

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

Re: Valero Refining Co. and Tesoro Refining and Marketing Company
Petitions to Object to Title V Permits

Dear Ms. Keever:

This letter is in response to petitions to the Administrator of the U.S. Environmental Protection Agency (“EPA”) you have filed on behalf of Our Children’s Earth, Sierra Club-Solano Group, and Environment California requesting EPA to object to the issuance of title V operating permits submitted by the Bay Area Air Quality Management District (“BAAQMD” or “District”) for Valero Refining Co. - California (Valero Benecia Refinery) (Facility #B2626) located in Benecia, California and Tesoro Refining and Marketing Company (Avon Refinery and Amorco Terminal) (Facility #B2758 and #B2759) located in Martinez, California.

As you may know, EPA has initiated a process to reopen the permits on which the petitions you have filed are based. On December 12, 2003, EPA sent a letter to BAAQMD notifying the District of EPA’s finding that cause exists to reopen the permits 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 permits, EPA is dismissing the petitions 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 new proposed permits allowing EPA an additional 45-day review period and an opportunity to object to the permits 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 permits, pursuant to 42 U.S.C. section 7661d(b)(2). Thus, there will be an opportunity to refile these petitions, or amended versions, at that time.

We appreciate your interest in this matter and your 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