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July 20, 2001

Mr. Jonathan D. Nadler
Planning – CEQA
South Coast Air Quality Management District
21865 E. Copley Drive
Diamond Bar, CA 91765-4182

Re: Draft Environmental Impact Report for the Proposed Ultramar Diamond
Shamrock – Wilmington Refinery RFG3 Project

Dear Mr. Nadler:

We are writing on behalf of the Southern California Pipe Trades District Council 16, Plumbers and Steamfitters Local Union 250, Alonzo Ransom, Carlos Valdez, and Frank Baiza with regard to the California Environmental Quality Act (“CEQA”) review prepared by the South Coast Air Quality Management District (“the District”) for Ultramar Diamond Shamrock’s (“Applicant’s” or “Ultramar’s”) Wilmington Refinery CARB Phase 3 Proposed Project (“the Project”). The District prepared a Draft Environmental Impact Report (“DEIR”) for the Project that does not comply with CEQA and is inadequate. The District should refrain from approving the Project or granting any permits for the Project until an adequate DEIR is prepared and re-circulated for public review and comment.

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The members of District Council 16 and Local 250 construct and maintain commercial, residential and industrial projects, primarily in the vicinity of the Los Angeles basin. District Council 16’s and Local 250’s members live in and use the areas that suffer the impacts of environmentally detrimental projects, and are concerned that continued environmental degradation may jeopardize future jobs by making it more difficult and more expensive for business and industry to locate and expand in California, and by making it less desirable for people to live here. Alonzo Ransom, Carlos Valdez and Frank Baiza are members of Local 250 who live in the Wilmington area and are concerned about the adverse impacts of this Project on

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themselves, their families, and their community. These individuals also share the concerns described above.

The primary goal of CEQA is “to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 [104 Cal.Rptr. 761].) “CEQA compels government first to identify the [significant] environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives.” (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233 [32 Cal.Rptr.2d 19].) Although we fully support the Governor’s and the District’s efforts to phase out MTBE from gasoline, the District must not sacrifice these important CEQA mandates in the name of expediency. In fact, the failure to fully analyze the potential environmental impacts of MTBE *before* it was approved for widespread use is precisely what led us to the current water quality disaster faced by the State. We must not make the same mistake here.

Instead, the District should ensure that all potentially significant environmental effects of blending ethanol with gasoline are fully addressed and mitigated or avoided before approving its use in this Project. Unfortunately, the DEIR for this Project does not meet this challenge. First, it improperly truncates the Project description to exclude the impacts of offsite ethanol blending, impacts which are likely to be significant. Second, it fails to properly assess other significant impacts associated with the Project, including significant impacts to air quality, water quality, public health, and worker safety. Third, it fails to identify and impose enforceable mitigation measures for several significant impacts. Fourth, it fails to require all feasible mitigation for significant air quality impacts. The District should correct these errors by modifying the DEIR and re-circulating it for public review.

The technical portion of these comments were prepared by our consultant Dr. Phyllis Fox. Dr. Fox’s comments are appended as Attachment 1 to this letter. Her curriculum vitae is appended as Attachment 2.

I. THE DRAFT EIR DID NOT ANALYZE ALL OF THE PROJECT

The DEIR examines the impacts of modifications to Ultramar's Wilmington Refinery that are required "to change the oxygenate used in the manufacture of gasoline from MTBE to ethanol and to comply with the CARB RFG Phase 3 requirements...." (DEIR, p. 1-4.) The DEIR explains that, unlike MTBE, ethanol will not be blended into gasoline at the Refinery. (DEIR, p. 2-14.) Instead, it will be blended into gasoline at distribution terminals owned and operated by third parties. (*Ibid.*) However, the DEIR declines to evaluate the impacts associated with ethanol blending at third party terminals, explaining that "[a]ny required modifications to the distribution terminals receiving gasoline from Ultramar would be the responsibility of the terminal owner and would be evaluated for CEQA applicability at the time any permit applications for modifications of new equipment are submitted to the SCAQMD." (DEIR, p. 2-14.) This approach unlawfully piecemeals analysis of the impacts associated with this Project, and is not permitted under CEQA.

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Under CEQA, the term "project" refers to the whole of an action and to the underlying activity being approved, not to each separate governmental approval. (*See, e.g.*, California Code of Regulations, Title 14 ("14 CCR" or "CEQA Guidelines"), § 15378.) By referring to the underlying activity, CEQA "focuses attention on that which has impact on the environment." (*Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283 [118 Cal.Rptr. 249].) This approach ensures "that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences." (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592 [284 Cal.Rptr. 498]; *Bozung*, 13 Cal.3d at 283-84 [118 Cal.Rptr. 249].)

Here, the DEIR presents a classic example of this "fallacy of division" by inexplicably excluding the impacts associated with offsite ethanol blending activities from its review of the Project. (*See McQueen v. Board of Directors of the Midpeninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1144 [249 Cal.Rptr. 439].) There can be no question that the offsite blending activities are part of the project. First, Ultramar cannot achieve its stated objective of "chang[ing] the oxygenate used in the manufacture of gasoline from MTBE to ethanol" without adding the ethanol, which it proposes to do at the offsite blending facilities. (DEIR, p. 1-4.) "An EIR may not define a purpose for a project and then

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remove from consideration those matters necessary to the assessment of whether the purpose can be achieved.” (*County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1, 7 [177 Cal.Rptr. 479].)

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Second, the District recently released three draft EIRs for similar refinery CARB Phase 3 reformulated gas projects that properly include the impacts associated with offsite blending activities in their analyses. (SCAQMD, Draft EIR, Mobil CARB Phase 3 Reformulated Gas Project, pp. 1-3 to 1-5 (June 2001) (“Mobil DEIR”); SCAQMD, Draft EIR, Equilon CARB Phase 3 Proposed Project, pp. 1-4 to 1-6 (July, 2001) (“Equilon DEIR”); SCAQMD, Draft EIR, ARCO CARB Phase 3/MTBE Phase-out Project, p. 1-3 (Nov. 2000) (“ARCO DEIR”).)¹ These DEIRs recognize that activities associated with ethanol blending at local distribution terminals will cause significant impacts in the areas of air quality (e.g., Mobil DEIR, p. 4-35; Equilon DEIR, p. 4-26; ARCO DEIR, pp. 4-21 to 4-22, 4-34) and hazardous materials (e.g., Mobil DEIR, pp. 4-69 to 4-70). The District has not presented any valid reason for treating the Ultramar Project differently.

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Third, the DEIR suggests that it has excluded impacts associated with offsite ethanol blending because the offsite distribution terminals are owned and operated by third parties. (DEIR, p. 2-14.) However, different ownership of facilities does not affect the scope of the project under CEQA. For example, in *San Joaquin Raptor*, the court found inadequate an EIR’s project description for a 154-acre development because the EIR did not identify expansion of a wastewater treatment plant as a necessary element of the project, even though the wastewater treatment plant and proposed development were owned and operated by different entities. (32 Cal.Rptr. 2d at 730-731.) Instead, the key issue for the court was that the development could not go forward without the sewer expansion. (*Id.* at 731.) Similarly, in *Santiago County Water District v. County of Orange*, the court held an EIR for a mining operation inadequate because the project description omitted mention of the construction of water delivery facilities that were an integral part of the project, even though the mining operation and the water delivery facilities would be owned and operated by different entities. (*Santiago County Water District* (1981) 118 Cal.App.3d 818, 829-30 [173 Cal.Rptr. 602].) Here, Ultramar cannot achieve the stated purpose of this Project – oxygenating its gasoline with ethanol – without adding the ethanol at offsite blending facilities. Therefore, the offsite blending activities are part of the project.

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¹ We incorporate these DEIRs by reference into these comments.
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Finally, the District is aware that the distribution terminals used by Ultramar will have to be modified in order to allow ethanol blending to occur at those terminals. The DEIR states that "Ultramar currently uses third party terminals located at four locations within the jurisdiction of the SCAQMD – Carson, Colton, Orange, and Wilmington (Los Angeles)." (DEIR, p. 2-14.) The District has received applications to add new equipment and modify existing equipment for ethanol blending at at least six terminals located in Carson, Colton, and Wilmington. (See Equilon DEIR, pp. 2-21 to 2-32 (proposing changes to Equilon's Carson, two Colton and Wilmington terminals); ARCO DEIR, p. 2-15 (proposing changes to ARCO's Colton and Carson terminals).) These changes include construction of new storage tanks for ethanol, addition of new pumps for blending, construction of new loading facilities, and modifications to many existing systems. (E.g., Equilon DEIR, pp. 2-23 to 2-24.) Moreover, the District has recognized that the proposed modifications of the distribution terminals, along with operation of the facilities as ethanol blending terminals, will cause significant environmental impacts. (E.g., Equilon DEIR, pp. 4-7, 4-9 to 4-10, 4-14.)

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The impacts of construction and operation of the modified ethanol blending facilities that are likely to be used by Ultramar must be analyzed in the Ultramar DEIR. Because the offsite ethanol blending activities are part of this Project under CEQA, analysis of the impacts in a separate EIR does not satisfy the requirements of CEQA. (See, e.g., *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729-34 [32 Cal.Rptr.2d 704, 713-17].) Without analysis of the whole project in a single environmental review document, the District's CEQA review gives decisionmakers and the public a distorted view of the true impacts of the project, and prevents decisionmakers and the public from making informed decisions about possible alternatives and mitigation measures.

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Furthermore, offsite blending activities are likely to cause significant environmental impacts that have not been addressed in the DEIR. As mentioned above, the District has already found significant environmental impacts associated with offsite blending activities in the Mobil DEIR, Equilon DIER, and ARCO DEIR. We describe below other significant impacts that are likely to occur as a result of Ultramar's offsite blending activities.

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The District should revise the DEIR to address the significant environmental impacts of blending ethanol with Ultramar-produced feedstock at offsite facilities, and re-circulate the DEIR for public comment.

II. THE DEIR UNDERESTIMATES SEVERAL SIGNIFICANT IMPACTS

The DEIR underestimates several impacts, incorrectly determining that the impacts are not significant. When these errors are corrected, it is apparent that the DEIR fails to identify all significant environmental impacts of the Project and fails to require all feasible mitigation measures, as required by CEQA.

A. Air Quality Impacts

1. Construction PM10 Emissions Are Significant

The DEIR substantially underestimates PM10 emissions from construction. (Attach. 1, p. 1.) It concludes that peak day PM10 emissions would be 127 pounds per day based on faulty assumptions. When the errors in the DEIR's analysis are corrected, construction PM10 emissions exceed the District's significance threshold of 150 pounds per day and require mitigation.

The DEIR's assumptions regarding PM10 emissions from construction activity are inconsistent with a recent study conducted for the District by the Midwest Research Institute. (Attach. 1, p. 1.) That study indicates that average hourly uncontrolled PM10 emissions from similar equipment exceed the emissions estimated in the DEIR by about a factor of 13. (Attach. 1, p. 1.) The causes of this underestimation include the DEIR's failure to include all construction activities when estimating fugitive on-site construction emissions, the failure to properly estimate the amount of disturbed soil, the failure to correctly calculate entrained road dust emissions, and the failure to include construction activities at offsite ethanol blending facilities. PM10 emissions from Project-related construction activity increase to at least 1,811 pounds per day when these errors are corrected. (Attach. 1, pp. 1-6.)

The DEIR does not propose adequate mitigation measures to reduce these significant PM10 impacts below a level of significance. The DEIR identifies a Fugitive Dust Emission Control Plan as mitigation but acknowledges that "[w]ith the exception of watering the site three times, the [measures proposed in the Plan]

were reflected in the project emission calculations so no further emission reduction credit has been taken....” (DEIR, pp. 4-18 to 4-19.) At best, watering the site three times per day would reduce PM10 emissions by approximately 68%. (DEIR, p. 4-18.) This does not reduce PM10 impacts below a level of significance.

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Other mitigation measures are available and feasible to further reduce Project PM10 emissions. For example, PuriNOx is a CARB-verified fuel that achieves a 54-63% reduction in PM10 emissions from on-road and off-road construction equipment. (Attach. 1, pp. 14-15.) In addition, fuel additives have been found to reduce total PM by 5-19%. (Attach. 1, p. 16.) Exhaust emissions of all criteria pollutants could be reduced by requiring the use of at least 20% CARB-certified off-road engines in the mix of construction equipment operating on-site. (Attach. 1, pp. 17-19.) Further, effective post-combustion controls should be *required* on construction equipment, and not just recommended for evaluation as proposed in the DEIR. (DEIR, p. 4-18.) These controls have been widely used and can be imposed on construction equipment without the need for additional evaluation. (Attach. 1, pp. 19-24.) Finally, measures included in the CEQA guidelines of several air districts could further reduce construction-related emissions. (Attach. 1, pp. 24-28.)

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The District should modify the DEIR to correctly analyze Project PM10 emissions and impose all feasible mitigation measures, as required by CEQA.

2. Operational Emissions Are Significant

a. Emissions From Railcars

The DEIR explains that ethanol would be transported via railcar to the Wilmington area as part of the Project. (DEIR, p. 4-10.) The DEIR underestimates railcar emissions associated with the transport of ethanol by only considering emissions within the South Coast air basin and by using a very high fuel efficiency factor that, based on a study commissioned by CARB, is not representative of conditions in the South Coast. (Attach. 1, pp. 28-30.) When these errors are corrected, railcar emissions increase by approximately a factor of five. (See Attach. 1, p. 30 for corrected emission estimates.) The DEIR fails to adequately mitigate the VOC and NOx emissions associated with this activity.

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information to calculate the impact. However, they are likely to be substantial. Assuming a vapor recovery system designed to meet 0.08 pounds of VOC per 1000 gallons, the loading and unloading of 5,000 barrels per day of ethanol (DEIR, p. 6-2) would emit 50.4 pounds/day of VOCs. (Attach. 1, p. 33.) Because VOC emissions are already significant, including these emissions increases the mitigation obligation beyond what is discussed and mitigated in the DEIR.

d. Indirect Emissions Associated With Increased Use of Electricity

CEQA requires that the indirect impacts of a project be evaluated. (CEQA Guidelines § 15126.2(a).) However, the DEIR fails to reveal the increase in electricity consumption that would be required to support the Project nor does it evaluate the air quality impacts of generating additional electricity to support the Project. These impacts are likely to be significant and should be evaluated.

The new processing unit associated with the Project, as well as the 15 new pumps at the Refinery and new offsite blending operations (DEIR, pp. B-7/9) are likely to increase electrical demand in the South Coast by at least 1 MW, and probably by more than 5 MW. (Attach. 1, p. 35.) This increase in electrical demand could increase NO_x emissions by at least 126 pounds per day and SO_x emissions by 38 pounds per day if the electricity to supply the Project came from LADWP-owned coal plants. (Attach. 1, pp. 34-35.) The increase in NO_x emissions exceeds the significance threshold of 100 pounds per day. Moreover, the increase could be substantially higher if diesel-fired generation supplies the Project's increased electrical demand.

The DEIR should be revised to address and mitigate these impacts.

e. Other Errors

The DEIR contains several inconsistencies that affect emission estimates. These include conflicting estimates of the number of heavy duty diesel truck trips associated with the Project, conflicting estimates of the distance ethanol trucks would have to travel from Colton to Orange, and conflicting estimates regarding the total truck miles traveled for ethanol transport. (Attach. 1, pp. 35-36.) These errors could increase NO_x and CO emissions to levels higher than those discussed or mitigated in the DEIR.

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f. Mitigation

These significant emissions can and must be mitigated under CEQA. We discuss in Section IV.B. below feasible mitigation measures to reduce significant VOC and NOx emissions from Project operation. Both PM10 and SOx emissions from operation are also significant. Some of the measures discussed below would also help to mitigate PM10 and SOx emissions. In addition, the District could require the use of ultra low sulfur fuel in stationary and mobile diesel engines to reduce both PM10 and SOx emissions. (Attach. 1, p. 44.)

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B. Public Health Impacts

The DEIR underestimates toxic emissions from the Project. First, the toxic emission inventory appears to underestimate emissions. (Attach. 1, p. 36.) Second, the DEIR omits the major sources of toxic emissions: the trucks and trains required to support the Project, and emissions from off-site blending operations. (*Ibid.*) Third, the DEIR did not evaluate the health impacts from diesel exhaust, a toxic air contaminant. (*Id.*, pp. 36-37.) Fourth, the DEIR concludes that the Project would cause a decrease in the emissions of many toxic substances. (DEIR, Table 4-7.) These assumed decreases are not reasonable in light of the Project's requirements. (Attach. 1, p. 37.) When these errors are corrected, public health impacts may be significant.

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C. Worker Safety Impacts

The DEIR concedes that contaminated soils are likely to be encountered during construction. (Attach. 1, p. 46.) Nevertheless, the DEIR fails to evaluate the impacts of contaminated soils on construction workers. These impacts could be significant and should be evaluated.

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Workers are exposed to contaminated soils and vapors during construction through ingestion, inhalation and dermal absorption. Contaminants present in disturbed soils could cause cancer and temporary or permanent damage to the eyes, ears, skin, internal organs, or the nervous and circulation system of workers. (Attach. 1, p. 47.) Workers may also encounter toxic chemicals from buried structures such as pipelines during earthmoving activities. Inadvertent discovery of buried pipelines could pose a possible explosion hazard or result in the release of

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