

Marcelin E. Keever  
Environmental Law & Justice Clinic  
Golden Gate University School of Law  
536 Mission Street  
San Francisco, CA 94105

Re: Valero Benicia Asphalt Plant  
Petition to Object to Title V Permit

Dear Ms. Keever:

This letter is in response to a petition to the Administrator of the U.S. Environmental Protection Agency (“EPA”) you have filed on behalf of Our Children’s Earth requesting EPA to object to the issuance of a title V operating permit proposed by the Bay Area Air Quality Management District (“BAAQMD” or “District”) for the Valero Benicia Asphalt Plant (Facility #A0901) located in Benicia, California.

As you may know, EPA has initiated a process to reopen the permit on which the petition you filed is based. On December 12, 2003 EPA sent a letter to BAAQMD notifying the District of EPA’s finding that cause exists to reopen the permit pursuant to EPA’s authority under 42 U.S.C. section 7661d(e) and 40 C.F.R. section 70.7(g)(1). As set forth in that letter, EPA determined that BAAQMD did not follow the procedures required by 42 U.S.C. section 7661d(a)(1)(B), 40 C.F.R. part 70 (“part 70”), and BAAQMD’s approved part 70 program to submit proposed permits to EPA as required by 7661d(a)(1)(B), 70.8(c), BAAQMD Rule 2-6-411, and BAAQMD’s Manual of Procedures Vol. II, Part 3, section 6.1.2. In such circumstances, the Clean Air Act and part 70 authorize a permitting authority to reopen and revise a permit to assure compliance with all applicable requirements. 42 U.S.C. § 7661d(e); 40 C.F.R. § 70.7(f)(iv).

Based on this action to reopen the permit, EPA is dismissing the petition you have filed as unripe. EPA’s letter requires BAAQMD to submit a proposed determination addressing the procedural problem identified in the letter within 90 days. BAAQMD will be required to submit to EPA a new proposed permit allowing EPA an additional 45-day review period and an opportunity to object to the permit if it fails to meet the standards set forth in 42 U.S.C. section 7661d(b)(1). Following the conclusion of EPA’s 45-day review period, the public will have another opportunity to petition EPA to object to the permit, pursuant to 42 U.S.C. section 7661d(b)(2). Thus, you will have the opportunity to refile this petition, or an amended version, at that time.

We appreciate your client's interest in this matter and attention to the title V operating permits program administered by BAAQMD. If you have any questions regarding this letter, please do not hesitate to contact Kara Christenson of the Office of Regional Counsel at (415) 972-3881.

Sincerely,

Deborah Jordan  
Acting Director, Air Division

cc: Jack Broadbent, APCO BAAQMD  
Brian Bunger, District Counsel BAAQMD