

19 November 2013

Marvin Terrell, Chair  
Planning Commissioners  
County Planning Commission  
Contra Costa County  
30 Muir Road  
Martinez, CA 94533



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

Dear Chair Terrell and Commissioners,

Communities for a Better Environment (CBE) respectfully renews our request that this Environmental Impact Report (EIR) be revised and recirculated for full public review. This letter addresses the treatment in the November 2013 Final EIR (FEIR) of problems CBE identified in our review of the proposed project cited above and the June 2013 Draft EIR (DEIR).

We believe that CBE and other independent experts presented substantial evidence that the project as proposed has a reasonable potential to result in significant unmitigated adverse impacts on air quality, climate, community and worker health and safety, and the San Francisco Bay.<sup>1</sup> The FEIR fails to disclose, analyze, or mitigate these significant potential impacts in large part because its project description is inadequate, as discussed in the summary below.

The project would result in burning at least 40% more fuel for energy onsite and offsite than the Rodeo facility uses now. This is directly related to its “recovery” for sale of much more LPG than data show the Rodeo facility can produce now. *That* is directly related to its components to bring in and process lower quality oil feeds, parts of the project the FEIR rejects disclosing.<sup>2</sup> The project needs more LPG; this refinery can get more either by increased coking of denser oils, or by importing it, or both; and the concurrent wharf, rail, and process throughput expansions at its interconnected Santa Maria and Rodeo facilities—enabling it to bring in more tar sands dilbit and coke the bitumen in it while importing LPG in its carrier diluent—would do both.

In this respect the project is what Phillips’ top management say they are building: a delivery mechanisms for refining more tar sands oil here. And it would be done largely with repurposed, existing, and in critically important cases outdated, dangerous, and harmful technology.

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<sup>1</sup> See expert reports submitted by Greg Karras and Phyllis Fox on behalf of CBE and the Rodeo Citizens Association for details and documentation of the evidence summarized here.

<sup>2</sup> The FEIR’s insistence that the project will have no effect on oil feedstock one way or the other appears to be little more than a smokescreen. It provides no data for its claim that the facility already produces so much LPG, ignores the fundamental engineering fact that feedstock and products are key process variables that are interrelated, and defines its view of the “project” so narrowly as to exclude the refinery’s key activities that provide the LPG.

**Chair Terrell and Commissioners**

**19 November 2013**

**Page two**

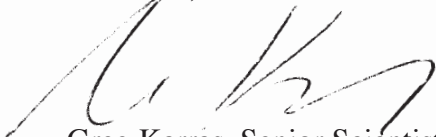
Apparently to cut corners on cost, the project proposes to store the LPG under pressure in vulnerable locations where it could explode catastrophically instead of using cooled storage. County HMP staff want to see this analyzed to find and require the *inherently safer* system. But under their current Industrial Safety Ordinance authority, they must wait until after it is built—which could be too late for safer alternatives that are feasible now. The EIR can and should include this “Documented Inherently Safer Systems Evaluation,” and the feasible safer system as mitigation, before the project is built, when it is not too late, but the FEIR actually argues against doing so.

Also apparently to cut cost (on the downtime of the Rodeo coking unit for tie-ins), the project proposes to expand a cooling system so outdated and harmful to the Bay that no other refinery in the region has used it for decades. So potentially harmful, in fact, that state water quality officials ordered Phillips to study replacing it *before* this project proposed expanding it. Phillips’ study that was so ordered is signed and submitted—and it shows replacing the cooling system is feasible—but the FEIR supports expanding the old system, which would foreclose replacing it. As to Phillips’ study admitting it is feasible to replace this antiquated system instead of expanding its harm, CBE submitted it with our comments, but the FEIR appears to deny that it exists.

Instead of revealing the substantial evidence for the many significant, and apparently avoidable but as-yet unmitigated, potential impacts that independent experts have documented, the proposed FEIR omits it. Worse, the FEIR reacts to comments documenting these material facts by arguing against disclosing them, and continuing its errors of omission. This hides the scope of the project and its environmental implications from public review. Some fifty examples of these serial omissions, from the FEIR “responses” to the project description section of CBE’s expert report alone, are attached hereto and incorporated into this letter by reference.

CBE respectfully submits that the proposed FEIR is deficient and must, properly, be revised and recirculated for full public review.

In Health,



Greg Karras, Senior Scientist  
Communities for a Better Environment (CBE)

Attachment: Table A. Summary of FEIR responses to 50 omissions identified by CBE in DEIR

Copy: Refinery Action Collaborative  
Shute Mihaly & Weinberger LLP  
Interested organizations and individuals

**Table A. Summary of FEIR responses to 50 omissions identified by CBE in DEIR<sup>a</sup>**

<b>Omitted Information Identified (CBE Expert Report page #)</b>	<b>Provided In FEIR?</b>	<b>Summary of FEIR Comment on Information Request (FEIR page #)</b>
Estimated project operating life, showing other EIRs provide this (4)	No	FEIR suggests a quantitative estimate would be too speculative (3.2-119)
Disclosure that wharf expansion would begin to implement a switch to new crude feeds at Rodeo (4)	No	FEIR claims no change in crude supply is proposed or needed (3.2-129, referencing 3.2-118, 119)
Data on crude feed <u>quantity</u> , explaining this must be known to evaluate the scale of impacts (5)	No	FEIR claims crude feed data are omitted because no change in crude is proposed or needed (3.2-129)
Data on oil <u>use</u> , explaining oil will be cracked to make much of the LPG that now will be exports (5, 6)	No	FEIR claims crude feed data are omitted because no change in crude is proposed or needed <sup>b</sup> (3.2-130)
Change in oil <u>quality</u> , explaining that more and/or denser oils must be coked to make enough LPG (6, 7)	No	FEIR claims crude feed data are omitted because no change in crude is proposed or needed (3.2-132, 133)
Disclosure of the project's reliance on dense coker feeds (7, fn 18)	No	FEIR ignores that coker products and feeds are linked. <sup>b</sup> Its argument that conflates LPG, fuel gas, and oil feed economics obscures this process fact. (3.2-132, 133, 130; see also 2-3)
Disclosure of project link to coker operation, as feed & products are key coking variables (7, fn 20)	No	
Disclosure that project locks the refinery into a lower quality crude slate than otherwise needed (8)	No	FEIR denies any project link to any changes in crude or coking operation (e.g. 3.2-132, 133)
Data on baseline and potential crude feed quality, explaining that another Phillips EIR provides some of this data (8, fn 22)	No	FEIR ignores this explanation, denies any project link to any changes in crude or in coker operation (3.2-132 through 3.2-135)
Disclosure of upstream process changes linked to project (8, fn 22)	No	FEIR refers to these projects without disclosing this link (2-4)
Disclosure of Phillips' stated intent to refine more tar sands at SFR (12)	No	FEIR refers to the statements without disclosing their content (2-3)
Data on changes in the composition of fuels burned (12, 13)	No	FEIR says there is no basis to analyze this data (3.2-135, citing 3.2-121)

<b>Table A (page two).</b>		
<b>Omitted Information Identified (CBE Expert Report page #)</b>	<b>Provided In FEIR?</b>	<b>Summary of FEIR Comment on Information Request (FEIR page #)</b>
Data on combustion equipment that could be affected by changes in the heat content of refinery fuels (13)	No	FEIR claims no basis to analyze this (3.2-135, citing 3.2-121); elsewhere, it admits this change in heat content.
Disclosure of activities that could increase SO <sub>2</sub> emissions using emission reduction credits (ERCs) that were proposed as part of this project in February 2013 (13, 14)	No	FEIR claims no basis for this analysis (3.2-135, citing 3.2-121). Note that page 3.2-119 refers to responses that do not address proposed or future ERCs resulting from <u>this</u> project.
Amount of heat the project would dump in the Bay (14 paragraph 27)	No	FEIR does not respond to this request (see 3.2-57, 3.2-135 through 138)
Disclosure of NPDES findings showing EIR inflated once-through cooling (OTC) system baseline (14)	No	FEIR omits these multi-year findings, asserting only a one-year value, with no data to verify this value <sup>b</sup> (3.2-135)
Temperature of OTC water exiting processing prior to onsite heat loss before discharge (15, fn 47)	No	FEIR does not respond to this request (see 3.2-58, 3.2-135 through 138)
Disclosure of a discrepancy between maximum heat the DEIR says project will create and the heat the OTC expansion could carry (15)	No	Instead of disclosing this discrepancy the FEIR obfuscates it by arguing (wrongly) that it is based on average heating (3.2-136)
Cooling system design data to confirm whether the discrepancy between project heat and cooling capacities will be used for increased process heat or decreased use of existing cooling towers (15, 16)	No	FEIR conflates the need for these data to confirm how the extra cooling capacity could be used with its argument that no change in crude feed is proposed or needed (3.2-136)
Disclosure that OTC is antiquated, no longer used by other Bay Area refineries, and being phased out by power plants (16)	No	FEIR rejects need for this disclosure claiming comparison to technology used by other refiners is outside the scope of the project (3.2-136)
Disclosure of a state order to evaluate replacing the OTC system the project would expand (16)	No	FEIR rejects need for this disclosure, saying that it would be “speculative” to report the state’s rationale for its order (3.2-137, 3.2-122)

<b>Table A (page three).</b>		
<b>Omitted Information Identified (CBE Expert Report page #)</b>	<b>Provided In FEIR?</b>	<b>Summary of FEIR Comment on Information Request (FEIR page #)</b>
Disclose and discuss the report by Phillips, required by the state order, indicating that OTC can be replaced at Rodeo (16; CBE attached report)	No	Although a signed copy was provided by CBE, the FEIR rejects discussing this report, claiming (wrongly) that its findings do not yet exist (3.2-137)
Evaluate project impacts from continuing to operate OTC that could otherwise be replaced (17)	No	FEIR argues that it need not evaluate these impacts because the project proponent proposes to expand OTC (3.2-121, 122, 123, 127, 136, 137)
Describe the potential biological effects of OTC expansion (18)	No	<p>FEIR ignores the need for this analysis, and instead argues that:</p> <p>(1) NPDES requirements will ensure against impacts; and</p> <p>(2) the DEIR did not overestimate (inflate) the project baseline.<sup>b</sup></p> <p>In addition, the FEIR adds a reference to a second old (2006-2007) biological monitoring study<sup>b</sup> (3.2-137, citing 3.2-121/122/123)</p>
Identify the limitations of OTC biological monitoring studies (18)	No	
Discuss the extent to which a 2006 study referenced in the EIR addresses these limitations (18)	No	
State whether that study collected any biological samples (19)	No	
Clarify that this 2006 study could not have measured effects of future, expanded OTC flow (19)	No	
Explain that a large enough volume of 80–110 °F thermal waste would harm fish adapted to cooler (≈55 °F) water near the OTC (19)	No	<p>FEIR argues instead that NPDES limits should be assumed to protect against project impacts, including impacts at the shoreline outfall where OTC thermal waste discharges (3.2-137, 3.2-138)</p>
Disclose that the thermal waste receives little or no dilution, greatly exacerbating its localized impact, and NPDES limits allow that (19)	No	
Correct the false statement in the DEIR that “the NPDES permit establishes maximum once-through volumes” (20)	Yes	FEIR acknowledges the error and proposes corrected text; it does not, however, change its incorrect reliance on NPDES requirements (3/2-138)

<b>Table A (page four).</b>		
<b>Omitted Information Identified (CBE Expert Report page #)</b>	<b>Provided In FEIR?</b>	<b>Summary of FEIR Comment on Information Request (FEIR page #)</b>
Disclose 2000–2011 effluent trends from NPDES findings showing that OTC flow is not, in fact, limited by NPDES requirements (20)	No	Despite admitting its flow limit error, the EIR fails to disclose data showing NPDES requirements do not ensure against new OTC impacts (3.2-138)
Identify the species of threatened or endangered fish “potentially at risk of being entrained” in the OTC (21)	No	FEIR ignores the need for this information, arguing that “the baseline condition for the proposed Project includes the permitted use of” OTC, and asserting (wrongly) that these potential impact statements, quoted from the DEIR, are only CBE’s opinions (3.2-138)
Identify the species of threatened or endangered fish that “could be subjected to increased risk of injury, death, or habitat reduction at effluent discharge locations” (21)	No	
Include & describe the documented Process Hazard Analysis that is required by the Industrial Safety Ordinance (ISO) for the project (21)	No	FEIR labels this request as an “introductory statement of the commenter’s opinion” to which it need not respond, then refers to other “basic information” in the DEIR and to its responses to comments about crude oil, but does not respond to the need for this information and analysis (3.2-138, citing 3.2-117, 3.2-120)
Include & describe the documented Inherently Safer Systems evaluation that is required by the ISO for the project (21; see also 23)	No	
Disclose some project LPG would be stored at a shoreline plot at high risk for soil liquefaction (22)	No	FEIR wrongly labels this request as a claim of a “larger project,” reasserts its argument about that separate issue, refers to “regulatory background” in the DEIR, and argues other requirements will ensure the needed analysis “prior to startup” of the project built.  The FEIR does not address the need for the information requested—and it ignores that its argument <u>supports</u> evaluating the potential for a safer design to be precluded if that design is not addressed in the EIR.  (3.2-138/139, citing 3.2-121)
Evaluate probability of catastrophic LPG storage failure based on site-specific (not only based on average worldwide) conditions (22)	No	
Evaluate catastrophic incident consequences for workers (23)	No	
Disclose and evaluate the potential that a feasible safer design might be precluded after the project is permitted and built (23; see also 26)	No	

<b>Table A (page five).</b>		
<b>Omitted Information Identified (CBE Expert Report page #)</b>	<b>Provided In FEIR?</b>	<b>Summary of FEIR Comment on Information Request (FEIR page #)</b>
Disclose that there is no exemption from Inherently Safer Systems requirements based on cost alone; correct the error in the DEIR that implies such an exemption (23)	No	FEIR refers to the same argument directly above, referencing regulatory background that does not provide the disclosure or correction that is needed (3.2-139, citing 3.2-121)
The EIR failed to include & discuss the Human Factors Evaluation the ISO requires for this project (24)	No	FEIR argues (wrongly) that there is no specific problem identified by this comment (3.2-139, citing 3.1-7)
The EIR does not discuss the Safety Culture issue involved in recent disastrous refinery incidents (24)	No	
Describe and discuss the frequency, magnitude, and consequences of safety incidents reported at U.S., California, and Bay Area refineries since 1999 (24)	No	FEIR argues that, while interesting, this information “does not address any concern or issue specifically related to the DEIR” (3.2-139)
Identify & describe the impacts of selling project LPG for purposes that include burning it offsite (24)	No	FEIR sets up a smokescreen that attempts to conflate these reasonably foreseeable indirect impacts with “lifecycle” emissions, then it argues (illogically) that the LPG produced by the project could be used offsite even if the project is not built, and finally asserts (absurdly) that such emissions “would not be caused by the proposed Project” (3.2-139, citing 3.2-124)
Correct the error in the DEIR that assigns offsite emissions from burning project LPG a value of zero in the DEIR’s impact analysis (25)	No	
Describe and evaluate potential offsite emissions from burning project LPG in relation to the EIR’s stated significance thresholds (25)	No	
Evaluate the amount of petroleum coke, which is created as a byproduct along with project LPG and is an extremely dirty-burning fuel, that could be burned as fuel both in the refinery and offsite (25)	No	FEIR argues this request is “a broad summary” that “fails to identify alternatives to the Project,” and argues that the project described in the EIR does not propose to modify coking operations (3.2-139, citing 3.2-118, 2-2 through 2-4)

<b>Table A (page six).</b>		
<b>Omitted Information Identified (CBE Expert Report page #)</b>	<b>Provided In FEIR?</b>	<b>Summary of FEIR Comment on Information Request (FEIR page #)</b>
The DEIR does not explain that the company's Rodeo Facility (RF) and Santa Maria Facility (SMF) are two parts of one integrated refinery, the San Francisco Refinery (SFR) (25)	No	The FEIR fails to disclose integration of the SMF and RF into one SFR, and argues (wrongly) that SMF throughput increase and crude by rail projects are independent from the RF project.
The DEIR also fails to explain the extent to which this project at the RF, and the concurrent SMF expansion to increase production and pipeline shipments to Rodeo, are two parts of a single, larger, project that remains undisclosed (25)	No	It fails to disclose key parts of the SMF and RF projects that reveal their interdependence, while repeating its unsupported argument that the project will not change refinery oil feedstock or coking operation.  (3.2-139, citing 3.2-118/119, 2-2 through 2-4)

<sup>a</sup> Omissions summarized in this table are identified and discussed in CBE's Expert Report submitted on 4 September 2013. The CBE Expert Report's analysis is intensive, but is limited to the scope as set forth in the Report, and these examples are further limited to the project description section of the Report. Therefore the omissions summarized in this table represent only a sample of the serious deficiencies in the November 2013 EIR.

<sup>b</sup> With respect to the FEIR comments summarized in the table regarding "new" data not included in the DEIR, County staff responded to requests filed by CBE, as required under the California Public Records Act, stating that none of this information exists for review.