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February 10, 2010

Jack Broadbent
Executive Officer
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Re: Response to January 25, 2010 Letter from the Petaluma River Council
Regarding the Dutra Haystack Landing Asphalt Facility, LPL04-0046

Dear Mr. Broadbent:

This letter is submitted on behalf of Dutra Materials and The Dutra Group ("Dutra") in response to claims made by the Petaluma River Council ("PRC") in a letter dated January 25, 2010. Although silent during nearly four years of environmental review, PRC has emerged as a strident opponent of Dutra's Haystack Landing Asphalt Project ("Project") since commenting just before what was to be the final hearing before the Sonoma County ("County") Supervisors on the EIR for the Project in December 2008. Since then, there has been a continuing barrage of claims by PRC, which Dutra and the County have addressed, and the final approval hearing has been continued several times.

PRC's most recent letter criticizes the Health Risk Assessment ("HRA") prepared by the Bay Area Air Quality Management District ("BAAQMD" or "the District") relating to the Project, prepared in October 2008, and revised in September 2009, as a result of scaling back the Project and the resulting reductions in emissions. Among other criticisms, PRC contends that the HRA was required to include a cumulative impacts analysis and is somehow tainted by Dutra's payment of the District's invoice for administrative costs. The PRC criticisms of the District's HRA are entirely without merit, and are based on false claims concerning the Project, the requirements of CEQA and applicable regulatory guidance, and the nature and extent of the analysis and conclusions of the environmental review.

This response is intended to set the record straight and address PRC's claims, and includes a letter from ENVIRON International Corporation ("ENVIRON"), which is attached hereto and incorporated herein by this reference, which further responds to technical issues raised by PRC and its consultant.



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I. The EIR Fully Analyzes the Project's Cumulative Impacts According to Applicable Guidance, and Additional Cumulative Impacts Analysis is not Required in the HRA

The Environmental Impact Report ("EIR") prepared for the Project analyzed the cumulative impacts of the project in accordance with CEQA and the BAAQMD Guidelines and concluded that the Project would have a significant cumulative air quality impact. Since that time, the Project has been scaled back, including reducing peak throughput by 25 percent and eliminating onsite recycling and associated truck traffic, measures which substantially reduce air emissions. Most recently, Dutra has proposed to relocate barge offloading to the existing, adjacent Landing Way facility, eliminating the need for a diesel front end loader and associated emissions (the Landing Way facility has electric offloading), reducing tug emissions associated with positioning barges for mooring (the Landing Way facility has electric positioning equipment), and providing an additional 580 foot buffer to the nearest receptor (a non-conforming residence on the Petaluma River).

PRC cannot dispute that the EIR includes a cumulative impacts analysis. PRC contends, however, that the HRA is inadequate because it does not analyze the impacts of the Project when combined with the emissions of vehicles on adjacent roadways and other nearby sources. PRC's strained interpretation of the rules governing cumulative impacts fails to recognize that there is nothing in CEQA or the Guidelines that requires a health risk assessment, nor do they require that if one is prepared, that it include an analysis of the project's cumulative impacts or otherwise analyze emissions from other sources. CEQA requires consideration of cumulative impacts, and that analysis is undisputedly provided in the EIR for this Project.

This issue of the content of a health risk assessment was addressed in *Gray v. County of Madera*, 167 Cal.App.4th 1099, 1125-1126 (2008). There, the court found that the health risk assessment did not need to evaluate secondary truck traffic where, as here, an air dispersion model is used and the additional sources were offsite and far away from the project. *Id.* at 1126.

The applicable BAAQMD CEQA Guidelines outline the required cumulative impacts analysis for projects with significant air quality impacts. BAAQMD CEQA Guidelines at 19-21 (1999). The Guidelines require that a project be considered cumulatively significant if it has individually significant air impacts, which is precisely the analysis followed in the EIR for this Project. The cases that PRC cites emphasize the importance of a cumulative impacts analysis in an EIR, which was performed for this Project, but they do not stand for the proposition that a health risk assessment must be performed, or if performed, must include such an analysis.

Furthermore, "CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project." *Id.* at 1115 (citing *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396). Here, analysis of cumulative impacts in a health risk assessment is neither recommended nor required.



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It is helpful to keep in mind why the HRA was prepared in the first place. BAAQMD initially conducted the HRA in connection with Dutra's permit application for the Project. The District concluded that no significant health risks were posed by the Project, and thus, no further analysis was required. This analysis was provided in the CEQA proceedings after the County requested comments from BAAQMD concerning the EIR.

Despite the fact that the Project will include a state-of-the-art plant and was determined to pose no significant health risks as originally designed, Dutra has adopted a number of mitigation measures to further reduce air emissions and potential health risks. As noted above, Dutra reduced the peak hourly production by 25 percent and eliminated the onsite recycling and associated truck traffic. These changes were reflected in the reduced health risk figures shown in the refined HRA issued by the District in September 2009. In addition, as described below, Dutra has just proposed relocation of barge offloading to an existing, adjacent facility, which will eliminate a diesel front-end loader, reduce tug emissions, and further reduce the overall air emissions associated with the Project.

The analysis of potential health risks associated with emissions from the Project were below any applicable significance thresholds even before these mitigation measures. Now they are lower still.

II. CEQA Expressly Provides for Applicant Funding of Necessary Studies

PRC's claim that the HRA is somehow tainted by Dutra's payment of the District's invoice for administrative costs is both disingenuous and ironic. It is disingenuous because PRC's counsel knows full well that agencies reviewing permit applications and conducting review under CEQA charge applicants for administrative time and expenses. It is ironic because the District's Board Chair, Mayor Pamela Torliatt, has been aligned with PRC for the past year and has publicly opposed the Project in written statements and verbal presentations.

In fact, CEQA expressly allows applicants to pay for the preparation of an EIR by an outside consultant so long as the lead agency subjects the draft to its "own review and analysis." Cal. Pub. Res. Code § 21082.1(a); § 21089(a); 14 C.C.R. § 15084(d) & (e); § 15045(a); *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 369. The same is true for studies prepared by the District in consultation with lead agencies and in permitting projects. See 14 C.C.R. § 15096(b); see e.g. Gov. Code § 66014(b) (providing that local agencies may charge fees for the reasonable costs of processing applications requested by project proponents).

Here, BAAQMD only sent an invoice to Dutra after the initial HRA was prepared in response to the permit application. Dutra exercised no discretionary authority over the analysis. The revisions that were later made to the HRA were a result of a refined analysis that took into



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account offroad equipment that was not initially considered and the mitigation measure that scaled back the Project, as noted above, not due to some bias on the District's part.

Furthermore, any suggestion of bias on part of the District is unsupportable when the actual analysis is reviewed. As ENVIRON demonstrated in comments submitted to the County on November 10, 2009, the refined HRA is a conservative analysis that over-estimates Project emissions and potential exposures but still concludes that health risks will be well below all significance thresholds. Furthermore, as explained in ENVIRON's February 10, 2010 letter, it appears that PRC did not even take the time to request and review the relevant tables that support the HRA. Had PRC and its consultant considered the HRA and the supporting data, they would have seen that the HRA properly analyzed all hazardous air pollutants that are included in EPA's emission factors. PRC's comments regarding the analysis of criteria pollutants are similarly incorrect. The EIR does analyze the criteria pollutants in accordance with BAAQMD's current guidance.

For all of these reasons, PRC's claim that the HRA is somehow tainted by Dutra's payment of the District's invoice for administrative costs is wholly lacking in merit.

III. PRC's Claims Regarding Project Revisions is Based on Notes of the County Planning Department and do not Reflect the Actual Measures Proposed to Scale Back the Project

As noted above, despite findings that all potential health risks are less than significant, Dutra scaled back the Project last year to address concerns expressed by the community and some of the Supervisors, reducing peak throughput by 25 percent and eliminating onsite recycling and associated truck traffic, measures that substantially reduce air emissions.

PRC's letter now seeks to find flaws with preliminary proposals that it apparently found recently in notes of the County Planning Department staff. In fact, however, no formal proposal has ever been submitted which includes operating barges at 70 percent capacity. Instead, Dutra, prompted by Coast Guard navigational concerns, submitted a proposal on January 29, 2010, to entirely eliminate the barge off-loading facility at Haystack Landing. The Project will instead utilize the existing barge offloading facility 580 feet upriver at Landing Way, which will position and unload barges electrically, and from which aggregate will be transported via electric conveyor to the Haystack Landing site. These changes will substantially reduce Project emissions, as well as noise and visual impacts for the nearest receptor and Shollenberger Park. There is no proposal to operate barges at a reduced capacity or extend the time for offloading, as PRC claims. Moreover, the relocation and use of electric power for barge offloading at the Landing Way facility renders PRC's barge-related claims entirely moot.



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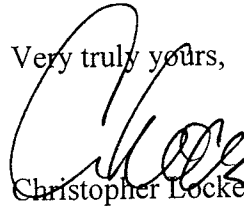
IV. Conclusion

The Haystack Landing Project has been thoroughly reviewed by Sonoma County, its consultants and numerous agencies during the past five years.

Dutra is committed to operating a state-of-the-art plant that will fully comply with all applicable environmental standards, and to providing a local asphalt resource that will reduce greenhouse gas emissions that result from importing asphalt from older and more distant plants. The EIR prepared for the project thoroughly analyzes Project emissions, in accordance with CEQA, and includes a cumulative impacts analysis which is in accordance with the District's own guidelines. The District's HRA analysis requires no additional cumulative impacts analysis, meets or exceeds all applicable standards, and properly and conservatively concludes the Project will pose no significant health risks.

We hope you find these points and the accompanying letter from ENVIRON to be fully responsive to PRC's claims. Please contact ENVIRON or me with any questions.

Very truly yours,



Christopher Locke

RCL:cm

Enclosure

cc: Steve Dee, Sonoma PRMD
Steve Padovan, Sonoma PRMD
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ENVIRON

February 10, 2010

Mr. Brian Peer
The Dutra Group
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1000 Point San Pedro Road
San Rafael, CA 94901

Re: Response to Petaluma River Council Comments on the BAAQMD Refined Health Risk Assessment for the Proposed Dutra Materials Haystack Landing Asphalt and Recycling Facility

Dear Mr. Peer:

Per your request, ENVIRON International Corp. (ENVIRON) evaluated claims made by the Petaluma River Council (PRC) in a comment letter submitted on their behalf by Lozeau Drury LLP, dated January 25, 2010. In addition, ENVIRON evaluated claims made by Soil Water Air Protection Enterprise (SWAPE) in their January 12, 2010 letter, which was attached to the PRC letter as Exhibit F. In their letter, SWAPE identified what they believe to be flaws in the Draft Environmental Impact Report (DEIR) prepared by Sonoma County and the Refined Health Risk Assessment (HRA), dated September 21, 2009, prepared by the Bay Area Air Quality Management District (BAAQMD or the District) for the proposed Dutra Materials' Haystack Landing Asphalt facility ("Project") under the California Environmental Quality Act (CEQA).

SWAPE incorrectly characterizes and makes erroneous statements about the analyses and conclusions of both the DEIR and District HRA. Based on our review of the SWAPE letter, we have the following comments:

1. SWAPE incorrectly asserts the DEIR should have considered draft CEQA Guidelines that were proposed after the DEIR and which are still not approved for use.

The DEIR was published in January 2008 and the Final Environmental Impact Report (FEIR) was published in July 2008. In September 2009, the BAAQMD first released draft CEQA guidelines which, if adopted, would update their current CEQA guidelines, dated December 1999. The BAAQMD then released revised the draft CEQA guidelines in November 2009 and again in December 2009. At their January 6, 2010 meeting, the BAAQMD Board of Directors postponed consideration of the revised guidelines until April 2010 (at the earliest) and directed BAAQMD staff to meet with city and county planning staffs to re-evaluate the proposed standards. As such, the draft standards, proposed 23 months after the release of the DEIR and still not in effect, are not applicable to the Project.

Ignoring the inapplicability, SWAPE proceeds to claim that the DEIR fails to incorporate the draft guidance on analysis of criteria pollutants. However, even if the draft guidelines were applicable and criteria pollutant emissions from the Project were evaluated against the most recent draft of the proposed significance thresholds (December 2009), the conclusions reached in the DEIR would remain unchanged. Emissions estimates of all criteria pollutants, except NOx, are below the proposed thresholds and NOx is above the proposed threshold. As such, under the proposed significance thresholds Impact AQ-2 of the DEIR would continue to be significant and unavoidable.