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16 UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

17  
18 CENTER FOR BIOLOGICAL DIVERSITY,  
ASSOCIATION OF IRRITATED RESIDENTS,  
19 SIERRA CLUB, and CLIMATE CHANGE  
LAW FOUNDATION,

20  
21 Plaintiffs,

22 v.

23 UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; GINA MCCARTHY,  
24 in her official capacity as Administrator of the  
United States Environmental Protection Agency;  
25 and JARED BLUMENFELD, in his official  
capacity as Regional Administrator of the United  
26 States Environmental Protection Agency,

27 Defendants.  
28

Case No:

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**INTRODUCTION**

1  
2           1.       This is an action to compel the Administrator of the United States Environmental  
3 Protection Agency (“EPA” or “Administrator”) to fulfill mandatory duties under the federal Clean  
4 Air Act to ensure that the citizens of California have adequate protections against air pollution  
5 from an oil refinery in Bakersfield, California.

6           2.       The refinery – the Alon USA – Bakersfield, California Refinery facility (“Refinery”  
7 or “Alon”) – sought and received approval for an Authority to Construct permit / Certificate of  
8 Conformity (“Permit”) from the San Joaquin Valley Air Pollution Control District (“Air District”)  
9 pursuant the federal Clean Air Act. The Permit allows Alon to modify its Bakersfield refinery to  
10 restart crude refining, and expand the refinery’s crude rail terminal to accommodate a five-fold  
11 increase in the Refinery’s capacity to import crude oil, from 40 tank cars per day to 208 tank cars  
12 per day, or up to 63.1 million barrels of crude per year (hereinafter, the “Project”). This will allow  
13 the Refinery to run at its full capacity, processing 70,000 barrels of oil per day.

14           3.       Allowing the Project to move forward will significantly increase harmful air  
15 pollution that will exacerbate the poor air quality and respiratory illnesses that plague San Joaquin  
16 Valley communities already unfairly burdened with industrial pollution.

17           4.       The Permit was issued pursuant to the Title V of the Clean Air Act and is a  
18 modification of the Refinery’s existing federal Title V operating permit. As a modification of a  
19 Title V permit, the Permit was required to be submitted to EPA for a 45-day review period before  
20 it became final. 42 U.S.C. §§ 7661d(a)(1), (b)(1). EPA did not object to the Permit during the 45-  
21 day review period.

22           5.       Therefore, the Association of Irrigated Residents (“AIR”), Center for Biological  
23 Diversity (the “Center”), and Sierra Club (collectively, “Petitioners” or “Plaintiffs”) filed a petition  
24 (“Petition”) with EPA in December 2014, requesting that EPA object to the Air District’s proposed  
25 Permit for the Refinery. *See* 42 U.S.C. § 7661d(b)(2) (authorizing such petitions).

26           6.       Title V of the Clean Air Act establishes a mandatory 60-day deadline for EPA to  
27 grant or deny a citizen petition for an objection to a Title V permit, modification, or renewal. *Id.*  
28



1 friends, have direct experience with the many health impacts that arise from the type of pollution  
2 emissions associated with this Project.

3 12. Plaintiff Center for Biological Diversity is a non-profit corporation with offices in  
4 Oakland, Los Angeles, and elsewhere throughout California and the United States. The Center is  
5 actively involved in environmental protection issues throughout California and North America and  
6 has over 47,000 members, including many throughout California and in Kern County. The  
7 Center's mission includes protecting and restoring habitat and populations of imperiled species,  
8 reducing greenhouse gas pollution to preserve a safe climate, and protecting air quality, water  
9 quality, and public health. The Center's members and staff include individuals who regularly live,  
10 work, recreate and visit Kern County.

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

18 14. Plaintiff Sierra Club is a national nonprofit organization of approximately 630,000  
19 members. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the  
20 earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to  
21 educating and encouraging humanity to protect and restore the quality of the natural and human  
22 environment; and to using all lawful means to carry out these objectives. Sierra Club and its  
23 members are greatly concerned about the effect of air pollution on human health and the  
24 environment. Sierra Club has approximately 600 members in Kern County.

25 15. Plaintiffs are "persons" within the meaning of 42 U.S.C. § 7602(e). As such,  
26 Plaintiffs may commence a civil action under 42 U.S.C. § 7604(a).

1           16.     Plaintiffs' members live, work, recreate and conduct other activities in areas where  
2 their health and welfare are adversely affected or threatened by air pollution caused by the Project.

3           17.     By this action, Plaintiffs seek to protect the health, welfare, and economic interests  
4 of their members and the general public. Plaintiffs' members and staff have an interest in their  
5 health and well-being, and in the health and well-being of others, including the residents of Kern  
6 County. The acts and omissions of EPA complained of herein have caused and continue to cause  
7 injury to Plaintiffs and their members by authorizing modifications to the Refinery that will  
8 significantly increase harmful air pollution from the Refinery and impair or threaten members' and  
9 the public's health and welfare, as well as recreational, aesthetic, and environmental interests.

10           18.     Plaintiffs' interests and their members' interests have been, are being, and will  
11 continue to be harmed by EPA's failure to act on the Petition to object to the Permit for the  
12 Project. Plaintiffs and their members have a substantial interest in ensuring that EPA complies  
13 with federal law, including the requirements of the Clean Air Act.

14           19.     The acts and omissions of EPA alleged herein further deprive Petitioners and their  
15 members of procedural rights and protections to which they are entitled. During the permitting  
16 process for the Project, Petitioners provided comments critical of the Permit's conditions.  
17 Subsequently, Petitioners petitioned EPA to object to the issuance of the Permit. The Clean Air  
18 Act gives Petitioners a procedural right to a timely decision on their Petition. EPA's failure to take  
19 action on the Petition prevents Petitioners and their members from challenging an unfavorable  
20 EPA decision or from benefiting from a favorable decision on the Petition.

21           20.     For all the foregoing reasons, the failures complained of herein cause Plaintiffs and  
22 their members injuries for which they have no adequate remedy at law. Granting the requested  
23 relief would redress these injuries.

24           21.     Defendant EPA is the federal agency charged with implementation of the Clean Air  
25 Act.



1           28.     Before a state or local district with an approved Title V permit program can issue a  
2 Title V permit or significant modification to a Title V permit, the state or district must forward the  
3 proposed Title V permit to EPA. 42 U.S.C. § 7661d(a)(1); 40 C.F.R. § 70.8(a). EPA then has 45  
4 days to review the proposed permit. 42 U.S.C. § 7661d(b)(1).

5           29.     Air District Rule 2520 allows the Air District to issue a “Certificate of Conformity”  
6 as a means of processing a significant modification to a Title V permit. *See* San Joaquin Valley Air  
7 Pollution Control District Rule 2520 §§ 3.7, 5.3.3.

8           30.     A Certificate of Conformity prompts EPA review of the proposed Title V permit  
9 changes before construction or modification of the permitted facility and states that procedural  
10 requirements substantially equivalent to those of 40 C.F.R. sections 70.6 (covering permit  
11 content); 70.7 (covering permit issuance and revision); and, 70.8 (covering permit review by EPA)  
12 have been followed. *Id.* § 3.7. EPA has 45 days to review a Certificate of Conformity and  
13 underlying proposed changes to a Title V facility. *Id.* § 11.3.7.

14           31.     Pursuant to a Certificate of Conformity, modifications to a Title V permit may  
15 subsequently be processed as an administrative amendment to the permit without additional EPA  
16 review or public participation. *Id.* §§ 3.2, 3.7, 6.4.

17           32.     EPA must object to the issuance of a permit if EPA finds that the permit does not  
18 comply with all applicable provisions of the Clean Air Act. 42 U.S.C. § 7661d(b)(1); 40 C.F.R. §  
19 70.8(c).

20           33.     If EPA objects to a permit, the permitting authority may not issue the permit unless  
21 it is revised. 42 U.S.C. § 7661d(b)(3). If the permitting authority has issued a permit prior to  
22 receipt of an objection by the Administrator, the Administrator shall modify, terminate, or revoke  
23 such permit. *Id.*

24           34.     After EPA’s 45-day review period expires, “any person may petition the  
25 Administrator within 60 days” to object to the proposed permit. 42 U.S.C. § 7661d(b)(2); 40  
26 C.F.R. § 70.8(d).

1 35. The Clean Air Act requires that “[t]he Administrator shall grant or deny such  
2 petition within 60 days after the petition is filed.” 42 U.S.C. § 7661d(b)(2).

3 36. If EPA fails to comply with a non-discretionary duty, such as acting on a petition  
4 within the statutorily mandated timeframe, the Clean Air Act allows any person to bring suit to  
5 compel EPA to perform its duty. 42 U.S.C. § 7604(a).

6 **FACTS**

7 37. The Alon USA – Bakersfield, California Refinery facility is a major stationary  
8 source of air pollution located in Bakersfield, California that has been mostly idle since 2008. The  
9 Refinery is capable of processing 70,000 barrels of crude oil per day at full capacity.

10 38. The Refinery is subject to an existing Title V permit, issued on February 28, 2003.

11 39. On October 25, 2013, Alon applied to the Air District for an Authority to Construct  
12 / Certificate of Conformity to modify the Refinery and expand the Refinery’s crude rail terminal.

13 40. The proposed Project would entail a five-fold increase in the Refinery’s capacity to  
14 import crude oil, *from 40 tank cars per day to 208 tank cars per day*, or up to 63.1 million barrels  
15 of crude oil per year. This increased influx of crude would allow the shuttered Refinery to restart  
16 and run at its full processing capacity of 70,000 barrels of crude oil per day.

17 41. The public health implications of the Project are significant. The Project would  
18 result in the release of harmful air pollution, including significant levels of oxides of nitrogen  
19 (NOx) and volatile organic compounds (VOCs). NOx and VOCs are ozone “precursors” that react  
20 in the presence of sunlight to create ground-level ozone (or “smog”), for which the San Joaquin  
21 Valley is already in “extreme” nonattainment.

22 42. Smog causes severe public health and related effects, which may include chronic  
23 respiratory illnesses, emergency room visits, premature death, missed school days, medical bills,  
24 lost wages, and reduced worker productivity.

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## Procedural Background

1  
2 43. The Air District published notice of its preliminary decision on the Permit on  
3 October 14, 2014 (“Preliminary Decision”), triggering a 30-day comment period on the  
4 Preliminary Decision.

5 44. Petitioners submitted comments objecting to the proposed Permit on a number of  
6 grounds to the Air District during the comment period, on November 19, 2014.

7 45. The Air District determined as part of its Preliminary Decision that the proposed  
8 Project “modification can be classified as a significant Title V modification pursuant to Rule 2520,  
9 and can be processed with a Certificate of Conformity (COC).”

10 46. Processing the modification with a Certificate of Conformity allows Alon to amend  
11 its Title V Permit for the Refinery administratively under the theory that the procedural  
12 requirements for the Permit would be “substantially equivalent” to those set forth in 40 C.F.R §§  
13 70.7 and 70.8. District Rule 2520 §§ 3.7, 5.3.3., 11.3. The Air District explicitly stated in its  
14 Preliminary Decision that, “[s]ince the facility has specifically requested that this project be  
15 processed [with a Certificate of Conformity]”, the 45-day EPA comment period will be satisfied  
16 prior to the issuance of the Authority to Construct.”<sup>1</sup>

17 47. EPA did not raise objections to the Permit during the 45-day review period.

18 48. The Air District issued the Authority to Construct/Certificate of Conformity for the  
19 Project on March 19, 2015.

20 49. On December 16, 2014, AIR, the Center for Biological Diversity, and Sierra Club  
21 filed a petition requesting that the Administrator object to the issuance of the Permit on several  
22 grounds, including that the Permit:

- 23 • fails to consider and apply Best Available Control Technology;
- 24 • fails to properly calculate the emissions increase that must be offset because it  
25 relies on an improper emissions baseline;

26  
27  
28 <sup>1</sup> Proposed Decision, [http://www.valleyair.org/notices/Docs/2014/10-14-14\\_%28S-1134224%29/S-1134224-1134223.pdf](http://www.valleyair.org/notices/Docs/2014/10-14-14_%28S-1134224%29/S-1134224-1134223.pdf), at p. 2.

- 1 • severely underestimates the Project's emissions of VOCs by relying on flawed
- 2 assumptions about the crude oils that will be stored and processed at the
- 3 Refinery;
- 4 • improperly exempts from emissions offset requirements existing heaters that
- 5 will be retrofitted; and
- 6 • relies on invalid emissions reduction credits.

7 The Petition was timely filed within 60 days following the conclusion of EPA's review period.  
8 *See* 42 U.S.C. § 7661d(b)(2).

9 50. The Petition was based on objections raised during the public comment period for  
10 the proposed permit or on grounds that arose subsequent to the public comment period, in  
11 accordance with 42 U.S.C. § 7661d(b)(2) and 40 C.F.R §§ 70.8(d), 70.7(h).

12 51. EPA had 60 days, until February 16, 2015, to grant or deny the Petition. 42 U.S.C.  
13 § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the  
14 petition.

15 52. By letter dated December 14, 2015, Plaintiffs provided the Administrator with  
16 written notice of their intent to sue for EPA's failure to take action on the Petition. The  
17 Administrator received this notice letter via certified mail on or before December 21, 2015. More  
18 than 60 days have elapsed since Plaintiffs gave notice, and EPA remains in violation of the law.

19 **CLAIM FOR RELIEF**  
20 **(Failure to Grant or Deny Petition)**

21 53. Plaintiffs hereby incorporate all previous paragraphs by reference herein.

22 54. The Administrator had a mandatory duty to grant or deny the Petition within 60  
23 days after it was filed. *See* 42 U.S.C. § 7661d(b)(2).

24 55. It has been more than 60 days since the Administrator received the Petition  
25 requesting that EPA object to the Permit for the Refinery.

26 56. Defendants' failure to timely complete this duty constitutes failure to perform an act  
27 or duty that is not discretionary within the meaning of 42 U.S.C. § 7604(a)(2).  
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/s/ Maya Golden-Krasner  
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court.

I. (a) PLAINTIFFS

CENTER FOR BIOLOGICAL DIVERSITY, ASSOCIATION OF IRRITATED RESIDENTS, SIERRA CLUB, and CLIMATE CHANGE LAW FOUNDATION

(b) County of Residence of First Listed Plaintiff Alameda, CA. (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) James Birkelund (SBN 206328), Climate Change Law Foundation, 548 Market St., #11200, San Francisco, CA 94104. T: 415-602-6223.

DEFENDANTS

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA); GINA MCCARTHY, in her official capacity; and JARED BLUMENFELD, in his official capacity as Regional Administrator of EPA.

County of Residence of First Listed Defendant District of Columbia (IN U.S. PLAINTIFF CASES ONLY)

NOTE:

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- X 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. §§ 7401 et seq. (Federal Clean Air Act). Brief description of cause: Suit to compel EPA to perform mandatory duties pursuant to the Clean Air Act.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) (X) SAN FRANCISCO/OAKLAND ( ) SAN JOSE ( ) EUREKA

DATE SIGNATURE OF ATTORNEY OF RECORD

4/13/16 /s/ James Birkelund

**Attachment to Civil Cover Sheet**

**CENTER FOR BIOLOGICAL DIVERSITY, ASSOCIATION OF IRRITATED RESIDENTS, SIERRA CLUB, and CLIMATE CHANGE LAW FOUNDATION v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; GINA MCCARTHY, in her official capacity as Administrator of the United States Environmental Protection Agency; and Jared Blumenfeld, in his official capacity as Regional Administrator of the United States Environmental Protection Agency.**

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