

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

Limetree Bay Terminals, LLC
Christiansted, Virgin Islands

Respondent

In a proceeding under Section 113(a) of the
Clean Air Act, 42 U.S.C. § 7413(a)

NOTICE OF VIOLATION

CAA-02-2021-1306

Summary

The Director of the Enforcement and Compliance Assurance Division (“ECAD”) for the United States Environmental Protection Agency (“EPA”) Region 2 issues this Notice of Violation (“NOV”) to Limetree Bay Terminals, LLC (“Limetree” or “Respondent”), pursuant to Section 113(a)(1) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413(a)(1). Limetree owns and/or operates a facility located at 1 Estate Hope, Christiansted, Virgin Islands (the “Facility”). This NOV identifies violations of a Prevention of Signification Deterioration of Air Quality (“PSD”) permit issued for the Facility. This NOV also identifies violations of 40 C.F.R. § 69.41, and of the Facility’s Title V permit, issued under title V of the CAA and its implementing regulations at 40 C.F.R. Part 70.¹

¹ Although the EPA is not required under the Clean Air Act to issue a Notice of Violation for these violations, they are included in this NOV as a courtesy.

Statutory and Regulatory Background

1. Section 101(b)(1) of the Act, 42 U.S.C. § 7401, provides that the Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population.

A. Clean Air Act § 325(a) Waiver

2. Section 123(a)(2) of the Act, 42 U.S.C. § 7423(a)(2), prohibits “the degree of emission limitation required for control of any air pollutant under an applicable implementation plan under this subchapter” from being affected in any manner by “any . . . dispersion technique.” Section 123(b) of the Act defines a dispersion technique as “any intermittent or supplemental control of air pollutants varying with atmospheric conditions.”
3. On May 7, 1996, the Governor of the United States Virgin Islands sent the EPA a petition under Section 325 of the Clean Air Act, 42 U.S.C. § 7625-1, requesting that the Hess Oil Virgin Islands Corp. (“HOVIC”) refinery be granted an exemption from the prohibition on basing emission limitations on intermittent control strategies (“ICS”) in section 123 of the Act.
4. On June 10, 1997, the EPA proposed a rule granting such an exemption to the Facility under CAA section 325(a), subject to certain conditions. *See* 62 Fed. Reg. 31,546.
5. On November 14, 1997, the EPA finalized a rule granting this exemption, subject to certain conditions. *See* 62 Fed. Reg. 61,204. The rule was codified at 40 C.F.R. § 69.41.
6. Under 40 C.F.R. § 69.41, the Facility, referred to in § 69.41(a) as the St. Croix refinery, must follow requirements to be set out in a PSD permit issued to HOVIC, which must include, at a minimum, certain listed conditions. These conditions included, among others, conditions listed in 69.41(b)(1) and (b)(2).
7. The condition listed in 40 C.F.R. § 69.41(b)(1) requires that:

“HOVIC shall maintain a meteorological tower on its property for the purpose of the ICS which meets the required EPA QA/QC operating specifications. At a minimum, the wind direction data will be monitored, collected and reported as 1-hour averages, starting on the hour. . . .”

8. The condition listed in 40 C.F.R. § 69.41(b)(2) requires that:

“HOVIC shall maintain SO₂ ambient monitors and collect ambient SO₂ concentration data for the purpose of implementing the [Intermittent Control Strategy] at nearby locations approved by EPA and specified in the PSD permit. The ambient monitors must follow the required EPA QA/QC operating specifications. At a minimum, the data will be collected according to EPA approved State and Local Ambient Monitoring Stations procedures found at 40 CFR 58.20, but will, for these purposes, be averaged by the hour, starting on the hour.”

9. Under 40 C.F.R. § 69.41(g), the requirements of 40 C.F.R. § 69.41 became effective once a final PSD permit modification incorporating the requirements became effective.

B. The National Ambient Air Quality Standards

10. Section 108(a)(1) of the Act, 42 U.S.C. § 7408(a)(1), requires the Administrator of EPA to identify and publish a list of each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources.
11. Section 108(a)(2) of the Act requires the Administrator of EPA to issue air quality criteria for each air pollutant listed pursuant to § 108(a)(1) of the Act.
12. Section 109 of the Act, 42 U.S.C. § 7409, requires the EPA Administrator to promulgate regulations establishing primary and secondary NAAQS for those air pollutants (criteria pollutants) for which air quality criteria has been issued pursuant to § 108 of the Act.
13. Pursuant to CAA § 109(b)(1), the primary NAAQS must contain an adequate margin of safety to protect the public health.
14. Pursuant to CAA § 109(b)(2), the secondary NAAQS must protect the public welfare from any known or anticipated adverse effects associated with air pollutants in the ambient air.

15. Pursuant to CAA §§ 108 and 109, EPA promulgated the NAAQS at 40 C.F.R. Part 50. 40 C.F.R. § 50.2(b) provides that: (1) the primary NAAQS define levels of air quality which the Administrator judges necessary, with an adequate margin of safety, to protect the public health; and (2) the secondary NAAQS define levels of air quality which the Administrator judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant.
16. Under CAA § 107(d), 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an “attainment” area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a “nonattainment” area with respect to such pollutant.
17. Section 107(d)(1)(A)(iii) of the Act provides that an area that cannot be classified as either “attainment” or “nonattainment” with respect to a particular pollutant due to insufficient data is termed “unclassifiable” with respect to such pollutant.

C. The Prevention of Significant Deterioration Program

18. Under the authority of §§ 110, 114, 161, 165 and 166 of the Act, EPA promulgated the PSD regulations to implement Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, entitled “Prevention of Significant Deterioration of Air Quality” provisions in the CAA. The PSD regulations established preconstruction permitting and operating requirements for new major stationary sources and major modifications located in areas designated as “in attainment” with the national ambient air quality standards (NAAQS) promulgated under § 109 of the Act.
19. Part C of Title I of the Act, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of

meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process.

20. EPA initially promulgated the PSD regulations on June 19, 1978 (43 Fed. Reg. 26402 (June 19, 1978)) and promulgated significant amendments to the PSD regulations on August 7, 1980 (45 Fed. Reg. 52741), and December 31, 2002 (67 Fed. Reg. 80186).
21. Section 165(a)(1) and (4) of the Act, 42 U.S.C. § 7475(a)(1) and (4), among other things, prohibits the construction of a “major emitting facility” in an area designated as attainment or unclassifiable unless a permit has been issued for such proposed facility that conforms to the requirements of Part C of Title I of the Act and the facility is subject to BACT for each pollutant subject to regulation under the Act that is emitted from, or which results from, the facility.
22. To obtain a PSD permit, an applicant must, among other things, (1) conduct an ambient air quality analysis to demonstrate that its emissions would not violate either the NAAQS or the PSD increments and (2) apply best available control technology (BACT). *See* Part C of Title I of the Act and 40 C.F.R. § 52.21.
23. Section 169(1) of the Act, 42 U.S.C. 7479(1), defines “major emitting facility” as sources in specific categories (category sources) with the potential to emit 100 tons per year or more of any air pollutant and any other source (non-category sources) with the potential to emit 250 tons per year or more of any air pollutant.
24. In accordance with §§ 110(a) and 161 of the Act, states shall adopt and submit to EPA, for approval into the state implementation plan (SIP), a plan that contains emission limits and such other measures, as may be necessary, as determined under regulations promulgated under

Subpart C of Title I of the Act, to prevent significant deterioration of air quality in each region (or portion thereof) designated pursuant to § 107 of the Act as attainment or unclassifiable. 40 C.F.R. § 52.21(a).

25. Pursuant to 40 C.F.R. § 52.21(a), the PSD regulations are applicable in any state, as provided in 40 C.F.R. Part 52, Subparts B-DDD, that has been disapproved with respect to its PSD plan. In addition, pursuant to 40 C.F.R. § 52.21(a), the PSD regulations are incorporated by reference into the applicable implementation plan for various States, including the U.S. Virgin Islands.
26. On June 19, 1978, pursuant to § 110 of the Act, EPA disapproved the U.S. Virgin Islands' PSD implementation plan submission. *See* 40 C.F.R. § 52.2729.
27. Thereafter, in accordance with 40 C.F.R. § 52.21(a)(1), the provisions of 40 C.F.R. § 52.21, except paragraph (a)(1), were incorporated and made part of the applicable Air Quality Implementation Plan ("AQIP") for the U.S. Virgin Islands. *See* 40 C.F.R. § 52.2729.
28. EPA has not delegated implementation of the PSD regulations to the Virgin Islands Department of Planning and Natural Resources ("VIDPNR"), and therefore, EPA administers the federal PSD program in the U.S. Virgin Islands.
29. 40 C.F.R. § 52.21(b)(1)(i)(a) and (b) defines a "major stationary source" as any stationary source that emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act for any source category listed in 40 C.F.R. § 52.21(b)(1)(i)(a) and any stationary source which emits or has the potential to emit 250 tons per year or more of any air pollutant subject to regulation under the Act at a non-listed source category.
30. Under 40 C.F.R. § 52.21(b)(1)(i)(c), a "major stationary source" also includes any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(1) of § 52.21 as a major stationary source, if the changes would constitute a major stationary source by itself.

31. 40 C.F.R. § 52.21(b)(5) defines a "stationary source" as any building, structure, facility or installation that emits or may emit any pollutant subject to regulation under the Act.
32. 40 C.F.R. § 52.21(b)(4) defines "potential to emit" as "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. . . ."
33. Pursuant to 40 C.F.R. § 52.21(d), no concentration of a pollutant shall exceed the concentration permitted under the primary or secondary NAAQS.
34. Pursuant to 40 C.F.R. § 52.21(i)(1), no stationary source to which the requirements of paragraphs (j) - (r) of 40 C.F.R. § 52.21 apply shall begin actual construction without a permit that states the stationary source will meet those requirements.
35. Pursuant to 40 C.F.R. § 52.21(i)(2), the requirements of paragraphs (j) - (r) of 40 C.F.R. § 52.21 apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the Act that it would emit except as § 52.21 otherwise provides.
36. Pursuant to 40 C.F.R. § 52.21(i)(3), the requirements of paragraphs (j) - (r) of 40 C.F.R. § 52.21 apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under § 107(d)(1)(D) or (E) of the Act.
37. Under 40 C.F.R. § 52.21(r)(1), "Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to [section 52.21] or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate

enforcement action.” *See also*, 40 C.F.R. § 52.21(b)(8), (9) and (11).

38. Under 40 C.F.R. § 52.23, failure to comply with any condition in a permit issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act.

D. The Facility's PSD Permit

39. Following the Nov. 14, 1997 final rule adding section 69.41 to 40 C.F.R. Part 69, EPA revised the PSD permit for the Facility on December 12, 1997 to incorporate requirements in accordance with 40 C.F.R. § 69.41.

40. The December 12, 1997 PSD permit was modified on May 9, 2011 (the "2011 PSD Permit").

41. In Enclosure 1 of the Facility's 2011 PSD permit, condition VI.F states:

"HOVENSA shall continuously monitor wind conditions in accordance with the HOVENSA Meteorological Monitoring Plan dated September 5, 1991. Data on wind direction shall be monitored and recorded. The HOVENSA meteorological station shall be audited semiannually by an independent party. Maintenance and calibration records shall be maintained."

42. In Enclosure 1 of the Facility's 2011 PSD Permit, condition III.C.c.2.ii., while explaining when the supplemental control scenario will be implemented, states:

"Wind direction will be monitored by a meteorological tower located on HOVENSA property, and will be collected and reported as 1-hour averages, starting on the hour. . . ."

43. In Enclosure 1 of the Facility's 2011 PSD permit, condition VI.G states:

"HOVENSA shall operate five ambient S02 monitoring stations, two to the west of the refinery and three to the north of the refinery, for purposes relating to the supplemental control scenario as delineated under section III.C.c of this permit. These monitors shall record hourly average and 24-hour rolling average S02 concentrations. In the event that monitoring data indicate an exceedance of the NAAQS, HOVENSA shall report the exceedance to EPA, and shall recommend corrective action and modifications to the supplemental control scenario, to ensure protection of the NAAQS."

44. On November 5, 2018, EPA amended the 2011 PSD Permit to reflect the transfer of ownership of the Facility from HOVENSA, LLC to Limetree Bay Terminals, LLC (the "2018 PSD Permit").

E. Clean Air Act Title V

45. Section 502(a) of the Act provides that after the effective date of any permit program approved or promulgated pursuant to Title V of the Act, it is unlawful for any person to violate any

requirement of a permit issued under Title V of the Act, or to operate a Title V affected source except in compliance with a permit issued by a permitting authority under Title V of the Act.

46. Section 302(e) of the Act provides that whenever the term “person” is used in the Act, the term includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.
47. Under Section 502(b) of the Act, EPA promulgated 40 C.F.R. Part 70, “State Operating Permit Programs,” which provides for the establishment of comprehensive state air quality permitting programs consistent with the requirements of Title V of the Act. EPA’s Part 70 regulations define the minimum elements required by the Act for state operating permit programs, among other things. *See* 40 C.F.R. § 70.1.
48. Section 502(d) of the Act requires each state to develop, and submit to EPA for approval, a permit program meeting the requirements of Title V of the Act, including the requirements of the Part 70 State Operating Permit Programs regulations.
49. Under Section 502(e) of the Act, EPA maintains its authority to enforce permits issued by a state.
50. Pursuant to Section 502(d)(1) of the Act, the Virgin Islands developed and submitted portions of the Virgin Islands Air Pollution Control Act Rules and Regulations, Title 12, Chapter 09 (the “Virgin Islands Operating Permit Regulation”), including Sections 206-51 to 93, 12 V.I.R.&R. §§ 206-51 to 206-93, to EPA, to meet the requirements of Title V of the Act, and 40 C.F.R. Part 70, which was promulgated pursuant to Section 502(b) of the Act.
51. EPA granted interim approval of the Virgin Islands Title V Operating Permit Program on July 31, 1996. *See* 61 Fed. Reg. 39,882.
52. EPA granted full approval of the Virgin Islands Title V Operating Permit Program on December 14, 2000. *See* 65 Fed. Reg. 78,102.

53. Under the Virgin Islands Code, “[a]fter the effective date of the permit program promulgated under this chapter, it shall be unlawful for any person to violate any requirement of an operating permit issued under this chapter [Chapter 9 of Title 12 of the Virgin Islands Code], or to operate, a major source, or any other source subject to standards or regulations promulgated pursuant hereto, except in compliance with an operating permit issued by the Commissioner under this chapter.” 12 V.I.C. § 206(b).
54. The Virgin Islands Code defines a “person” to include “an individual, corporation, partnership, association and any officer or governing or managing body of such entity; and further includes the Government of the United States Virgin Islands and the Government of the United States, and any board, commission, authority or instrumentality thereof.” 12 V.I.C. § 202(c).
55. Under the Virgin Islands Title V Operating Permit Program, “Part 70 sources, as listed below, are required to obtain a Part 70 permit: (1) Any major source; (2) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act; (3) Any source, including an area source, subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a part 70 permit solely because it is subject to regulations or requirements under section 112 (r) of the Act; (4) Any source in a source category designated by the Administrator pursuant to 40 CFR.” 12 V.I.R.&R. § 206-51(a).
56. Under the Virgin Islands Title V Operating Permit Program, “The owner and/or operator of each part 70 source shall comply with all terms and conditions of the part 70 permit and with all applicable requirements. Nothing in this section shall relieve the owner or operator of a stationary source from complying with any provision of any regulation. Failure to comply with any order of the Commissioner, requirement or condition of the permit or regulations of this chapter shall constitute a violation.” 12 V.I.R.&R. § 206-92(a)(1).

F. The Facility's Title V Permit

57. The Facility operates pursuant to a Title V operating permit, permit number STX-TV-003-10, currently issued to Limetree Bay Terminals LLC (the "Limetree Title V Permit").

58. The Limetree Title V Permit states that it is a "Part 70 Permit" issued "[i]n accordance with the provisions of the Virgin Islands Rules & Regulations (VIR&R), Title 12 Chapter 09, Section 206-51 adopted pursuant to or in effect under the Act."

59. Condition 2.2.2.1 of the Limetree Title V Permit states:

"The Permittee shall continuously monitor wind conditions in accordance with the Permittee's Meteorological Monitoring Plan dated September 5, 1991. Data on wind direction shall be monitored and recorded. The Permittee's meteorological station shall be audited semiannually by an independent party. Maintenance and calibration records shall be maintained. [1997 PSD Permit II.VI.F]"

60. Condition 2.2.8.3 of the Limetree Title V Permit states:

"The Permittee shall maintain a meteorological tower on its property for the purpose of the ICS which meets the required EPA QA/QC operating specifications. At a minimum, the wind direction data will be monitored, collected, and reported as 1-hour averages, starting on the hour. . . . [40 CFR 69.41(b)(1)]"

61. Condition 2.2.2.2 of the Limetree Title V Permit states:

"The Permittee shall operate five ambient SO₂ monitoring stations, two to the west of the refinery and three to the north of the refinery, for purposes relating to the Supplemental Control Scenario as delineated in this permit. These monitors shall record hourly average and 24-hour rolling average SO₂ concentrations. In the event that monitoring data indicate an exceedance of the NAAQS, the Permittee shall report the exceedance to the EPA, and shall recommend corrective action and modifications to the Supplemental Control Scenario, to ensure protection of the NAAQS. [1997 PSD Permit II.VI.G]"

G. EPA's Authority to Issue NOV's

62. Section 113(a)(1) of the CAA provides, in pertinent part, that whenever the EPA Administrator finds, on the basis of any information available to the Administrator, that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the state in which the implementation plan applies of such finding. Section 113(a)(1) further provides that 30 days after providing such notice, the EPA Administrator may take various actions to address the violation(s).
63. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the authority to make findings of violation and to issue notices of violation under Section 113 of the CAA has been delegated to the Director of ECAD by the EPA Administrator through the EPA Region 2 Regional Administrator.

Findings of Fact

64. The following findings of fact are based on information and belief, including but not limited to information gathered during an April 30, 2021 site visit to the Facility by EPA personnel.
65. Limetree Bay Terminals, LLC is a corporation that owns and/or operates a petroleum refinery located at 1 Estate Hope in Christiansted, on approximately 1,500 acres on the south central coast of St. Croix, U.S. Virgin Islands.
66. According to the Limetree Title V Permit, The Facility was originally owned and/or operated the Hess Oil Virgin Islands Corporation (HOVIC). On October 30, 1998, Amerada Hess Corporation, the parent company of HOVIC, and Petroleos de Venezuela, S.A. (PDVSA) formed a new corporation, HOVENSA L.L.C. (HOVENSA), which acquired ownership and operational control of the St. Croix refinery formerly known as HOVIC. Limetree acquired the Facility in 2016.

67. Prior to 2012, HOVENSA operated 5 sulfur dioxide (SO₂) ambient air monitors (the “SO₂ monitors”) by the facility, two to the west of the refinery and three to the north of the refinery.
68. On April 6, 2012, Kathleen C. Antoine, Environmental Director at HOVENSA, sent a letter to Steve Riva at US EPA, Region 2 informing EPA that it would be shutting down refinery operations at the Facility and would operate as an oil storage terminal in the future. In this letter, HOVENSA informed EPA that it "plan[ne]d to cease operating and maintaining the stations by July 1, 2012." HOVENSA noted in its letter that, "[i]f process units were started up again, we would of course resume the operation of all 5 stations prior to startup of the first process unit.”
69. On May 31, 2012, Raymond Werner, Chief of the Air Programs Branch in EPA Region 2 at the time, sent a response letter to Ms. Antoine. Mr. Werner notes HOVENSA’s assertion that, “while HOVENSA has no plans to restart the process units at the facility, [HOVENSA] would resume operation of the monitors if the process units were restarted.” Mr. Werner also, “request[s] HOVENSA to continue to operate all five monitors for the remainder of 2012. I also request that HOVENSA continue to operate at least one monitor until such time that the HOVENSA refinery operations are permanently shut down and the respective permits are surrendered, or until HOVENSA decides to restart the process units, at which time you would resume monitoring operations as required by the permit.”
70. During the time HOVENSA operated refinery operations at the Facility, it submitted to the EPA’s Air Quality System database, an EPA database for ambient air pollution data, data from the 5 SO₂ monitors. No data from the 5 SO₂ monitors has been uploaded to the Air Quality System database since 2013.
71. Limetree restarted refinery operations at the Facility, including beginning operation of multiple process units related to refinery operations, on or before September 2020.

72. The Limetree Facility is required to operate pursuant to a number of CAA permits, including the 2018 PSD Permit and the Limetree Title V Permit.
73. During a phone call on February 16, 2021, Catherine Elizee, an employee of Limetree, told EPA staff that Limetree's SO₂ monitors are not in operation, and have not been in operation since 2014.
74. EPA sent Limetree a Clean Air Act section 114 information request on April 1, 2021. Question 9.a in Part III of Enclosure 1 in the information request asked that Limetree "[s]tate when each monitoring station was restarted after its 2012 shutdown and its operating status up to the present. If a monitoring station was started up and then shutdown, indicate the periods in which it was operating and the periods in which it was not operating. Where this information is not available, state why not." Question 9.a in Part III of Enclosure 1 in the information request asked, "[i]f the SO₂ monitoring stations have not started up as of the present, explain why not."
75. In a letter from Limetree to EPA on April 7, 2021, Limetree states the following regarding the 5 SO₂ monitors:
- "Information Request 9: This request asks whether the five SO₂ ambient air monitors are operating. This question has already been asked and answered informally and in the comments on the PAL permit. Therefore, we understand that EPA is asking why Limetree does not believe that it is currently required to operate the monitors, not whether they are operating. . . ."
- Implied in this response is the fact that Limetree is not currently operating the SO₂ monitors.
76. On April 30, 2021, multiple EPA personnel attended a site visit at the Facility. During this site visit, Limetree staff informed EPA personnel that Limetree has not operated, and is not currently operating, the SO₂ monitors or a meteorological tower.
77. Limetree has not operated the 5 SO₂ monitors since it restarted refinery operations at the Facility.

Conclusions of Law

Based on the Findings of Fact set forth above, the EPA reaches the following conclusions of law:

78. Respondent is a “person” within the meaning of Clean Air Act 113 and Clean Air Act § 302(e).
79. Respondent is the owner and/or operator of the Facility referred to in 40 C.F.R. § 69.41.
80. Since restarting refinery operations, Respondent has failed to maintain the five SO₂ monitors and collect ambient SO₂ concentration data from those monitors, in violation of 40 C.F.R. § 69.41.
81. Since restarting refinery operations, Respondent has failed to maintain a meteorological tower on its property and use it to monitor, collect, and report wind direction data, in violation of 40 C.F.R. § 69.41.
82. Respondent is the owner and/or operator of the Facility subject to the 2018 PSD Permit, and is responsible for compliance with that permit.
83. Since restarting refinery operations, Respondent has failed to operate the five ambient SO₂ monitoring stations, two to the west of the refinery and three to the north of the refinery, or to record hourly average and 24-hour rolling average SO₂ concentrations from those monitors, in violation of the 2018 PSD Permit and 40 C.F.R. § 52.21(r). *See also* 40 C.F.R. § 52.23.
84. Since restarting refinery operations, Respondent has failed to continuously monitor wind conditions using a meteorological tower, or to record, collect and report wind direction data, in violation of the 2018 PSD Permit and 40 C.F.R. § 52.21(r). *See also* 40 C.F.R. § 52.23.
85. Respondent is the owner and/or operator of the Facility subject to the Limetree Title V Permit, and is responsible for compliance with that permit.
86. Since restarting refinery operations, Respondent has failed to operate five ambient SO₂ monitoring stations, two to the west of the refinery and three to the north of the refinery, or to record hourly average and 24-hour rolling average SO₂ concentrations from those monitors, in violation of the Limetree Title V Permit. *See also* 12 V.I.R.&R. § 206-92(a)(1).

87. Since restarting refinery operations, Respondent has failed to maintain a meteorological tower on its property and use it to continuously monitor, collect, report, and record wind direction data, in violation of the Limetree Title V Permit. *See also* 12 V.I.R.&R. § 206-92(a)(1).

Enforcement

Section 113(a)(1) of the CAA authorizes EPA to take any of the following actions in response to a respondent's violation(s) of an applicable implementation plan, after the expiration of 30 days following the issuance of a notice of violation:

- Issue an order requiring compliance with the requirements or prohibitions of the applicable implementation plan;
- Issue an administrative penalty order in accordance with CAA Section 113(d); or
- bring a civil action in accordance with CAA Section 113(b) for civil penalties and/or injunctive relief.

The amount of civil penalties that may be recovered for violations such as those discussed above of the CAA and its implementing regulations is set by statute at not more than \$25,000 per day per violation, but has been adjusted pursuant to the Debt Collection Improvement Act, 31 U.S.C. 3701 *et seq.*, including up to \$37,500 per day for each violation that occurs after January 12, 2009 and through Nov. 2, 2015, and up to \$102,638 per day for each violation that occurs after Nov. 2, 2015 and where penalties are assessed on or after Dec. 23, 2020. *See* 40 C.F.R. Part 19.

Furthermore, for any person who knowingly violates any requirement or prohibition of an applicable implementation plan for more than thirty (30) days after the date of the issuance of an NOV, Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. In addition, under Section 306 of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject

facility, or other facilities owned or operated by Respondent, being declared ineligible for participation in any federal contract, grant, or loan program.

Penalty Assessment Criteria

Section 113(e)(1) of the Act provides that if a penalty is assessed pursuant to Section 113 of the Act, EPA or the court, as appropriate, shall, in determining the amount of the penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

Section 113(e)(2) of the Act allows EPA or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, EPA will consider a violation to continue from the date the violation began until the date Respondent establishes that it has achieved continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, EPA will reduce the penalty accordingly.

Opportunity for a Conference

Respondent may request a video conference with EPA concerning the violations alleged in this NOV. This conference will enable Respondent to present evidence regarding the findings of violation, the nature of the violation, and any efforts it may have taken or it proposes to take to achieve compliance. Respondent's request for a conference must be confirmed in writing within ten (10) days of receipt of this NOV. The request for a conference, or other inquiries concerning this NOV, should be made by email to Sara Froikin, Assistant Regional Counsel, at froikin.sara@epa.gov.

Notwithstanding this NOV and the opportunity for conference, Respondent must comply with all applicable requirements of the CAA.

Issued: April, 30, 2021

Dore LaPosta, Director
Enforcement and Compliance Assistance Division
U.S. Environmental Protection Agency - Region 2

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