

February 10, 2022

Administrator Michael S. Regan  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building, Mail Code 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

*Via Certified Mail*

**RE: Notice of Intent to Sue for Failure to Timely Grant or Deny Petitions to Object to Title V Permit Numbers 2261-V8, 2363-V8, and O1381 Filed on January 29, February 12, and June 29, 2021 Regarding the Valero Houston and ExxonMobil Baton Rouge Refineries**

Dear Administrator Regan:

Texas Environmental Justice Advocacy Services (“t.e.j.a.s.”), Louisiana Bucket Brigade, Environmental Integrity Project, Caring for Pasadena Communities, and Sierra Club provide this notice to you as Administrator of the U.S. Environmental Protection Agency (“EPA”) in your official capacity, pursuant to 42 U.S.C. § 7604(a)(2) and 40 C.F.R. Part 54, as a prerequisite to bringing a civil action. These groups (“Petitioners”) intend to bring a civil action regarding “a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator” under section 304 of the Clean Air Act (“the Act”). 42 U.S.C. § 7604(a)(2). Specifically, EPA has failed to timely respond to the following three petitions:

1. Petition to Object to the Title V Operating Permit for the Reforming Complex at ExxonMobil Fuels & Lubricant Company’s Baton Rouge Refinery (Permit No. 2261-V8) (Filed on January 29, 2021)
2. Petition to Object to the Title V Operating Permit for the Utilities Unit at ExxonMobil Fuels & Lubricant Company’s Baton Rouge Refinery (Permit No. 2363-V8) (Filed on February 12, 2021)
3. Petition to Object to the Title V Operating Permit for the Valero Houston Refinery (Permit No. O1381) (Filed on June 29, 2021)

More than 60 days have passed since Petitioners filed these petitions, but EPA has not granted or denied them, as required under 42 U.S.C. § 7661d(b)(2).

**A. Authority to Bring Suit**

The Clean Air Act authorizes a citizen suit in federal district court “against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.” *Id.* § 7604(a)(2). EPA has

failed to perform a nondiscretionary duty to grant or deny the three petitions within 60 days of receipt. *Id.* § 7661d(b)(2). Petitioners are hereby giving the required 60-day notice of their intent to bring a citizen suit to compel EPA to expeditiously grant or deny these petitions. If EPA fails to grant or deny the three petitions within 60 days of receiving this notice, Petitioners will file suit in federal district court to compel EPA’s response.

## **B. EPA’s Duty to Grant or Deny the Petitions**

To protect public health and the environment, the Clean Air Act prohibits major stationary sources of air pollution from operating without or in violation of a valid Title V permit. *Id.* § 7661a. Title V permits must “assure compliance with applicable requirements of th[e Clean Air Act].” *Id.* § 7661c. If an operating permit is issued by a state with an approved Title V program, EPA is responsible for ensuring that the permit satisfies the Act. *See id.* § 7661d(b)(1). A state permitting authority must submit any permit application and proposed operating permit to EPA for review for 45 days. *Id.* § 7661d(a)(1), (b)(1); 40 C.F.R. § 70.8(a)(1). If a proposed permit fails to assure compliance with applicable Clean Air Act requirements, EPA must object to the issuance of the permit within 45 days of receipt. 42 U.S.C. § 7661d(b)(1); 40 C.F.R. § 70.8(c)(1). If EPA fails to object to the permit within 45 days of receipt, anyone may petition EPA to object to the permit. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). Within 60 days of the filing of the petition to object, EPA must grant or deny the petition and provide a reasoned determination and explanation for its decision. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

### **i. Petition to Object to the Title V Operating Permit for the Reforming Complex at ExxonMobil Fuels & Lubricant Company’s Baton Rouge Refinery (Permit No. 2261-V8) (Filed on January 29, 2021)**

In 2020, the Louisiana Department of Environmental Quality submitted to EPA proposed Title V operating permit number 2261-V8 for the reforming complex at ExxonMobil’s Baton Rouge oil refinery. On January 29, 2021, Louisiana Bucket Brigade, Environmental Integrity Project, Sierra Club, and Earthjustice filed a timely petition urging EPA to object to ExxonMobil’s permit because it violated the Clean Air Act in multiple ways.<sup>1</sup> For example, the permit failed to assure compliance with certain limits on volatile organic compounds (“VOCs”) and impermissibly allowed ExxonMobil to unilaterally revise monitoring requirements and seek approval after-the-fact via administrative permit amendment. Among other issues, the proposed permit failed to comply with chemical accident prevention requirements. Under the Clean Air Act, EPA was required to grant or deny the January 29, 2021 petition by March 30, 2021. *See* 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). EPA has not responded to the petition. In its failure to grant or deny the petition to object by March 30, 2021, EPA failed to perform a nondiscretionary duty within the meaning of section 304 of the Clean Air Act. 42 U.S.C.

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<sup>1</sup> Louisiana Bucket Brigade et al., Petition to Object to the Title V Operating Permit for the Reforming Complex at ExxonMobil Fuels & Lubricant Company’s Baton Rouge Refinery (Jan. 29, 2021), <https://www.epa.gov/sites/default/files/2021-02/documents/exxonbatonrougerefineryreformingcomplexpetition2021.pdf>. Before filing this Petition, Petitioners commented on the draft permit. *See* Louisiana Bucket Brigade et al., Public Comments on the Draft Part 70 Air Operating Permit for ExxonMobil Fuels & Lubricant Company’s Baton Rouge Refinery – Reforming Complex (AI No. 2638, Permit No. 2261-V8, Activity No. PER20180019) (Mar. 2, 2020).

§ 7604(a)(2). Accordingly, EPA violated and is in ongoing violation of the Act as of its final action deadline of March 30, 2021.

**ii. Petition to Object to the Title V Operating Permit for the Utilities Unit at ExxonMobil Fuels & Lubricant Company's Baton Rouge Refinery (Permit No. 2363-V8) (Filed on February 12, 2021)**

In 2020, the Louisiana Department of Environmental Quality submitted to EPA proposed Title V operating permit number 2363-V8 for the utilities unit at ExxonMobil's Baton Rouge oil refinery. On February 12, 2021, Louisiana Bucket Brigade, Environmental Integrity Project, Sierra Club, and Earthjustice filed a timely petition urging EPA to object to ExxonMobil's permit because it violated the Clean Air Act in multiple ways.<sup>2</sup> For example, the permit failed to ensure accurate calculations of VOCs emissions and contained no monitoring requirements for particulate matter emitted by the treatment system's cooling tower. Under the Clean Air Act, EPA was required to grant or deny the February 12, 2021 petition by April 13, 2021. *See* U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). EPA has not responded to the petition. In its failure to grant or deny the petition to object by April 13, 2021, EPA failed to perform a nondiscretionary duty within the meaning of section 304 of the Clean Air Act. 42 U.S.C. § 7604(a)(2). Accordingly, EPA violated and is in ongoing violation of the Act as of its final action deadline of April 13, 2021.

**iii. Petition to Object to the Title V Operating Permit for the Valero Houston Refinery (Permit No. O1381) (Filed on June 29, 2021)**

In 2021, the Texas Commission on Environmental Quality submitted to EPA proposed Title V operating permit number O1381 for the Valero Houston refinery. On June 29, 2021, t.e.j.a.s., Sierra Club, Caring for Pasadena Communities, Environmental Integrity Project, and Earthjustice filed a timely petition urging EPA to object to Valero's permit because it violated the Clean Air Act in multiple ways.<sup>3</sup> For example, the permit failed to ensure compliance with Clean Air Act standards for hazardous air pollutants ("HAPs") and included unlawful provisions relaxing federally enforceable limits and standards during maintenance, startup, and shutdown periods. Under the Clean Air Act, EPA was required to grant or deny the petition by August 28, 2021. *See* 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). EPA has not responded to the petition. In its failure to grant or deny the June 29, 2021 petition to object by August 28, 2021, EPA failed to perform a nondiscretionary duty within the meaning of section 304 of the Clean Air Act. 42

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<sup>2</sup> Louisiana Bucket Brigade et al., Petition to Object to the Title V Operating Permit for the Utilities Unit at ExxonMobil Fuels & Lubricant Company's Baton Rouge Refinery (Feb. 12, 2021), <https://www.epa.gov/sites/default/files/2021-02/documents/exxonbatonrougeutilitiesunitpetition2021.pdf>. Before filing this Petition, Petitioners commented on the draft permit. *See* Louisiana Bucket Brigade et al., Public Comments on the Draft Part 70 Air Operating Permit for ExxonMobil Fuels & Lubricant Company's Baton Rouge Refinery – Utilities Unit (AI No. 2638, Permit No. 2363-V8, Activity No. PER20180040) (Jan. 23, 2020).

<sup>3</sup> T.e.j.a.s. et al., Petition to Object to the Title V Operating Permit for the Valero Houston Refinery (June 29, 2021), [https://www.epa.gov/system/files/documents/2021-07/valero-houston-petition\\_6-29-21.pdf](https://www.epa.gov/system/files/documents/2021-07/valero-houston-petition_6-29-21.pdf). Before filing this Petition, Petitioners commented on the draft permit. *See* t.e.j.a.s. et al., Public Comments and Request for Notice and Comment Hearing in response to Notice of Draft Federal Operating Permit No. O1381, Valero Refining-Texas, L.P., 9701 Manchester St., Houston, TX (Mar. 26, 2019).

U.S.C. § 7604(a)(2). Accordingly, EPA violated and is in ongoing violation of the Act as of its final action deadline of August 28, 2021.

Below is a summary of the relevant dates showing EPA’s overdue non-discretionary duties:

<b>Petition</b>	<b>Date Petition Filed</b>	<b>Final Action Deadline</b>
Petition to Object to Title V Permit No. 2261-V8 (ExxonMobil’s Baton Rouge Refinery—Reforming Complex) filed by Louisiana Bucket Brigade, Environmental Integrity Project, Sierra Club, and Earthjustice	January 29, 2021	March 30, 2021
Petition to Object to Title V Permit No. 2363-V8 (ExxonMobil’s Baton Rouge Refinery—Utilities Unit) filed by Louisiana Bucket Brigade, Environmental Integrity Project, Sierra Club, and Earthjustice	February 12, 2021	April 13, 2021
Petition to Object to Title V Permit No. O1381(Valero Houston Refinery) filed by t.e.j.a.s., Caring for Pasadena Communities, Environmental Integrity Project, Sierra Club, and Earthjustice	June 29, 2021	August 28, 2021

**C. Permits Present Serious Clean Air Act and Environmental Justice Concerns**

EPA should expeditiously grant the petitions to object because the Title V permits violate the Clean Air Act and present severe environmental justice concerns.<sup>4</sup> EPA’s failure to act on the petitions subjects communities already overburdened by toxic air pollution, including Petitioners’ members, to the health consequences of HAPs and VOCs.

ExxonMobil’s refinery in Baton Rouge is part of an industrial complex the size of at least 250 Superdomes and is surrounded by predominantly low-income communities and communities of color that are already overburdened by toxic air pollution.<sup>5</sup> The refinery releases significant quantities of VOCs and HAPs. For example, in 2017, the refinery emitted 2,251,988.80 pounds of VOCs and 467,517.65 pounds of HAPs, including benzene, ethylbenzene, xylene, and toluene.<sup>6</sup> These HAPs cause significant health risks to fenceline communities, including cancer,

<sup>4</sup> The petitions to object explain the Clean Air Act violations in further detail.

<sup>5</sup> See National Public Radio, *Baton Rouge’s Corroded, Overpolluting Neighbor: Exxon Mobil* (May 30, 2013), <https://www.npr.org/2013/05/30/187044721/baton-rouge-s-corroded-overpolluting-neighbor-exxon>.

<sup>6</sup> EPA, *Air Pollutant Report: ExxonMobil Baton Rouge Refinery*, <https://echo.epa.gov/air-pollutant-report?fid=110043804185> (last visited Feb. 10, 2022).

chronic non-cancer, and acute health risks.<sup>7</sup> For example, benzene is a known human carcinogen that increases the risk of leukemia.<sup>8</sup> The Title V permits for the utilities unit and reforming complex allow the refinery to emit even more HAPs and VOCs that will harm the health of Petitioners' members and fence-line communities. Specifically, the Title V permit for the utilities unit allows the unit to annually emit over 600 tons (over 1.2 million pounds) of HAPs.<sup>9</sup> The Title V permit for the reforming complex allows the individual units in the complex to annually emit over 50 tons (over 100,000 pounds) of HAPs.<sup>10</sup>

Similarly, Valero's Houston refinery is surrounded by low-income communities and communities of color in the Houston Ship Channel, which has one of the largest concentrations of petroleum refineries and petrochemical facilities in the world. The refinery annually emits significant quantities of VOCs and HAPs. For example, in 2017, Valero's refinery released 541,124.80 pounds of VOCs and 133,089.60 pounds of HAPs, including benzene, hydrogen cyanide, toluene, hexane, and xylene.<sup>11</sup> The Title V permit fails to ensure compliance with Clean Air Act standards for HAPs, 40 C.F.R. Part 63, Subparts CC and UUU, and contains inscrutable and unenforceable emission limits. As a result, the permit could authorize emission limits that subject Petitioners and fence-line communities to increased HAPs and VOCs emissions and consequent harm to their health.

#### **D. 60-Day Notice**

T.e.j.a.s., Caring for Pasadena Communities, Louisiana Bucket Brigade, Environmental Integrity Project, and Sierra Club may commence a citizen suit to compel EPA to perform any or all of the above duties at any time beginning 60 days from the postmark of this letter which is February 10, 2022. *See* 42 U.S.C. § 7604(b)(2); 40 C.F.R. § 54.2(d). This notice means that these groups may file suit on or after April 11, 2022, and seek a court order compelling EPA to comply with the Clean Air Act and expeditiously grant or deny the petitions.

The addresses of the organizations providing notice are:

Environmental Integrity Project  
1206 San Antonio Street  
Austin, TX 78701

Caring for Pasadena Communities  
1000 Curtis Ave, # 805  
Pasadena, TX 77502

Sierra Club  
2101 Webster Street, Suite 1300  
Oakland, CA 94612

Louisiana Bucket Brigade  
3416 B Canal Street  
New Orleans, LA 70119

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<sup>7</sup> *See generally* EPA, *Final Residual Risk Assessment for the Petroleum Refining Source Sector* (Sept. 2015), <https://www.regulations.gov/document/EPA-HQ-OAR-2010-0682-0800>.

<sup>8</sup> EPA, *Integrity Risk Information System Chemical Assessment Summary: Benzene* 14, 22 (Jan. 9, 2000), [https://iris.epa.gov/static/pdfs/0276\\_summary.pdf](https://iris.epa.gov/static/pdfs/0276_summary.pdf).

<sup>9</sup> ExxonMobil, Statement of Basis for Proposed Part 70 Operating Permit No. 2363-V8 for Utilities Unit, 5-6.

<sup>10</sup> ExxonMobil, Air Permit Briefing Sheet for Proposed Part 70 Operating Permit No. 2261-V8 for Reforming Complex, 2-4.

<sup>11</sup> EPA, *Air Pollutant Report: Valero Refining*, <https://echo.epa.gov/air-pollutant-report?fid=110000460885> (last visited Feb. 10, 2022).

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**E. Contact Information**

We are acting as attorneys for the above-listed organizations in this matter. Please contact us at your earliest convenience regarding this matter and address any communications to the email addresses and telephone numbers listed below.

Sincerely,

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Matthew Tejada, Director, Office of Environmental Justice