

Communities for a Better Environment v. South Coast Air Quality Management Dist.
(April 7, 2020) — Cal.App.5th —

This case involves a challenge to the EIR prepared by the SCAQMD for the Tesoro Refinery “Los Angeles Refinery Integration and Compliance Project.” The Project is designed to improve the integration of Tesoro’s Wilmington and Carson facilities and to comply with the District’s air quality regulations. Improving integration would increase Tesoro’s flexibility in altering the ratio of refinery outputs such as gasoline and jet fuel. If the price of one goes up and the other goes down Tesoro would be allowed to shift its output to maximize profits. The Project’s increased regulatory compliance would reduce air pollution from refinery heaters. Some refinery units heat petroleum over a fire the way a gas stove heats water in a pot.

The District received over 2,100 comments on the draft EIR. The final EIR responded to each of the comments (including those from CBE) in an appendix of over 5,700 pages.

The trial court held in favor of SCAQMD. The Court of Appeal affirmed that decision. The Court summarized its decision as follows:

Communities criticizes this environmental impact report in four respects.

First, it used the wrong “baseline.”

Second, the agency did not obtain information about the pre-project composition of crude oil the refinery processes, but instead merely found the post-project input would remain within the refinery’s “operating envelope.”

Third, the report did not explain how the agency calculated its so-called “6,000 barrel” figure.

Fourth, the report did not disclose either the existing volume of crude oil the refinery processes as a whole or the refinery’s unused capacity.

We resolve these issues as follows.

First, the agency properly used its discretion to adopt a logical and conventional federal baseline.

Second, the law did not require the report to detail immaterial information about input crude oil composition.

Third, Communities forfeited its right to complain about the 6,000-barrel figure [for increased input to one part of the refinery to offset to make up lost production capacity elsewhere] because it was essential for Communities to raise this issue before the agency but Communities never did.

Fourth, the law did not require the agency to list either the refinery’s pre-project volume or its unused capacity because these data were immaterial.

With regard to baseline, the Court examined past precedent affirming that a lead agency has the discretion to select a reasonable baseline (based on substantial evidence) that is not necessarily existing conditions. In this case, the District chose to follow the practice of the federal EPA, which uses the 98th percentile baseline approach (i.e., 98 percent of the peak existing emissions level) to regulate air pollution at the national level. The Court gave deference to the District's choice; the baseline reflected shared state and federal concerns about the health effects of air pollution and the EIR clearly described how the Project would result in lower emissions than the existing level of emissions during peak periods.

The Court held that input crude oil composition was immaterial because the Project would make no changes to the refineries that would allow a change in existing inputs:

The agency's briefing extensively explains why this means crude oil composition cannot change. For instance, in order to process lighter crude, the refinery would have to increase the height of the crude unit towers to make room for the greater proportion of recoverable short hydrocarbons. To process heavier crude, the refinery would have to build larger coke drums for the coking units since it would have to break apart a greater proportion of long hydrocarbons. To process crudes with higher sulfur content, it would be necessary to modify the sulfur plant. And so on.

The Court dismissed CBE's fourth claim for what might be considered common sense reasons, as follows:

Communities presents its throughput argument as follows. It claims the agency should have disclosed the total volume of crude moving through the refinery to "permit a cross-check" on the Report's calculations. Communities acknowledges the [EIR] does state any throughput increase beyond 6,000 barrels per day is impossible due to physical constraints, but claims the [EIR] contains too little data to "verify" that conclusion. Communities also expresses concern the [EIR] does not provide enough information to assure it that the actual post-project increase in capacity will not exceed 6,000 barrels per day.

This argument fails because the [EIR] adequately explains why the project will not increase the refinery's overall throughput. As the [EIR] phrases it, at oil refineries "the limitation on how much crude oil can be processed lies within the refining equipment itself." We have reviewed this point [in the opinion] above. As further illustrations, pump and piping capacity limitations constrain the Carson operation's crude rate. To increase the crude oil processing rate would require bigger pipes and stronger pumps. The Project does not involve and would not make these changes.