

October 26, 2015



Ms. Amy Million  
City of Benicia  
Community Development Department  
250 East L. Street  
Benicia, CA 94510



Dear Ms. Amy Million,

The Air Pollution Control and Air Quality Management Districts (Air Districts) that have participated in this coordinated comment letter appreciate the efforts of the City of Benicia for including an expanded air quality evaluation in the affected "uprail" air basins identified in the Valero Benicia Crude by Rail Project (Project) Revised Draft Environmental Impact Report (RDEIR).



The significant air quality impacts identified in the RDEIR are of considerable concern to the Air Districts due to the potential for local and regional health impacts resulting from the substantial increase in ozone precursor and toxic air contaminants that will result from this Project. In addition, since the release of the RDEIR, the U.S. EPA has promulgated a new lower ozone ambient air quality standard that may cause some of the Air Districts to now be classified as non-attainment and/or make it more difficult for those Air Districts already classified as nonattainment to reach attainment.



According to the analysis in the RDEIR, the Project will result in a substantial increase in ozone precursors in each of the uprail air basins analyzed, resulting in significant air quality impacts. Unfortunately, the RDEIR does not identify any mitigation measures to lessen the significant impacts. The RDEIR references federal preemption prohibiting the City of Benicia from regulating UPRR's rail operations "either directly, by dictating routing or choice of locomotives, or indirectly by requiring Valero to pay a mitigation fee or purchase emission offsets." Therefore, the City of Benicia asserts that these types of mitigation measures are infeasible per the California Environmental Quality Act (CEQA). We disagree with this conclusion. We believe the Interstate Commerce Commission Termination Act (ICCTA) preempts permit requirements that could prevent a railroad from conducting operations authorized by the Surface Transportation Board (agency with regulatory authority over railroads) and from making regulations on matters already regulated by that Board. In other words, another agency cannot prevent a railroad from conducting its operations or unreasonably burden interstate commerce.



The ICCTA therefore does not preempt the City of Benicia from requiring an applicant for a discretionary project, in this case Valero, from mitigating a project's significant air quality impacts just because the emissions come from railroad operations. Requiring the applicant to implement an offsite mitigation program to reduce the project's air quality impacts would not be in violation of the federal preemption because the mitigation requirement would not require the applicant to achieve the emission reductions from UPRR. Valero can implement the offsite mitigation program either to fund their own offsite mitigation projects





within each air basin, or they could provide an offsite mitigation fee to fund projects through air districts' existing grant programs, where the implementation of an offsite mitigation program may not require any participation by UPRR or affect its operations. Requiring Valero to offset the Project's emissions through an offsite mitigation program is well within the discretion of the lead agency. Additionally, the implementation of an offsite mitigation program has been considered feasible by numerous jurisdictions throughout the State and accepted by air districts. The CEQA Guidelines (Section 15364) definition of feasible is:


"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.


The RDEIR has not adequately evaluated the "feasibility" of an offsite mitigation program that could be implemented by Valero, or alternatively participation in an offsite mitigation fee program in consultation with each impacted Air District, who would then utilize the offset fee to reduce equivalent emissions necessary to lessen the Project's significant air quality impacts. Several Air District CEQA Guidelines have provisions for offsite mitigation and a number of projects have participated in this strategy. As applicable, individual Air Districts' CEQA Guidelines should be consulted for more details. The incorrect assertion that the federal preemption legally prohibits the City of Benicia from imposing an offsite mitigation strategy/fee on Valero does not provide the substantial evidence required for a lead agency to approve a project with significant impacts, or support any findings of infeasibility as required by CEQA.


Since payment of offsite mitigation fees has been implemented in numerous jurisdictions throughout the State, it is considered a feasible mitigation measure accepted by the Air Districts. Therefore, the Air District's recommend that the City of Benicia require Valero to mitigate this Project's significant air quality impacts to the extent feasible, within each district or air basin, to reduce the significance of the proposed Project's impacts. If Valero wishes to avoid funding offsite mitigation efforts, perhaps they can work with UPRR to voluntarily commit to using Tier 4 locomotives within the California borders for this Project and significantly reduce the air quality impacts.


The Air Districts look forward to working with the City of Benicia to develop and implement a successful offsite mitigation strategy for this project. If you have any questions, please contact Andrea Gordon, Senior Environmental Planner with the Bay Area Air Quality Management District at (415) 749-4940.


Sincerely,


  
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Jack P. Broadbent, Executive Officer/APCO  
Bay Area AQMD

  
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