

DOCKETED

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April 14, 2021

Rina Putnam
Valero Refining Company
3400 East 2nd Street
Benicia, California 94510
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Application for Confidential Designation for 2020 Annual Mass Emissions Report, Docket No. 01-AFC-05

Dear Rina Putnam:

The California Energy Commission (CEC) has received Valero Refining Company's Application for Confidentiality covering specified data contained in the 2020 Annual Mass Emissions Report under Condition of Certification AQ-22. Specifically, Valero seeks confidentiality for:

- 1) The mass emissions and fuel use summary in Section 1.
- 2) The fuel gas sulfur content report in Section 6.

The application notes that this information contains proprietary business information and trade secrets and that disclosure to the public would be harmful to the Valero Benicia Refinery.

The application states that information contained in the annual report cannot be aggregated in a manner allowing release.

A properly filed Application for Confidentiality shall be granted under California Code of Regulations, Title 20, section 2505(a)(3)(A), ". . . if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code section 6254(k); Evid. Code section 1060)

California courts have traditionally used the following definition of trade secret:

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business,

and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .

(*Uribe v. Howe* (1971) 19 Cal. App. 3d 194, 207, citing the Restatement of Torts, vol. 4, section 757, comment b, p.5.)

California Code of Regulations, Title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, an application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to an applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Regarding the fuel use summary within Section 1, the applicant in prior quarterly report applications and in this application addresses these elements as disclosure of the applicant's cogeneration operational fuel use data could be used by competitors and vendors to disadvantage the applicant, including the ability to determine the applicant's process rate. The applicant states that the data is kept on secure servers and has not been publicly disclosed and that the information should be kept confidential for three years.

For these reasons, the request for confidential designation for fuel use data contained in Section 1 of the 2020 Annual Mass Emission Report is granted until March 1, 2023.

The emission data identified in Sections 1 and 6, cannot be designated as confidential. Government Code section 6254.7 sets forth broad public access to air emission data.

(a) All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses the article, machine, equipment, or other contrivance, are public records.

(b) All air or other pollution monitoring data, including data compiled from stationary sources, are public records.

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(e) Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade secrets as defined in subdivision (d), are public records...

Therefore, the emissions data contained in the 2020 Annual Mass Emissions Report will not be designated as confidential.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, Title 20, sections 2506-2508.

If you have any questions concerning this matter, please contact Jared Babula, senior attorney, at jared.babula@energy.ca.gov or (916) 651-1462.

Sincerely,



Drew Bohan
Executive Director