



**AGENDA ITEM
CITY COUNCIL MEETING DATE – JUNE 25, 2019
BUSINESS ITEM**

TO : City Manager

FROM : Fire Chief

SUBJECT : **REPORT ON REFINERY SAFETY IMPROVEMENTS AND APPROVAL OF BENICIA – VALERO COOPERATION AGREEMENT**

EXECUTIVE SUMMARY:

On November 20, 2018, staff provided to the City Council an update on the progress Valero and the City had made towards various safety related issues. Following the presentation, public comment, and Council deliberation, the Council directed staff to return in six months with a written agreement that documented the future working relationship between the City and Valero, focused on various areas, including progress on air monitoring programs, improved communications and coordination between the City and Valero, increased access to incident notifications and reports, and increased public participation and engagement. This report serves as that six-month follow-up and presents a written, legal agreement for Council to consider adopting. The agreement also provides a means for the City to pay for the numerous initiatives contained in the agreement.

RECOMMENDATION:

Move to adopt a resolution (Attachment 1) authorizing the City Manager to execute the attached Benicia – Valero Cooperation Agreement (included as Attachment 2).

BUDGET INFORMATION:

With approval of the attached agreement, Valero agrees to pay \$278,000 per year to fund an additional Division Chief position in the Fire Department. An annual adjustment equal to Consumer Price Index for the previous year is included in the agreement. This new position will sufficiently expand staff capacity to monitor compliance with the agreement and strengthen the working relationship between the City and Valero.

BACKGROUND:

Introduction

Tonight's report is a continuation of Council discussion that began at the June 19, 2018 City Council meeting (staff report included as Attachment 3). At that time, the City Council discussed

a two-step request from Mayor Patterson to adopt an Industrial Safety Ordinance (ISO). After lengthy discussion and public comment, Council took action to:

1. Direct staff to monitor Solano County's implementation of the California Accidental Release Prevention (CalARP) Program 4 regulations;
2. Direct staff to meet with Valero and the appropriate regulatory agencies to address the few gaps that exist between Contra Costa County's ISO and Program 4, including more effective and frequent communications with the City, Valero, and the community;
3. Require Valero to have fenceline monitors installed within six months while continuing to negotiate the installation of additional community monitors;
4. Develop an evacuation plan; and
5. Report back at the first City Council meeting in November on Valero's progress and Council's direction.

Per the direction on item 5 above, a report was brought back to City Council on November 20, 2018 (Attachment 4). At the November 20, 2018 City Council meeting, staff provided an update on both Valero's and the City's progress on the direction given on June 19, 2018. After a staff presentation, public comment, and Council deliberation, direction was given to staff to return in six months to provide Council with an update on various items, including progress on air monitoring programs, improving communications and coordination between the City and Valero, increased access to incident notifications and reports, and increased public participation and engagement. Additionally, Council gave direction that staff work with Valero to memorialize numerous concerns in an agreement between the two parties. This direction is consistent with longstanding concerns the City has had with Valero. The following is a broad summary of the goals the City has shown a desire to achieve. A breakdown of each goal and potential solution or agreement follows. The goals include the following actions:

- I. Establish a robust air monitoring program with transparent community access to the data
- II. Increase public participation and engagement, including input on planning documents
- III. Increase public notification and awareness, including access to reports and inspection results
- IV. Improve communication and coordination between Valero and the City
- V. Increase City involvement allowing the City to have a "seat at the table" for inspections, investigations, and reviews
- VI. Establish a means for the City to pay for the numerous initiatives described in the previous list of goals.

Goal I: Establish a robust air monitoring program with transparent community access to the data

Issue

There has been a great deal of concern regarding the need for an improved air monitoring program in the City of Benicia.

Solution/Agreement

Through a combination of Bay Area Air Quality Management District (BAAQMD) rules, a Valero/Good Neighbor Steering Committee Agreement, and an agreement with the City, Valero has agreed to partnering in a state-of-the-art air monitoring program which includes fenceline air monitors, community air monitors, and portable air monitors for emergency response.

A) Fenceline Monitors

In June 2018, Valero began the installation of their BAAQMD approved fenceline air monitors. This project was completed in November 2018. While this was a great first step in creating a comprehensive fenceline air monitoring program, there was concern in the community that, while the BAAQMD plan covered the majority of the fenceline, due to a wind analysis, it left a large area between the refinery and the community along the northwest boarder unmonitored. On February 19, 2019 an agreement between the City, the Good Neighbor Steering Committee, and Valero was approved by Council. This agreement, titled the Second Amendment to Valero/Good Neighbor Steering Committee Agreement, stated that Valero agrees to construct, install, and maintain at its own expense the equipment required to expand this BAAQMD-approved fenceline monitoring program to address the northwest boundary of Valero's Benicia Refinery. Valero anticipates that the expenditure for this expansion to its BAAQMD-approved fenceline monitoring program will be approximately \$1.5 million. Valero further agreed to make the data obtained through this BAAQMD-approved fenceline monitoring program available to the public through the air monitoring program website.

B) Community Monitors

City staff has had various discussions with Valero regarding the possibility of adding additional community air monitors. Community air monitors differ from fenceline monitors in that they are single site monitors located outside of Valero property. Currently, there are three older style monitors in place. There has been interest in adding additional monitors in strategic locations. Again, as part of the Second Amendment to Valero/Good Neighbor Steering Committee Agreement approved by Council on February 19, 2019, Valero has agreed to provide \$460,000 to the Benicia Community Air Monitoring Program (BCAMP) for community air monitoring equipment. The funds shall be used for the operation and management of the Benicia Community Air Monitoring Program ("BCAMP"), including an independently contracted expert air monitoring company for managing raw data collection, data analysis, maintenance of air monitoring equipment, and to provide related services, including operation of an educational public access website that presents data being collected in real time and information on public health as related to ambient air quality.

C) Portable Monitors

While fenceline and community air monitors are helpful in providing information to the public, emergency responders need a more versatile air monitoring solution. From an

emergency response standpoint, the most important monitors are portable monitors located on fire department vehicles that can be quickly deployed in the field. This gives fire personnel real time data at specific locations allowing for more informed decisions to be made. On January 22, 2019, Valero provided the City of Benicia Fire Department 6 portable air monitors. They include 2 ChemPro100i handheld gas and vapor detectors, 2 PpbRae 3000 air monitors and 2 Aerocet 831 particulate matter air monitors. The total cost to Valero for this contribution is \$48,342.00. The City's acknowledged receipt of these monitors is included in the Benicia – Valero Cooperation Agreement.

Goal II: Increase public participation and engagement, including input on planning documents

Issue

There is concern that Benicia citizens are not given the opportunity to participate in the development process of various health and safety documents and plans.

Solution/Agreement

The following items were developed and included in the proposed Benicia – Valero Cooperation Agreement to increase public participation and engagement:

A) Risk Management Plan (RMP)

Valero shall provide the Risk Management Plan required by Title 19 California Code of Regulations, section 2745.1 to the Benicia Fire Department. The plan will be made available to the public and the public shall have 45 calendar days to comment on the Risk Management Plan. All comments will then be forwarded to the Solano County Certified Unified Program Agency (CUPA) for review. Additionally, once the plan is complete, the City will make the final Risk Management Plan publicly available on the Public Information Bank.

B) Process Safety Performance Indicators Report (Safety Plan)

Valero shall provide the Process Safety Performance Indicators Report, required by Title 19 California Code of Regulations, Section 2762.16, to the Benicia Fire Department. Title 19 requires Valero to report indicators identified in Section 2762.16 to the California Governor's Office of Emergency Services ("Cal OES") and the Solano County CUPA every year on June 30 for the period from January 1 to December 31 of the prior year ("Process Safety Report"). The City will make the report publicly available on the Public Information Bank.

C) Public Liaison for Hazardous Materials

The Benicia Fire Department shall appoint a Fire Division Chief to serve as a public liaison and single point of contact for people who live or work in the City regarding environmental health concerns, questions, and complaints about hazardous materials programs. The Public Liaison will be empowered to identify and solve problems and make recommendations. His or her role will be one of investigating concerns and complaints, facilitating their resolution, and assisting people in gathering information about programs, procedures, or issues. The Public Liaison may retain appropriate technical

experts in order to fulfill technical assistance requests from members of the public. The Benicia – Valero Cooperation Agreement requires that Valero make reasonable efforts to cooperate with the Public Liaison and to respond to requests for information regarding hazardous materials and health concerns within a reasonable period of time.

Goal III: Increase public notification and awareness, including access to reports and inspection results

Issue

There is a concern that Benicia citizens are not given the opportunity to be fully notified of refinery related health and safety issues, including incident notifications and post incident investigations.

Solution/Agreement

The following items were developed and included in the proposed Benicia – Valero Cooperation Agreement to increase public notification, awareness, and access:

A) 72-Hour Post Incident Report

Valero agrees to provide the Benicia Fire Department with a 72-Hour Post Incident Report when a significant incident or event occurs at the refinery. The criteria for initiating the 72-Hour report as well as its format and required data elements are detailed in the City of Benicia Hazardous Materials Incident Notification Policy, included as Exhibit A to Attachment 2. Any 72-Hour reports will be made available on the Public Information Bank. The Benicia – Valero Cooperation Agreement states that Valero shall strictly comply with the City of Benicia Hazardous Materials Incident Notification Policy which formalizes the various levels of notification including the 27-Hour report.

B) Incident Investigation Reports

Title 19 California Code of Regulations, Section 2762.9, requires Valero to develop, implement, and maintain effective written procedures for promptly investigating and reporting any incident that results in or could reasonably have resulted in a major incident. In addition to providing this required report to the Solano County CUPA, Valero agrees to provide the report to the City of Benicia. Additionally, the reports will be made available on the Public Information Bank.

C) Public Information Bank

As Benicia residents gain new access to various documents such as safety plans, investigation reports, planning documents, and notification reports, staff recognizes the need for a single, easy to locate and search repository of information. To that end, the Benicia – Valero Cooperation Agreement states that the City shall be entitled to collect and provide ready access to such public documents provided, however, that the City shall not publicly disseminate, in the Public Information Bank or otherwise, trade secrets or other information protected from disclosure by Federal or State law.

Goal IV: Improve communication and coordination between Valero and the City

Issue

Although the City and Valero have a long history of working well together, there have been instances of poor communication and a general lack of coordination between the two entities.

Solution/Agreement

The following items have been identified as solutions to improve both communication and coordination and have been incorporated into the proposed Benicia – Valero Cooperation Agreement.

A) Valero Emergency Procedures Manual

The Valero Emergency Procedures Manual is a planning document written by Valero staff and designed to develop the general philosophy of response to emergencies at the facility. In the past, Valero has been diligent in providing the Benicia Fire Department Fire Chief with updated copies. A recent review of this document found some minor inconsistencies with prior agreements as well as City procedures. The proposed Benicia – Valero Cooperation Agreement shall require Valero to review the Valero Emergency Procedures Manual annually and solicit comments on the Valero Emergency Procedures Manual from the Chief of the Benicia Fire Department in connection with each review and update.

B) Emergency Operations Center (EOC) Coordination

Past incidents in which both the City and Valero activated their respective EOCs have resulted in poor communication and coordination. In recognition of this, City and Valero staff verbally agreed to a solution where, whenever the City notifies Valero that the City EOC has been activated for an emergency that may impact the Refinery, Valero shall immediately dispatch a representative to the City EOC to assist and coordinate the City's and/or Valero's response to the emergency. Additionally, whenever Valero activates their Emergency Operations Center for an incident that may have off-Refinery impacts, Valero shall immediately contact the Benicia Fire Department and provide detailed information regarding the emergency; and accept a City emergency response staff person to fill a liaison position within the Valero EOC during the incident. While this verbal agreement is good, the Benicia – Valero Cooperation Agreement memorializes it in writing.

C) Emergency Response Training

A critical component of emergency response is training. The Benicia – Valero Cooperation Agreement incorporates provisions requiring regular, joint training with City and Valero staff. The training incorporates both EOC and field training and shall be completed annually.

D) Incident Notification Policy

There have been concerns in the past regarding inconsistent and sometimes inadequate notification to the City of incidents at Valero. Therefore, the Benicia Fire Department staff worked to develop a comprehensive incident notification policy for the City. The

Benicia – Valero Cooperation Agreement states that Valero shall comply with the City of Benicia Hazardous Materials Incident Notification Policy.

E) Valero Community Advisory Panel Meetings

The role of the Valero Community Advisory Panel (CAP) is to provide an on-going means of communication between the community, civic leaders, and the Valero Benicia Refinery. The CAP mission statement reads, “The objectives of the CAP are to provide an ongoing means of communications between the community and Valero on matters of mutual concern and interest that relate to refinery operations and their impact on the community, and to provide an advisory role to Valero on those matters.” Membership of the CAP includes a member of the Benicia City Council along with one Benicia Chamber of Commerce Member, one Benicia Industrial Park Association Member, one Benicia Unified School District Member, one Good Neighbor Steering Committee Member, and two Community-at-Large Members. Although the Benicia Fire Department does not have a representative as a member of the CAP, Valero agrees to allow attendance of the Benicia Fire Chief or Division Chief to any meetings of the Valero CAP.

Goal V: Increase City involvement, allowing the City to have a “seat at the table” for inspections, investigations, and reviews

Issue

Although the Benicia Valero Refinery is located entirely within the Benicia City limits, the facility is regulated by County, Regional, State and Federal agencies with very little input from the City. Examples include Solano Environmental Health, Bay Area Air Quality Management District, California Air Resources Board, Federal Environmental Protection Agency, along with many others. Unfortunately, Benicia is not represented in this group of agencies. There is long standing sentiment in the community that the City is missing “a seat at the table” when it comes to receiving information from Valero and making decisions which impact the community.

Solution/Agreement

Valero agrees to ensure the City has “a seat at the table” by enacting the covenants of the proposed Benicia – Valero Cooperation Agreement.

Goal VI: Establish a means for the City to pay for the numerous initiatives described in the previous list of goals

Issue

A great deal of City Fire Department administrative staff time is spent on emergency preparedness, hazardous materials training and response preparation, community emergency alert and notification preparedness, community engagement, and other activities related to Valero. This takes time away from other critical administrative functions. With the development of this agreement, the workload of Fire Department administrative staff will increase significantly. To appropriately manage this program, the Benicia Fire Department needs to fill one additional Division Chief position. This position will be in charge of managing the Emergency Preparedness and Disaster Management Division and will serve as the Public Liaison for Hazardous Materials.

Solution/Agreement

Valero understands the impact its operations have on staff and agrees to support this position moving forward by enacting the covenants of the Benicia – Valero Cooperation Agreement which includes an annual payment of Two Hundred Seventy-Eight Thousand and 00/100 Dollars (\$278,000.00) to cover the fully burdened cost of the position.

NEXT STEPS:

1. Complete signatures needed to finalize the Benicia – Valero Cooperation Agreement.
2. Receive payment #1 from Valero
3. Hire one additional Division Chief in the Benicia Fire Department.
4. Begin implementation of all sections of said agreement.

ALTERNATIVE ACTIONS:

Council may provide any other direction it determines appropriate.

General Plan	The overarching goal of the General Plan is Sustainability
	Goal 4.1: Make community health and safety a high priority for Benicia.
	Goal 4.9: Ensure clean air for Benicia residents.

Strategic Plan	Strategic Issue #1: Protecting Community Health and Safety
	Strategy #3: Provide a high state of preparedness for disasters/emergencies
	Strategy #5: Promote community and personal health
	Strategic Issue #2: Protecting and Enhancing the Environment
	Strategy #4: Protect air quality
	Strategic Issue #4: Strengthening Economic and Fiscal Conditions
	Strategy #4: Manage City finances prudently

CEQA Analysis	The proposed action is not a Project per Section 15378 of the California Environmental Quality Act (CEQA), because it will not result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.
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Attachments:

1. Resolution
2. Benicia-Valero Cooperation Agreement (including Exhibit A - City of Benicia Hazardous Materials Incident Notification Policy)
3. City Council Staff Report – June 19, 2018
4. City Council Staff Report – November 20, 2018

For more information contact: Josh Chadwick, Fire Chief

Phone: 707-746-4275

E-mail: jchadwick@ci.benicia.ca.us