

**Supplemental
Responses to Comments**

on the

Environmental Analysis

Prepared for the

**Control Measure for
Ocean-Going Vessels At Berth in
California**



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California Air Resources Board – Control Measure for Ocean Going Vessels At Berth
Supplemental Responses to Comments Document

August 27, 2020	Catherine H. Reheis-Boyd, Western States Petroleum Association
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CEQA Comment Summary (pp. 4 -5): The commenter makes several claims regarding the adequacy of the Final Environmental Assessment and CARB’s adherence to procedures required under CEQA:

1: The commenter states that the Final EA was released on August 25 for consideration of the Proposed Regulation on August 27, which deprives the public of meaningful opportunity to review the document.

2: The commenter states the Draft EA did not address significant adverse health, safety, and other environmental impacts related to how safety systems in tanker vessels are used to manage flammable cargoes during offloading at marine terminals and how they would interface with the vessel exhaust system. The commenter refers to the revised analysis in the Final EA and states that the analysis does not explain how the Proposed Regulation could alter or increase a risk related to the need to manage oxygen levels during the off-loading of hazardous cargoes other than stating that capture and control would result in increased safety management efforts and that CARB believes the industry will be able to handle alternative control technology.

3: The commenter states that the Final EA indicates that long-term operational impacts related to hazards and hazardous materials are potentially significant and unavoidable (Impact 9.A-2). The commenter asserts the Final EA highlights a new significant or more severe impact associated with the risk of explosion during off-loading, which is not discussed in the Draft EA and recirculation is required.

4: The commenter states that the Final EA continues to insist that operational safety impacts to vessels would be less than significant due to industry procedures to ensure safety, without allowing time for their implementation. The commenter calls this conclusion perplexing because the EA also acknowledges explosions may occur during off-loading of cargo, which are considered potentially significant and unavoidable. The commenter notes that the conclusion for land-based impacts is significant and unavoidable because it cannot be determined which safety regulations would govern new technologies but that for vessels the EA expects vessel operators will undertake necessary safety precautions.

5: The commenter states the EA is deficient in considering impacts on sensitive biological resources and references impacts to only two bird species. The flaw is exacerbated by the potential for increased impacts due to the compressed compliance schedule. The commenter says the Final EA adheres to the insufficient Draft EA analysis and states the Final EA provides some detail about construction—that pile driving may impact aquatic species—but does not say which aquatic species may be impacted or what the magnitude of impacts could be.

CARB Response (pp. 4 – 5): The Final EA adheres to the substantive and procedural requirements of CEQA:

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1: There is no mandate under CARB's procedures for further public review or comment regarding the Final EA. 17 CCR Section 60004.2(b) describes the public review process for an EA. Whereas a 45-day comment period is required for the Draft EA, the procedures contain no such requirement for a Final EA. Section 60004.2(b)(5) instead notes, on the subject of the Final EA, that CARB shall prepare a final Environmental Impact Analysis, which may include the responses to comments on the Draft EA and shall include any other information added by CARB as necessary. Section 60004.2(c) also requires that CARB shall consider the EA prior to approving a project, and that CARB must certify that the Final EA was presented to the Board and considered prior to approving the project.

2: The analysis in the EA of the hazards noted by the commenter is more detailed than described by the commenter and adequately addresses potential hazards impacts of the Proposed Regulation. The analysis of potential explosions starts on page 104 and ends on page 108. Additionally, Master Response 4, in the Response to Comments on the Draft Environmental Analysis Prepared for the Control Measure for Ocean-Going Vessels At Berth, addresses safety concerns and explains the analysis in the Final EA.

Importantly, the Final EA states the following:

- Accidents may occur, including explosions.
- There is an inherent need for additional safety measures for tanker vessels and safety studies for tanker vessels prior to implementation of compliance responses given that tanker vessels can carry flammable or explosive cargoes.
- The tanker industry has, since its inception, innovated to avoid and mitigate safety hazard risks. The tanker industry, at its core, is about moving potentially hazardous and flammable substances from place to place across the globe.
- The Final EA also describes safety measures taken by industry, which demonstrate the industry's ability to develop ways to perform these steps safely.
- Numerous laws have been enacted to regulate hazardous materials and wastes, and Chevron has created emergency response manuals.

Therefore, the Final EA does disclose the risk of increased explosions and other hazards. The discussion of safety management is meant to show that the industry (including WSPA's members) is capable of managing such risks, based on their track record and the regulatory environment. Furthermore, direct control equipment is not the only option. The IC provision was added to provide flexibility, and TIEs and VIEs are also available, in addition to provisions that take into account emergency situations. These flexibility options help avoid potential hazardous situations.

3: Response to comment 22-29, in the Response to Comments on the Draft Environmental Analysis Prepared for the Control Measure for Ocean-Going Vessels At Berth, explains that the revision made to the Draft EA is a result of scriveners' errors:

"As indicated throughout the EA, the Proposed Regulation is expected to have significant and unavoidable hazards-related impacts, pertaining to both construction and operations."

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The reason for the scrivener's error correction should be apparent, given the section the corrected language is included under, which concerns long-term operational impacts. Therefore, the substance of the discussion and the ultimate conclusion of Impact 9.A-2 was not changed from the Draft EA, and recirculation is not required.

4: To clarify, the discussion of vessel-related impacts relates to the work done on the vessels themselves, independent of ports. The land-based impacts relate to impacts that would occur at ports and due to activities at ports. For example, for the vessel-related impacts referred to by the commenter, the discussion focuses entirely on the vessels and on-board control strategies. For tankers, it is assumed that land-based capture and control systems would be used (see Master Response 4, in the Response to Comments on the Draft Environmental Analysis Prepared for the Control Measure for Ocean-Going Vessels At Berth); therefore, the discussion of these impacts are found in the land-based impact analysis in the EA.

5: As noted by the commenter, CARB has previously addressed the claim about the Draft EA addressing only two species in response to comment 22-36, in the Response to Comments on the Draft Environmental Analysis Prepared for the Control Measure for Ocean-Going Vessels At Berth, from December 2019, also in response to WSPA. In summary, that comment explains that the Draft EA does not state that impacts would be limited to only two species and that they are provided as examples. The response also notes and provides the Draft EA's discussion of impacts to benthic species. The EA is a programmatic document, as described in Master Response 1, in the Response to Comments on the Draft Environmental Analysis Prepared for the Control Measure for Ocean-Going Vessels At Berth,. There is no requirement to list every species that may possibly be impacted by compliance responses. As explained in Master Response 1, "The level of detail in the EA reflects that the project is a broad statewide action framework. Consequently, the analysis does not provide the level of detail that would be provided in subsequent environmental documents prepared for specific regulatory actions that CARB or other agencies decide to pursue . . ." CARB does not know what improvements are reasonably foreseeable at any given port, particularly with the IC provision's added flexibility. Any site-specific biological analyses would be speculative and therefore misleading, and speculation is not required by CEQA. Therefore, the EA's approach of describing broad categories of affected species and providing some examples is adequate under CEQA.

CEQA Comment Summary (pp. 6 – 7)

6: The commenter states that the Final EA includes a new significant and unavoidable impact (Impact 4.A-1), which requires recirculation under CEQA.

7: The commenter states that CARB fails to address how the accelerated implementation timeline would exacerbate impacts should construction occur simultaneously within a defined geographic area.

8: The commenter states the EA fails to evaluate cumulative impacts and improperly used statewide projections rather than a project list.

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9: CARB does not evaluate how the accelerated compliance timeline would affect cumulative impacts.

10: The deferral of compliance start dates for other vessel categories potentially brings up overlap of construction with tanker terminals, and this must be addressed.

CARB Comment Response (pp. 6 – 7)

6: The Draft EA deemed Impact 4.A-1 as significant and unavoidable; therefore, the Final EA did not introduce a new significant and unavoidable impact. The revision referenced by the commenter merely added clarification to the discussion, as noted in Response to WSPA's Comment 22-27, in the Response to Comments on the Draft Environmental Analysis Prepared for the Control Measure for Ocean-Going Vessels At Berth.

7: As described in Master Response 5, in the Response to Comments on the Draft Environmental Analysis Prepared for the Control Measure for Ocean-Going Vessels At Berth, referenced by the commenter, the impact discussion in the EA does not hinge on the timeline. As such, the impacts also would not rely on whether activities overlap. Master Response 5 provides an example of how impacts are not based on the compliance timeline.

Note that there are no concerns from environmental organizations regarding the claimed impacts. As the Proposed Regulation and compliance responses pertain to WSPA, this rulemaking involves controlling emissions at existing operating oil terminals. Generally, the impacts would be minor, in areas that are already heavily disturbed. We fully analyzed these impacts in the EA, to the extent possible at the programmatic level.

8: CARB addressed a similar comment as response to WSPA's comment 22-41, in the Response to Comments on the Draft Environmental Analysis Prepared for the Control Measure for Ocean-Going Vessels At Berth, which also claimed that the summary of projections approach was insufficient. CARB uses summary of projections, rather than list of projects, method for cumulative analysis. Here, it is the list of projections in the 2016 State SIP Strategy, which includes many similar emissions reduction measures across the state. This is the most accurate way to consider impacts from an emissions-reduction measure; the other projects listed are more like the project than specific industrial projects. The approach also recognizes that the minor impacts that could result from this project are part of a broader plan that dramatically reduces all types of harmful air pollution. In using the projections approach, consideration of individual projects is not necessary. Therefore, the EA adequately analyses and discloses cumulative impacts.

9: Master Response 5, in the Response to Comments on the Draft Environmental Analysis Prepared for the Control Measure for Ocean-Going Vessels At Berth, addresses impacts and the accelerated tanker compliance timeline, again noting that the EA conclusions do not hinge on the compliance timeline but rather on the nature and extent of impacts. Therefore, the EA adequately analyses and discloses cumulative impacts.

10: Again, Master Response 5, in the Response to Comments on the Draft Environmental Analysis Prepared for the Control Measure for Ocean-Going Vessels At Berth, addresses

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impacts and the accelerated tanker compliance timeline, again noting that the EA conclusions do not hinge on the compliance timeline but rather on the nature and extent of impacts. And, as stated, Master Response 1, in the Response to Comments on the Draft Environmental Analysis Prepared for the Control Measure for Ocean-Going Vessels At Berth, “The level of detail in the EA reflects that the project is a broad statewide action framework. Consequently, the analysis does not provide the level of detail that would be provided in subsequent environmental documents prepared for specific regulatory actions that CARB or other agencies decide to pursue” Overlap of construction activities was addressed in response to a comment about combined emissions from multiple projects occurring at once (PMSA’s December 2019 comment 52-18, in the Response to Comments on the Draft Environmental Analysis Prepared for the Control Measure for Ocean-Going Vessels At Berth), which explained that “the construction schedules and overlap . . . are unknown at this time.”