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Document 14

Translated from the Spanish original

On June 16, 2008

Commission of Industry, Energy and Environment Headquarter of Evaluation and Environmental quality

Avda. de Portugal s/n
06800 Mérida

Subject: Oil refinery promoted by refinery Balboa, S.A.

D. **Félix Lorenzo Donoso**, of legal age, with domicile to notifications effects in c / *Guadeloupe 17, 06200 Almendralejo* (Badajoz), ID card *9154113K*, phone *675 043 835*, in name and representation of *the Platform Against the Contamination of Almendralejo*, inscribed in the register of Associations of the Commission of Presidency of the Junta of Extremadura with the number 3.829, before **Vd.**, it appears and, as better it proceeds in right,

EXHIBIT

That the **article 45 of the Constitution** configures the environment as a juridical good of which enjoyment there are titular all the citizens and which conservation it is an obligation of the public powers and the community.

Precisely this participation and its instrumentation through legal tools that make it really effective constitute at present one of the areas in which with major intensity the International Environmental Right has progressed and, for extension, the Community law and that of the States that integrate the European Union.

In order to make these three principles effective, the Law 27/2006 arranges the incorporation of the commitments acquired under the Agreement of Aarhus, of which Spain is a part, to our Internal Right. This way, the right of environmental access to information is configured like an essential element to allow the civil intervention in the decisions on the subject of environment with cause knowledge. For its part, the civil participation in the decisions is articulated through the intervention in the procedures of authorization of certain activities, the approval of plans and programs, and the preparation of dispositions of general character.

That with **date June 3, 2008** (BOP of Badajoz 105), is published submits to public information the requests of Administrative Authorization, Integrated Environmental Authorization and Declaration of Environmental Impact, corresponding to the project of installation of a oil refinery in Extremadura and its auxiliary and complementary infrastructures in the province of Badajoz in Extremadura .

That in the said announcement was specifying that *“that in the course of thirty days told from the following one to that of the publication of this announcement, by any interested party there could be examined the Basic Project and the Study of Environmental Impact as well as the documents relative to the request of Integrated Environmental Authorization (only for the Refinery) in the Area of Industry and Energy of the Subdelegation of the Government in Badajoz, situated in Avda. of Europe, 1-6.th plants, 06004 Badajoz, and there were formulated by triplicate, in the above-mentioned term, any allegations that this one is considered to be opportune directed an Area of Industry and Energy. The documents relative to the request of Integrated Environmental Authorization will be also during the above mentioned term of manifesto in the Headquarter of Evaluation and Environmental quality, of the Commission of Industry, Energy and Environment (Junta of Extremadura), Avda. of Portugal s/n of Merida”*.

The complexity of the project, as well as his volume, does that to all lights the term of thirty days is insufficient to examine it with the thoroughness that the same one needs. This term of 30 days, in opinion of which this paper signs, prevents the right to the effective participation of the interested parties. Although it is true that Law 16/2002, of July 1, of prevention and control integrated of the contamination, establishes:

Art 16. Public information

- 1 As soon as the documents were completed, in accordance with the established in the previous articles, will open to itself a period of public information **that will not be lower than thirty days**.

It is clear that the legislator has wanted in this point to protect the right of the interested parties on having determined a minimal period, nevertheless, it has not established of the same way a maximum period, making the door opened to which this way is when it is considered that on this enlargement depends the safe-conduct of the real and effective participation.

To more abundance, the same circumstances recur in the legislative Royal Decree 1/2008, of January 11, by which there is approved the combined text of the Law of Evaluation of Environmental Impact of project, which in his:

Art. 9 Step of public information and of consultation to the affected Public administrations and to the interested persons. The substantive organ will submit the study of environmental impact to which the article 7 refers, [...] and **will have a duration not lower than 30 days**.

It is possible to verify how, again, the legislator annotates the minimal period without alluding to the maximum.

But it is, undoubtedly, the Law 27/2006, of July 18, by that there are regulated the rights of access to information, of public participation and of access to the justice on the subject of environment (it incorporates the Instructions 2003/4/CE and 2003/35/CE). The one that, undoubtedly, establishes that the **participation has to be effective and real**, not merely procedural. This way it establishes:

Article 3. Rights on the subject of environment.

To do effective the right to an environment adapted for the development of the person and the duty to preserve it, they all will be able to exercise the following rights in his relations with the public authorities, in accordance with the foreseen in this Law and with the established in the article 7 of the Civil code:

1) As regards the access to information:

- a) An access to the environmental information that acts in power of the public authorities or in that of other subjects in his name, without for it they being forced to declare a certain, any interest, his nationality, domicile or head office.
- b) **To be informed about the rights that the present law grants him and to be advised for his correct exercise.**
- c) **To be assisted in his information search.**
- d) To receive the information that he requests in the maximum period established in the article 10.
- e) **To receive the environmental information requested in the form or format elected**, in the terms foreseen in the article 11.
- f) To know the motives by which the whole or partially information is not facilitated, and also those by which the above mentioned information is not facilitated to them in the form or requested format.
- g) To know the list of the charges and prices that, in his case, should be demandable for the reception of the requested information, as well as the circumstances in which one can demand or to excuse the payment.

2) As regards the public participation:

- a) **To take part in an effective and real way** in the preparation, modification and review of those plans, programs and dispositions of general character related to the environment included in the ambience of application of this Law.
- b) To gain access with sufficient advance to the relevant information to the above-mentioned plans, programs and dispositions of general character.
- c) To formulate allegations and remarks when all the options are still open and before the decision is adopted on the mentioned plans, programs or dispositions of general character and to that they are born properly in mind by the corresponding Public administration.
- d) To know the definitive result of the procedure in which it has taken part and is informed about the motives and considerations in those that the adopted decision bases, including the information relative to the process of public participation.
- e) **To take part in an effective and real way**, in accordance with the arranged in the applicable legislation, in the administrative procedures proceeded for the granting of the authorizations regulated in the legislation on prevention and integrated control of the contamination, for the authorization of the administrative qualifications regulated in the legislation on the subject of organizations modified genetically, and for the issue of the declarations of environmental impact regulated in the legislation on evaluation of environmental impact, as well as in the processes planners foreseen in the water legislation and in the legislation on evaluation of the effects of the plans and programs in the environment.

As it is possible to verify, the norm repeats insistently the concept of **effective and real participation**, Showing up clearly that the legislator has thought that it is not sufficient with that the participation is purely formal, and this way he has put a big interest to emphasize that the public participation is essential when of environmental projects it is processed.

On the other hand, I think that the procedure by which it is established that the interested parties will be able to consult the documents related to the project they will have to present themselves at a few certain dependencies on the administration in working timetable, is in clear contradiction with the established in previously 27/2006, of July 18, which establishes:

Article 5. General obligations on the subject of environmental information.

1. The Public administrations will have to realize the following performances:

e) **To encourage the use of information technologies and of the telecommunications to facilitate the access to information.**

Not only the established is broken in this article, if not that, on having imposed office hours, is deprived in fact of the right to this participation of effective and real form, making this way empty of content the whole regulation that encourages the participation of the citizens in the decision making.

The concept of real and effective public participation is essential and common to all the legislation that in the last years has been appearing in congruity to the established in the Agreement of Aarhus which establishes that:

“so that the citizens could enjoy the right to a healthy environment and fulfill the duty to respect it and to protect it, they **must have excellent environmental access to information**, must be legitimized to take part in the processes of decision making of environmental character and must have access to the justice when such rights are denied. These rights constitute three principles on which the Agreement of Aarhus settles:

- **The principle of environmental access to information redeems an essential role in the campaign to raise public awareness and environmental education of the community, constituting an indispensable instrument to be able to intervene with cause knowledge in the public matters.** It splits into two parts: the right to look and to obtain information that is in possession of the public authorities, and the right to receive information environmentally excellent on the part of the public authorities, which must gather it and make it public without need that a previous request comes up.

This philosophy of transparenence of the administrations and effective participation of the citizens remains clearly reflected in the Legislative Royal Decree 1302/1986 of June 28, of Evaluation of Environmental Impact:

«Article 3.

1. The Public administrations **will promote and assure the participation of the persons interested** by the procedure of the procedures of project authorization that should surrender to evaluation of environmental impact and will adopt the measurements foreseen in this legislative Royal decree **to guarantee that such a participation is real and effective.**

To that end, the substantive organ will submit the study of environmental impact to which the article 2 refers inside the applicable procedure for the authorization or achievement of the project to which it fits, and jointly with this one, to the step of public information and other reports that in the same one are established. The above mentioned step will be evacuated in those phases of the procedure in which there are still open all the options relative to the determination of the content, the extension and the definition of the project subject to authorization and submitted to impact evaluation and **will have a duration not lower than 30 days.**

«Annex 5: Audience participation in the decision making.

5. The competent organ of the Autonomous region to grant the integrated environmental authorization will determine the information forms to the public and of consultation to the interested persons. **In any case, reasonable period will be established for the different phases that grant sufficient time to inform the public and so that the interested persons prepare themselves and take part really in the decision making process** on environment according to the arranged in the attached present.»

It has no object to keep on arguing that the procedure followed by the administration in this case does not fulfill with the established in the current legislation, as soon as that does not provide the minimal conditions so that the participation of the interested parties is real and effective, as it is established in the laws and agreements that regulate the public participation and the environmental access to information.

The information is not also facilitated using the electronic means that at present allow that to be able to be checked the projects without be scrolling to the offices of the administration in working hours. This fact prevents one from being able to evaluate the project simply because to do it, and considering the enormous quantity of documents to examine, it would be necessary to scroll to the dependencies earlier said to dedicate a team of technical personnel and to devote itself to this need the whole working day, which is not possible bearing in mind that most of the

organizations that devote themselves to the environmental protection are without lucre fortitude and that they are supplied with voluntary persons who dedicate part of his free time to watch for a common good.

For everything previously exhibited,

I request:

- First:** That sends to the Platform to the biggest possible briefness the finished project. (Excepting the parts that the promoter has declared specifically like information allocated in accordance with the established in the current regulation). The favorite support is the computer CD or DVD.
- Second:** That extends the term to do allegations to the project so that it insures the real and effective participation of the citizens. Taking in consideration the complexity of the project, as well as the social alarm that the same one has created, we think that the term should not be minor to five months.

Without another matter, receive in my name and in that of our association, our gratitude and more cordial greeting.

In Almendralejo on June 16, 2008

Fdo. Félix Lorenzo Donoso

Platform Against the Contamination of Almendralejo

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