect of the Project on local air quality it will not be possible to exclude the possibility that it violates the City of Benicia General Plan (4.8.1 and 4.91). By the same token, Significance Criterion 4.1.3 may be met. According to the DEIR one of the three primary goals recommended by the BAAQMD for a lead agency evaluating a project is "reduce population exposure and protect public health".

Additionally the DEIR should include the negative contribution to air quality by vehicles queued up at the five intersections most likely to be affected by train crossings. As mentioned in section II, the estimation of the length of these queues should be based on a worst case scenario as the scheduling of the trains is beyond Valero's or Benicia's regulatory reach.

Lastly, I believe that it is wrong to designate people working or travelling in the Industrial Park area as a "buffer zone" rather than Sensitive Receptors, one definition of which is people that may have a significantly increased exposure to contaminants by virtue of proximity to the

contamination These people should not be ignored when the potential effects of new emissions due to the locomotives and the loading equipment are tallied. The expected long lines of people in vehicles waiting 8+ minutes for the trains to pass deserve the same consideration.

The DEIR should be revised to reflect the net effect of the Project on air quality in Benicia and offer any mitigation possible.

#### IV. Greenhouse Gas Emissions 4.6

I am concerned with a possible contradiction on this topic within the DEIR. On page 4.6-12, table 4.6-5 indicates that as a result of the Project, California CO2 Emissions would **increase** by 6,726 metric tons/year compared to the existing baseline levels. The City of Benicia has determined this to be acceptable despite the fact that it would seem contrary to its Climate Action Plan.

Yet Executive Summary 5, on page ES 5, states that "Compared to the Project, the No Project alternative would result in higher emissions of criteria pollutants and greenhouse gasses within California. Global greenhouse gas emissions would be higher with the No Project alternative than with the project. "

ES-5 would appear to be in error and should be revised in the next version of the DEIR.

Thank you for your consideration;

James Egan

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