

Climate Change  
Law Foundation

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Via First Class Mail and Email

June 24, 2015

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

**Re: Petition to Object to the Issuance of Authority to Construct  
/Certificate of Conformity for the Linn Operating, Inc. Steam  
Generator Project (S-1246, Project No. 1144245)**

Dear Administrator Jackson and Regional Administrator Blumenfeld:

On behalf of the Climate Change Law Foundation (CCLF), please accept the attached petition requesting that the EPA object to the Linn Operating, Inc.'s (applying as "Berry Petroleum Co.") application to the San Joaquin Air Valley District for an Authority to Construct Permit and Certificate of Conformity to construct three new 85 MMBtu/hr natural gas, ethane-rich natural gas and/or TEOR gas-fired steam generator ("Project").

CCLF files this petition because the Project (and its attendant approvals) are in violation of the Clean Air Act. The initial administrative deadline for EPA to comment or object to this proposal ended on May 15, 2015; EPA did not comment.

CCLF asks that EPA grant or deny this petition within 60 days. Petitioner believes the issues are straightforward and that the impacts this Project would have to the health situation in the San Joaquin Valley deserve immediate attention.

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Gina McCarthy  
June 24, 2015

Should you or your staff wish to discuss this petition, please do not hesitate to contact me.

Respectfully Submitted



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**Federal**

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**State**

Arnaud Marjollet  
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Richard Edgehill  
Air Quality Engineer  
San Joaquin Valley Air Pollution Control  
District  
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Bakersfield, CA 93308

**Petitioner**

Mr. Shamim Reza  
Linn Operating, Inc  
5201 Truxtun Ave  
Bakersfield, CA 93309

**BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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Southern Region

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In the Matter of:

Linn Operating, Inc. – Berry Facility Ethyl D Lease  
Project # 1144247  
Proposed Authority to Construct / Certificate of Conformity

Issued by the San Joaquin Valley Air Pollution Control District

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**PETITION TO OBJECT TO ISSUANCE OF AUTHORITY TO CONSTRUCT /  
CERTIFICATE OF CONFORMITY FOR THE LINN OPERATING, INC.  
STEAM GENERATOR PROJECT**

Pursuant to section 505 of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), 40 C.F.R. §§ 70.7 and 70.8(d), and San Joaquin Valley Air Pollution Control District (“Air District”) Rule 2201, the Climate Change Law Foundation (“CCLF”) hereby petitions the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) to object to the Air District’s proposed issuance of an Authority to Construct / Certificate of Conformity (the “Permit”) for the Linn Operating, Inc. Berry Facility, Ethyl D Lease, Facility # S-1246, Project # 1144247, Application # S-1246-406-0.

The Administrator must object to the Permit because it relies on invalid emissions reduction credits for emissions increases.

**INTRODUCTION**

The Linn Operating, Inc., Berry Facility proposes to construct one new 85 MMBtu/hr natural gas, ethane-rich natural gas and/or TEOR gas-fired steam generator (“Linn Facility” or “Project”). The generators will result in emissions of nitrogen oxides (“NO<sub>x</sub>”), carbon monoxide (“CO”), volatile organic compounds (“VOCs”), particulate matter equal or less than 10 microns in diameter (“PM<sub>10</sub>”), and sulfur oxides (“SO<sub>x</sub>”). Unfortunately, these emissions will significantly increase harmful air pollution that will only exacerbate poor air quality that plagues San Joaquin Valley communities already unfairly burdened with industrial pollution; existing unhealthy air quality already places Valley residents at risk for chronic respiratory illnesses, emergency room visits, missed school days, medical bills, and potentially premature death. In particular, construction and operation of the Facility would impermissibly allow for significant emissions of NO<sub>x</sub> and VOCs, which result in the formation of ozone, for which the Valley is already in “extreme” nonattainment. Further, as detailed below, the Authority to Construct relies on invalid emissions reduction credits (“ERCs”) for VOCs.

## PETITIONERS

Petitioner Climate Change Law Foundation (“CCLF”) is a California non-profit corporation based in San Francisco. CCLF’s core mission is to address climate change and related environmental problems through legal advocacy. The organization engages in legal and policy matters that include climate change, alternative energy, air quality, and environmental and natural resources law. CCLF has members who reside in and regularly use, and intend to continue to use, areas in Kern County and surrounding regions that will be affected by the Project and emissions of pollution it will generate.

## PROCEDURAL BACKGROUND

On November 24, 2014, Linn Operating, Inc. (applying as “Berry Petroleum Co.”) applied to the Air District for an Authority to Construct Permit and Certificate of Conformity to construct one new 85 MMBtu/hr natural gas, ethane-rich natural gas and/or TEOR gas-fired steam generator. The Air District published notice of its preliminary decision on the project on March 25, 2015, triggering a 30-day comment period on the preliminary decision. Public comments were due on April 29, 2015. (*See* Authority to Construct Application Review, PDF 1 (Attachment A).) The Air District transmitted the preliminary decision to EPA via e-mail on March 25, 2015, triggering a 45-day review period by EPA, ending on May 9, 2015. (*See* Attachment A.) EPA did not object to the issuance of the Permit or otherwise submit comments to the Air District. This petition is timely because it is filed within 60 days of the expiration of EPA’s 45-day review period, as required by section 505(b)2 of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and Air District Rule 2201 § 5.9.1.7. The Administrator must grant or deny this petition within 60 days after it is filed. (*Id.*) In compliance with section 505(b)2 of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), and Air District Rule 2201 § 5.9.1.7., this petition is based on objections that were raised by CCLF during the public comment period. Petitioners’ comment letter to the Air District is attached as Attachment B, which is fully incorporated by reference herein.

## GROUNDS FOR OBJECTION

Petitioners request that the Administrator object to the Permit because it relies on invalid emissions reduction credits for emissions increases, among other concerns, in violation of 40 C.F.R. § 51.165 and Air District Rule 2201. In particular, the Permit (1) would impermissibly allow for significant emissions of nitrogen oxides (“NOx”) and volatile organic compounds (“VOCs”), which result in the formation of ozone, for which the Valley is already in “extreme” nonattainment; and (2) relies on invalid emissions reduction credits (“ERCs”) for VOCs.

### **I. The Air District May Not Use Banked Offsets for NOx and VOCs Emissions**

The Air District proposes to offset the Project’s NOx and VOCs emissions with ERC N-1198-2 and ERC S-4407-1. However, Air District Rule 2201 § 4.13.1 requires that

“Major Source shutdowns or permanent curtailments in production or operating hours of a Major Source may not be used as offsets for emissions from . . . a Federal Major Modification . . . unless the ERC, or the emissions from which the ERC are derived, has been included in an EPA approved attainment plan.” The San Joaquin Valley air basin is currently designated as being in extreme nonattainment with the 8-hour standard for ozone, for which NO<sub>x</sub> and VOCs emissions are precursors. At this time, the Air District does not have an EPA approved attainment plan for the 8-hour ozone (or 1-hour ozone) standard. Because the Air District may not approve or issue the Authority to Construct in reliance on these NO<sub>x</sub> or VOCs offsets until a requisite ozone plan for the basin is approved, the Administrator must object to the Permit.

## II. Emission Reduction Credit Certificate S-4407-1 is Invalid

ERC S-4407-1, for VOCs reduction, states that it was issued for “[i]ncineration of the Fluid Coker exhaust in the CO boiler.”<sup>1</sup> The authority to construct for the identified CO boiler was issued on January 12, 1976, and operation of the CO boiler began in May 1977.<sup>2</sup> However, under 40 C.F.R. § 51.165(a)(3)(ii)(C)(I)(ii), “in no event may credit be given for shutdowns that occurred before August 7, 1977.” As the EPA explained in comments on the proposed banking credit application in 1987:

The reductions occurred prior to August 7, 1977 and are therefore too old to be granted credit. EPA has previously advised the District that banking credit may not be awarded for any reductions which occurred prior to the Clean Air Act Amendments of August 7, 1977 . . . EPA will not recognize these reductions as valid offsets for any source wishing to purchase these ERCs for offsetting purpose.<sup>3</sup>

Further, both the EPA and the California Air Resources Board (“CARB”) pointed out in comments on the original application for banking credit that the credit was invalid because the application was submitted beyond the required time limits—a completed application for the banking credit was not submitted until October 1985, almost ten years after the reduction occurred.<sup>4</sup>

To this end, the proposed emissions credit comes from a shutdown or curtailment that occurred nearly four decades ago. Under District Rule 2201 and 2301, emission reductions used as ERCs must be “real, enforceable, quantifiable, surplus, and permanent.” (Air District Rule 2201 § 3.2.1; Rule 2301 § 4.1.2.) Given the many changes

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<sup>1</sup> See e.g., Emission Reduction Credit Certificate No. 2007148/501 (July 15, 1986), included in Attachment B as Exhibit 1.

<sup>2</sup> See Letter, Raymond E. Menebroker, CARB, to Citron Toy, Kern County Air Pollution Control District (July 17, 1987), included in Attachment B as Exhibit 2.

<sup>3</sup> Letter, David P. Howecamp, EPA, to Leon Hebertson, KCAPCD, (July 17, 1987), included in Attachment B as Exhibit 3.

<sup>4</sup> See *Id.*; Letter, Raymond E. Menebroker, CARB, to Citron Toy, Kern County Air Pollution Control District (July 17, 1987).

that have occurred at the refinery since 1977, this decades-old reduction is no longer “real” and will not actually offset projected air emissions. As the EPA noted even ten years after the event:

the reductions from the installation of the CO boiler are quite old. The burden is on the District to verify in its analysis that these reductions have not been assumed elsewhere (in the emissions inventory, the latest [air quality management plan], the attainment demonstration) and therefore are indeed surplus. In all likelihood, these reductions are not surplus since they occurred so long ago and probably are already reflected in the District’s records and plans. The District must verify that these reductions are not credited elsewhere.<sup>5</sup>

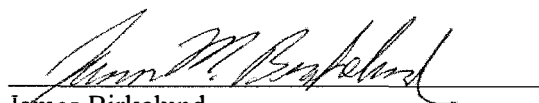
However, the Air District did not provide the EPA with verification that these reductions had not been credited elsewhere. EPA previously warned that “any source which attempts to use these emission reductions as an offset may be subject to federal enforcement action.”<sup>6</sup> Because ERC S-4407-1 is invalid and “subject to federal enforcement action” if used, the Administrator must object to the Permit.

#### CONCLUSION

For the foregoing reasons, the proposed Permit does not comply with the Clean Air Act and applicable regulations. We respectfully request that the Administrator object to the issuance of the Permit.

Dated: June 24, 2015

Respectfully Submitted



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<sup>5</sup> Letter, David Howecamp, EPA, to Leon Hebertson, KCAPCD, (July 17, 1987).

<sup>6</sup> *Id.*