

Courthouse News Service

Greens Fight Expanded Refining in SoCal

Friday, April 15, 2016

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SAN FRANCISCO (CN) — Federal approval for a Kern County refinery to process 70,000 barrels of oil a day will exacerbate the already dismal air quality in the San Joaquin Valley, environmentalist claim in court.

The Center for Biological Diversity and three other groups sued the U.S. Environmental Protection Agency on Wednesday in Federal Court.

Kern County, whose seat is Bakersfield, is at the southern end California's great Central Valley. Emissions from auto and farm equipment and oil refineries, agricultural pesticides and dust are captured by the surrounding mountains and make the region's

air among the worst in the United States. Kern County produces one-tenth of the nation's petroleum and is the top oil-producing county in California, with 81 percent of the state's active oil wells.

"This dangerous refinery represents an outdated grab for fossil fuel profits at the expense of California's climate future and would result in massive amounts of climate change pollutants spewing into our air," co-plaintiff Climate Change Law Foundation's attorney Noah Garrison told Courthouse News in an email.

"California can do better — alternative energy options exist, and the EPA has a legal duty to speak up."

Garrison said the EPA is shirking its statutory duty.

The refinery, Alon USA, has permission to begin work on the project, but has said it will be on hold until at least next year, Garrison said. Alon is not a party to the lawsuit.

"We're asking EPA to object to the permit," Garrison said. "If they object, it would require the air district that approved the permit to revoke and amend it. It's our hope that the EPA will review the permit and see that it meets none of the requirements under the Clean Air Act."

Should the EPA not object to the permit, the plaintiffs can challenge that decision to keep the project from moving forward, Garrison said.

"But we can't do that until the EPA responds to the petition," he said in an interview. "We want to make sure the EPA moves the process forward one way or the other."

The San Joaquin Valley Air Pollution Control District approved an application from Alon's Bakersfield facility to restart crude refining and expand operations fivefold, to receive 208 tank cars of crude per day and up to 63.1 million barrels of crude a year. At full capacity, it will process up to 70,000 barrels a day, according to the complaint.

The Air District is a party to the complaint.

"Allowing the project to move forward will significantly increase harmful air pollution that will exacerbate the poor air quality and respiratory illnesses that plague San Joaquin Valley communities already unfairly burdened with industrial pollution," the groups say in the complaint.

The Bakersfield refinery has been mostly idle since 2008. In October 2013, Alon applied to the Air District to expand its crude rail terminal operations from 40 tank cars a day to 208 per day, according to the complaint.

If given the green light, the plaintiffs say, the project will significantly increase emissions of smog-producing nitrogen oxides and volatile organic compounds. The San Joaquin Valley already is at extreme nonattainment levels for smog.

Smog causes a host of severe health problems, including chronic respiratory illnesses, asthma and bronchitis, missed school and work days, increased emergency room visits, and raises the risk of premature death, according to the complaint.

Under the Clean Air Act, major sources of air pollution must obtain operating permits through the Title V program that include mandatory pollution control requirements.

It also requires EPA regional offices to monitor and periodically review permits and reject any permit that does not fully comply with the Act.

The Air District published its preliminary approval of the permit in October 2014, which included a request from the facility to submit the project under the EPA's 45-day review period.

During that time, the groups say, they petitioned the EPA to reject the permit on several grounds, including its failure to properly calculate the emissions increase due to a flawed emissions baseline; underestimation of the project's emission of volatile organic compounds; its improper exemption of certain heaters from emissions offset requirements; and its reliance on invalid emissions reduction credits.

The EPA had 60 days — until Feb. 16, 2015 — to respond to the groups' petition, but has not yet done so.

When the 45-day review period passed without objection from the EPA, the Air District approved the permit, in March 2015.

The groups sent the EPA a notice of their intent to sue in December 2015 for its failure to respond to their petition by the 60-day deadline, but the agency did not respond to that letter either, before the deadline expired.

The EPA did not respond to emailed requests for comment Thursday.

Plaintiffs include the Sierra Club and the Association of Irrigated Residents. They seek declaratory judgment that the EPA violated its statutory duties and a court order compelling it to respond to their petition.

Their lead counsel is James Birkelund, with the Climate Change Law Foundation.