



December 14, 2015

VIA CERTIFIED MAIL

Ms. Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington D.C. 20460

Re: 60-Day Notice of Intent to File Clean Air Act Citizen Suit

Dear Administrator McCarthy,

This letter is submitted on behalf of the Center for Biological Diversity ("CBD"),¹ Sierra Club,² Association of Irrigated Residents ("AIR"),³ and Climate Change Law Foundation ("CCLF")⁴ (collectively, "Environmental Groups") to notify you that, pursuant to section 304(b) of the Clean Air Act ("CAA" or "Act") (42 U.S.C. § 7604(b)), the above organizations intend to file suit against the U.S. Environmental Protection Agency ("EPA") for its failure to perform non-discretionary duties under section 505(b)(2) of the CAA (42 U.S.C. § 7661d(b)(2)). EPA failed to either grant or deny a petition, filed by AIR, CBD, and Sierra Club ("Petitioners") pursuant to Section 505(b)(2) of the CAA and 40 C.F.R. sections 70.7 and 70.8(d), to object to a proposed Authority to Construct / Certificate of Conformity ("Permit") for a California refinery facility, within 60 days after the petition was filed. (42 U.S.C. § 7661d(b)(2).) Specifically, Petitioners requested that EPA object to the Permit proposed by the San Joaquin Valley Air Pollution Control District ("Air District") for the Alon USA – Bakersfield, California Refinery Crude Oil Flexibility Project, Facility # S-33 & S-3303, Project # S-1134224 & S-1134223. This petition was delivered to EPA on December 16, 2014, and more than 60 days have elapsed without EPA taking action on the petition. Environmental Groups ask that you direct your staff to take immediate action to address this deficiency, as required under the Act.

¹ Center for Biological Diversity, P.O. Box 1476, La Cañada Flintridge, CA 91012

² Sierra Club, 85 Second Street, 2nd Floor, San Francisco, CA 94105

³ James Birkelund, Esq., 1123 Lincoln Blvd., #1, Santa Monica, CA 94104

⁴ Climate Change Law Foundation, c/o Noah Garrison, Esq., 638 Pier Avenue, #A, Santa Monica, CA 90405

Administrator Gina McCarthy
December 14, 2015

Background

The Alon USA – Bakersfield, California Refinery facility (“the Refinery”) is subject to a Title V permit issued on February 28, 2003. On October 25, 2013, Alon USA Energy Inc. applied to the Air District for an Authority to Construct / Certificate of Conformity to modify its Bakersfield refinery and expand the refinery’s crude rail terminal. The Air District published notice of its preliminary decision on the project on October 14, 2014, triggering a 30-day comment period on the preliminary decision. Petitioners submitted comments on the proposed Permit to the Air District during the comment period, on November 19, 2014. The Air District also e-mailed the preliminary decision to EPA on October 14, 2014. Because the Air District determined that the proposed action is a significant Title V modification that “can be processed with a Certificate of Conformity,”⁵ the Air District stated that the proposed Permit would trigger a 45-day review period by EPA for a Title V modification, ending on November 28, 2014. EPA did not object to the issuance of the Permit or otherwise submit comments by this date.

Petitioners timely filed their petition for EPA to object to the Permit on December 16, 2014, within 60 days of the expiration of EPA’s 45-day review period. (See, 42 U.S.C. § 7661d(b)(2).) In compliance with 42 U.S.C. section 7661d(b)(2) and Air District Rule 2201 section 5.9.1.7, the petition was based on objections that were raised during the public comment period. Specifically, the petition noted that the Permit would authorize modifications that will significantly increase harmful air pollution from the Refinery, including nitrogen (“NOx”) and volatile organic compounds (“VOCs”), which result in the formation of ozone, for which the San Joaquin Valley is already in “extreme” nonattainment. The petition requested EPA object to the Permit because it (1) fails to consider and apply Best Available Control Technology; (2) fails to properly calculate the emissions increase that must be offset because it relies on an improper emissions baseline; (3) severely underestimates the Project’s emissions of VOCs by relying on flawed assumptions about the crude oils that will be stored and processed at the Refinery; (4) improperly exempts from emissions offset requirements existing heaters that will be retrofitted; and (5) relies on invalid emissions reduction credits. EPA did not take action within 60 days of its receipt of the petition, as required by 42 U.S.C. § 7661d(b)(2).

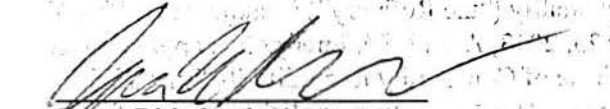
Conclusion

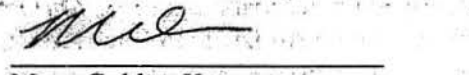
EPA has failed to complete its non-discretionary duty to grant or deny the petition on the Alon USA – Bakersfield Permit. Unless this deficiency is promptly addressed, Environmental Groups intend to file suit in U.S. District Court sixty days after your receipt of this letter. Please feel free to contact us at (415) 602-6223 to further discuss the matters raised in the petition or to explore possible options for resolving this claim.


⁵ See [http://www.valleyair.org/notices/Docs/2014/10-14-14_\(S-1134224\)/S-1134224-1134223.pdf](http://www.valleyair.org/notices/Docs/2014/10-14-14_(S-1134224)/S-1134224-1134223.pdf) at p. 2. This process was requested by Alon USA Energy Inc.

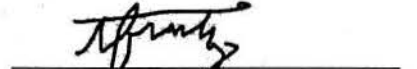
Administrator Gina McCarthy
December 14, 2015

Sincerely,


James Birkelund
Attorney for Climate Change Law Foundation
and Association of Irrigated Residents


Maya Golden-Krasner
Attorney for the Center for Biological
Diversity


Elizabeth Benson
Attorney for Sierra Club


Tom Frantz, President
Association of Irrigated Residents

cc: Jared Blumenfeld
Regional Administrator
EPA, Region 9
75 Hawthorne Street
San Francisco, CA, 94105

PROOF OF SERVICE

I, the undersigned, am over the age of 18 years and not a party to this case. I am a resident of or employed in the county where the mailing occurred and my business address is: 1123 Lincoln Blvd., Apt. 1, Santa Monica, CA 90403.

On the date shown below, I caused to be served the following documents:

- **60-Day Notice of Intent to File Clean Air Act Citizen Suit**

by having copies of the same enclosed in sealed envelopes addressed to each of the entities shown below and deposited in the U.S. mail with the postage fully prepaid.

Name and address of federal EPA offices to whom documents were mailed:

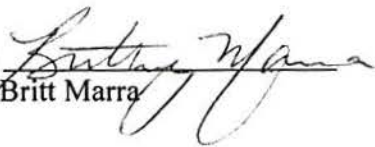
Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld, Regional Administrator
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

Name and address of others to whom documents were mailed: See attached distribution list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 14, 2015

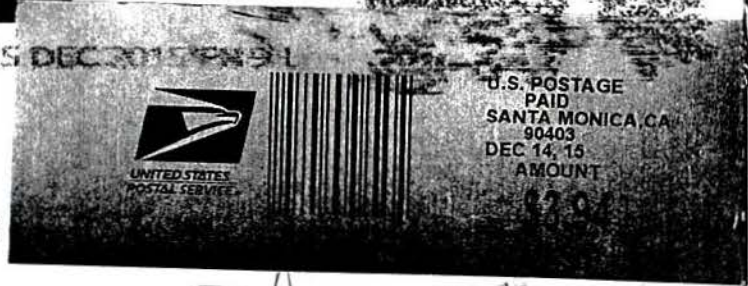
By: 
Britt Marra

Law Offices Of James Birkelund
548 Market St., Suite 11200
San Francisco
CA 94104

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE
CERTIFIED MAIL®



7015 0640 0004 0071 4852



Ms. Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington D.C. 20460

DEC 21 2015

20460

