



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 27, 2021

Victor Douglas and Jacob Finkle
Bay Area Air Quality Management District
375 Beale Street Suite 600
San Francisco, CA 94105
vdouglas@baaqmd.gov and jfinkle@baaqmd.gov

Subject: Draft Regulation 13: Climate Pollutants, Rule 5: Petroleum Refinery Hydrogen Plants, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2021070007, Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties

Dear Mr. Douglas and Mr. Finkle:

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) provided for the Draft Regulation 13: Climate Pollutants, Rule 5: Petroleum Refinery Hydrogen Plants (Project) located within the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA) §15386 for commenting on projects that could impact fish, plant and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Agreement and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

PROJECT DESCRIPTION AND LOCATION

The Project includes draft regulation rule language (Rule 13-5) that would limit vented emissions of total organic compounds (TOC) (including both methane and other organic compounds) from hydrogen production, hydrogen carrying systems, and hydrogen end users such as process units at petroleum refineries. The intent of draft Rule 13-5 is to minimize both methane and other organic compound emissions, which can be vented from atmospheric vents at petroleum refinery hydrogen plants during normal operating conditions, startups, shutdowns, malfunctions, upsets, and emergencies. Rule 13-5 would apply within the Bay Area Air Quality Management District.

The Project includes, but is not limited to, locations where specific upgrades to refinery technology is necessary to comply with Draft Rule 13-5: the Valero Refinery in Benicia

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and the PBF Refinery in Martinez. It is expected that both facilities would install new or upgraded technologies to control TOC emissions.

ENVIRONMENTAL SETTING

Sufficient information regarding the environmental setting is necessary to understand the Project's, and its alternative's (if applicable), significant impacts on the environment (CEQA Guidelines, §§15125 and 15360).

CDFW recommends that the CEQA document prepared for the Project provide for baseline habitat assessments of special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands (e.g., Suisun Marsh and other potential habitat areas as explained on Page 2-20 of the Initial Study). These baseline assessments should include all rare, threatened, or endangered species (CEQA Guidelines, §15380) where the Project could result in the installation of new TOC emissions reduction technologies adjacent to such sensitive biological resources at the noted refinery facilities. Although the NOP states on page 2-20 that the Project holds no impact to biological resources as all construction activities are slated to occur in heavy industrial areas where native biological resources have been removed, the document acknowledges on page 2-19 there are adjacent habitat areas present, including but not limited to, grasslands, coastal scrubs, and wetlands. The on-site changes to facilities associated with construction and operation of TOC emissions reduction technologies could hold potential impacts to these adjacent biological resources, such as nesting birds and migratory paths, and thus should be addressed per implementation of each TOC emission emissions reduction technology installation location and within the EIR. Fully protected, threatened, endangered, candidate, and other special-status species are known to occur, or have the potential to occur in or near refineries affected by Draft Rule 13-5. The assessed areas should include not only the footprint of construction, yet also the staging areas and haul routes related to the TOC emissions reduction technology installations.

Habitat descriptions and species profiles should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDDB). Based on the data and information from the habitat assessment, the CEQA document can then adequately assess which special-status species are likely to occur in the Project vicinity.

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

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Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming period for all sensitive plant species potentially occurring within, or adjacent to and affected by, the Project area and require the identification of reference populations. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants available at: <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>.

IMPACT ANALYSIS AND MITIGATION MEASURES

The CEQA Guidelines (§15126.2) necessitate that the draft EIR discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project. This includes evaluating and describing impacts such as, but not limited to:

- Potential for “take” of special-status species;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, due to changes in air quality, changes in facility operations, and other associated adjacent impacts caused by refinery TOC emissions reduction technology installation and operations.
- Permanent and temporary habitat disturbances associated with ground disturbance, noise (both during construction and operation), refinery flare operation, artificial light, reflection, air pollution, increased traffic or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The CEQA document also should identify reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project’s contribution to the impact (CEQA Guidelines, §15355). Although a project’s impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact – e.g., reduction of available habitat for a listed species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines (§§ 15021, 15063, 15071, 15126.2, 15126.4 and 15370) direct the lead agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the draft EIR, and/or mitigate significant impacts of the Project on the environment. This includes a discussion of take avoidance

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and minimization measures for special-status species, which are recommended to be developed in early consultation with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service and CDFW. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

Fully protected species such as the salt-marsh harvest mouse (*Reithrodontomys raviventris*), which has CNDDDB occurrence records adjacent to the PBF Martinez Refinery (Fisler, et al., 2016), may not be taken or possessed at any time (Fish and Game Code § 3511). Therefore, the draft EIR is advised to include measures to ensure complete take avoidance of these fully protected species.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Permit must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species [CEQA §§ 21001(c), 21083, and CEQA Guidelines §§ 15380, 15064, 15065]. Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with Fish and Game Code § 2080.

Lake and Streambed Alteration Agreement

Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA (Public Resources Code § 21000 et seq.) as the responsible agency.

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FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

If you have any questions, please contact Andrew Chambers, Environmental Scientist, at (707) 266-2878 or Andrew.Chambers@wildlife.ca.gov; or Monica Oey, Acting Senior Environmental Scientist (Supervisory), at (707) 428-2088 or Monica.Oey@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Stacy Sherman

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Stacy Sherman

Acting Regional Manager
Bay Delta Region

cc: State Clearinghouse

REFERENCES

Fisler, G., et al. (2016, Jul. 18). Salt-marsh harvest mouse [ds45]. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System (BIOS). Retrieved July 21, 2021 from <https://wildlife.ca.gov/Data/BIOS>.