

# Refinery Reactivation: Petition Before the U.S. EPA Environmental Appeals Board Challenging Plantwide Applicability Limit Air Permit



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

02/16/2021

The Center for Biological Diversity (“CBD”), other organizations, and an individual submitted a February 3rd Petition for Review (“Petition”) before the United States Environmental Protection Agency (“EPA”) Environmental Appeals Board challenging a Plantwide Applicability Limit (“PAL”) air permit issued by EPA to Limetree Bay Refining, LLC and Limetree Bay Terminals, LLC (collectively “Limetree”).

The other parties executing the Petition include:

- St. Croix Environmental Association
- Sierra Club
- Elizabeth Neville

The Petition addresses an oil refinery and storage facility located in St. Croix, U.S. Virgin Islands (“Refinery”) owned by Limetree.

CBD argues that the PAL air permit would allow Limetree to undertake large-scale refining operations at a facility that had been shut down for over eight years. It further alleges that harmful air pollutants would be emitted into the surrounding environment.

The Petition provides that Limetree purchased the Refinery in 2015. Limetree is stated to have subsequently applied for a PAL air permit in 2018. The Petition states that Limetree based its Permit Application on an April 5, 2018, letter from former EPA Administrator William Wehrum that:

... concluded the Refinery should be treated as the reactivation of an “idled” facility, rather than a “new source,” against longstanding EPA Reactivation Policy and PSD preconstruction permitting regulations.

EPA Region 2 is stated to have issued in 2019 a draft PAL permit proposing plant-wide emission limits for Sulfur Dioxide, Nitrogen Oxides, Volatile Organic Compounds, Carbon Monoxide, Particulate Matter, Particulate Matter 10, and Particulate Matter 2.5.

A PAL permit can be obtained by certain existing major stationary sources. It has a 10-year duration. See 67 Fed. Reg. 80,186 (Dec. 31, 2002). This type of permit provides plant emission limits in tons per year, for regulated air pollutants. Eligible PAL permits are available for existing major stationary sources and non-major modifications.

CBD’s Petition argues that the Refinery does not constitute an existing source for purposes of an air permit. Instead, it argues EPA should have classified the reactivating Refinery as a new source or a major

modification, thereby submitting it to the Clean Air Act Prevention and Significant Deterioration (“PSD”) program. It objects to this characterization and states:

. . . despite the Refinery’s eight years of shutdown, EPA erroneously decided to withdraw its Reactivation Policy and issue Limetree a PAL permit.

CBD’s Petition specifically bases its review on the following issues:

1. whether the Refinery is ineligible to receive a PAL permit given its many years of shutdown and should have been considered a new source under applicable PAL and Prevention of Significant Deterioration (“PSD”) regulations;
2. whether the Permit contains impermissibly high emissions caps;
3. whether the Permit insufficiently addresses environmental justice (“EJ”) issues despite EPA finding that there would be disproportionate impacts on the EJ community;
4. whether EPA complied with applicable language access and translation requirements for individuals with limited English proficiency (“LEP”); and
5. whether EPA failed to satisfy the Endangered Species Act (“ESA”) requirement to consult on the Permit’s impacts on threatened and endangered species. The former EPA Administrator’s decision to issue this Permit as a PAL Permit, with excessively high emissions caps, without appropriate consideration of environmental justice issues, and without sufficient consultation on threatened and endangered species, is based on clearly erroneous findings of fact and conclusions of law.

A copy of the Petition can be downloaded [here](#).