



November 19, 2013

Via Email

Planning Commission
Contra Costa County
30 Muir Road
Martinez, CA 94533

**Re: Phillips 66 Propane Recovery Project, November 2013 Proposed Final
Environmental Impact Report, SCH #2012072046; County File #LP12-2073**

Dear Chair Terrell, Vice-Chair Snyder and Commissioners:

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Our organization ("CBE") has seen this before. In 2005, Chevron submitted an application to the City of Richmond for the Hydrogen Renewal Project at its Richmond Refinery. Chevron proposed modifications that would allow its refinery to, "modernize," and become, "more efficient." Through that environmental review process, several parties, including CBE, discovered that Chevron was obscuring the fact that these changes would in reality increase Chevron's ability to process lower quality, heavier crude oil feedstock. Nevertheless, the final Environmental Impact Report ("EIR") for the Chevron project merely offered conclusory statements that such a change in oil feedstock was not likely to occur. CBE and other parties ultimately challenged the certification of that deficient EIR.

In 2010, the California Court of Appeal agreed with CBE: the Chevron EIR's conclusory terms regarding the oil feedstock quality were neither supported by facts nor any meaningful analysis. The Court of Appeal also noted that, "conflicting information developed during the EIR process," cast serious doubt on the EIR's assertions. This conflicting information included Chevron's statements to its investors regarding the company's true intention to refine lower quality oil feedstock.

Today, this Commission is faced with a strikingly similar set of facts, and a strikingly similarly deficient Final Environmental Impact Report for the Phillips 66 Propane Recovery Project ("FEIR" for the "Project"). Two refinery experts, Greg Karras and Phyllis Fox, have submitted separate comments to your agency, agreeing on and detailing the same concern that the Project is part of a larger project, masking a true intention to process a lower quality oil feedstock at the Phillips 66 Rodeo Refinery. Just as in the Chevron case, refinery experts identify the need for more information and a more detailed and adequate project description in order to fully analyze and set forth necessary mitigation measures as required by the California

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Environmental Quality Act ("CEQA"). Despite the information contained in these two expert comment letters, however, the FEIR, fails to state any information to either debunk or verify these experts' concerns. For instance, Karras' Comment 15 illustrates that, in order to meet the Project's stated goals and objectives, the refinery would have to commit to, 'continued coking of the highest-density part of the crude resource,' or otherwise risk smaller profit margins. To this, the FEIR merely offers the conclusory response that no change in crude slate is proposed or needed. The FEIR offers no additional relevant support or evidence. Rather, the FEIR states in response, 'feedstock selection is determined by maximizing profit around gasoline and diesel production.' Meanwhile, recall public statements made to investors by Phillips 66 Chief Executive Officer, Greg Garland, which include: "the single biggest lever we have to improve value in our refining business is through lowering our feedstock costs." As highlighted in CBE's Comments, Phillips 66 management signals its intent to bring this "advantaged crude" directly to its Rodeo refinery. It is remarkable that the FEIR does not address Karras' identified, "commitment," to heavier crude, but instead makes this broad, yet telling, statement regarding crude slate.

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The FEIR completely fails to acknowledge, much less analyze the meaning behind investor targeted statements, such as the one quoted above. Master Response 2.2 suggests that there is no definition for "advantaged crude." However, Phillips 66 itself offers that definition, which includes, "heavy crude oil from Canada."¹ In fact, the company elaborates to its investors: "(the) opportunity that we have...is to get...Canadian crudes down into California...We're looking at rail to barge to ship, down to the West Coast refineries..."² This lower quality oil feedstock implicates greater pollution and worker safety hazards, both of which are not adequately discussed in the FEIR.

Evidently, the same conflicting information and investor targeted comments that made the Chevron EIR inadequate also plague this current FEIR. Furthermore, the County's actions during this review period draw the Project's true intentions into question. In the same Chevron case, the City of Richmond failed to include the baseline and post-project crude oil quality data in the project EIR. In response, the California Attorney General strongly advocated for a, "crude cap," imposing a limitation on the conditional use permit precluding Chevron from altering its crude slate mix. Even the Court of Appeal found the lack of such a "crude cap" especially persuasive, which would have resolved the crude quality issue for many, if not all of the parties. The County's failure to include a similar condition of approval for Phillips 66 and this Project, a condition that could have resolved this issue, and would certainly not have been met with the company's objection if it did not obviate any true intention, highlights the fact that the County cannot guarantee against the refining of lower quality oil feedstock as a result of the Project.

The FEIR is fundamentally flawed. The County cannot issue a valid land use permit until it cures these flaws. As a result of the FEIR's fundamental shortcomings, certification of the FEIR as written will completely trample principles of public participation embedded in the

¹ Phillips 66's definition for "advantaged crude" is included in the same document that CBE cites to, regarding Garland's investor comments, in CBE's Comments on the Draft EIR.

² September 12, 2013 Transcript, pdf 7: Available at:

http://www.phillips66.com/EN/investor/presentations_ccalls/Documents/Barclays_091213_Final.pdf.

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language and spirit of CEQA. 'If a final EIR does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decision-making cannot occur under CEQA and the final EIR is inadequate as a matter of law.'³ Therefore, certifying the FEIR in its current deficient state would be a complete disservice to the public. Although CBE appreciates the County's efforts to provide the statutorily mandated CEQA comment periods and deadlines, the County has nevertheless utilized the minimum amount of time authorized under CEQA for review of this FEIR. The County allowed ten short days for review of the highly dense and technical FEIR. The spirit of CEQA does not require the County to offer the least amount of time authorized by statute for review of a project, let alone a highly technical one, but should allow for the best time frame to encourage this, "intelligent weighing," of environmental consequences.

Ten days to review such an extensive and technical document is hardly likely to yield any sufficient information to satisfy the concerns of CBE's members. This letter represents but a fraction of our organization's concerns regarding the FEIR's responses that barely address our comments to the Project's draft EIR. Moreover, the County is now in receipt of updated comments regarding the FEIR by Greg Karras, and the comments of Phyllis Fox prepared for Shute, Mihaly and Weinberger LLP on behalf of the Rodeo Citizens Association. At an absolute minimum, *the Commission should require staff to immediately revise and recirculate the FEIR.* The sooner that all parties can reach an agreement on how to revise this deficient EIR, the sooner we can come to a common understanding on how this Project should proceed.

In health,

/s/

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cc: Lashun Cross, Principal Planner, Contra Costa County
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³ CBE v. City of Richmond and Chevron Products Company, 184 Cal. App. 4th 70, 82-83 (2010).