LBT Proposed Consent Decree Modifications
May 24, 2018

Enforcement/Investigatory / Ex. 7(a)

Enforcement/Investigatory / Ex. 7(a)

Enforcement/Investigatory / Ex. 7(a)

Enforcement/Investigatory / Ex. 7(a)

Enforcement/Investigatory / Ex. 7(a)

Enforcement/Investigatory / Ex. 7(a)

Tab A

TITLE 40—Protection of Environment
PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS >
SUBPART CCC—Virgin Islands

§ 52.2781 Visibility protection.

52.2781(a)

The requirements of section 169A of the Clean Air Act are not met, because the plan does not include approvable procedures for protection of visibility in mandatory Class I Federal areas.

52.2781(b)

[Reserved]

52.2781(c)

[Reserved]

52.2781(d)

Regional Haze Plan for Virgin Islands National Park. The regional haze plan for the Virgin Islands consists of a Federal Implementation Plan entitled: "FEDERAL IMPLEMENTATION PLAN FOR REGIONAL HAZE FOR THE UNITED STATES VIRGIN ISLANDS." The applicable requirements consist of:

52.2781(d)(1) Applicability.

This section addresses Clean Air Act requirements and EPA's rules to prevent and remedy future and existing man-made impairment of visibility in the mandatory Class I area of the Virgin Islands National Park through a Regional Haze Program. This section applies to the owner and operator of HOVENSA L.L.C. (HOVENSA), a petroleum refinery located on St. Croix, U.S. Virgin Islands.

52.2781(d)(2) Definitions.

Terms not defined below shall have the meaning given them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this section: *NO_X* means nitrogen oxides.

Owner/operator means any person who owns, leases, operates, controls, or supervises a facility or source identified in paragraph (d)(1) of this section.

PM means particulate matter.

Process unit means any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an

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intermediate or a completed product. A single stationary source may contain more than one process unit, and a process unit may contain more than one emissions unit. For a petroleum refinery, there are several categories of process units that could include: Those that separate and/or distill petroleum feedstocks; those that change molecular structures; petroleum treating processes; auxiliary facilities, such as steam generators and hydrogen production units; and those that load, unload, blend or store intermediate or completed products.

SO_2 means sulfur dioxide.

Startup means the setting in operation of an affected facility for any purpose.

52.2781(d)(3) Reasonable Progress Measures.

On June 7, 2011, EPA and HOVENSA entered into a Consent Decree (CD) in the U.S. District Court for the Virgin Islands to resolve alleged Clean Air Act violations at its St. Croix, Virgin Islands facility. The CD requires HOVENSA, among other things, to achieve emission limits and install new pollution controls pursuant to a schedule for compliance. The measures required by the CD reduce emissions of NO_X by 5,031 tons per year (tpy) and SO_2 by 3,460 tpy. The emission limitations, pollution controls, schedules for compliance, reporting, and recordkeeping provisions of the HOVENSA CD constitute an element of the long term strategy and address the reasonable progress provisions of 40 CFR 51.308(d)(1). Should the existing federally enforceable HOVENSA CD be revised, EPA will reevaluate, and if necessary, revise the FIP after public notice and comment.

52.2781(d)(4) HOVENSA requirement for notification.

HOVENSA must notify EPA 60 days in advance of startup and resumption of operation of refinery process units at the HOVENSA, St. Croix, Virgin Islands facility. HOVENSA shall submit such notice to the Director of the Clean Air and Sustainability Division, U.S. Environmental Protection Agency Region 2, 290 Broadway, 25th Floor, New York, New York, 10007-1866. HOVENSA's notification to EPA that it intends to startup refinery process units must include information regarding those emission units that will be operating, including unit design parameters such as heat input and hourly emissions, information on potential to emit limitations, pollution controls and control efficiencies, and schedules for compliance. EPA will revise the FIP as necessary, after public notice and comment, in accordance with regional haze requirements including the "reasonable progress" provisions in 40 CFR 51.308(d)(1). HOVENSA will be required to install any controls that are required by the revised FIP as expeditiously as practicable, but no later than 5 years after the effective date of the revised FIP.

[50 FR 28553, July 12, 1985, as amended at 52 FR 45137, Nov. 24, 1987; 77 FR page 64421, Oct. 22, 2012; 82 FR page 3129, Jan. 10, 2017]

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Tab B

§ 204-44. (RESERVED)

§ 204-45. Standards of performance for sulfur recovery units at petroleum refineries

The provisions of this section are applicable to the tail gas treatment system at Hess Oil Virgin Islands Corporation (HOVIC) which is comprised of four (4) existing sulfur recovery units (Claus Plants) and two existing Beavon Units.

(a) Except as provided below, HOVIC shall vent all tail gas from the sulfur recovery units to the Beavon unit at all times.

(b) HOVIC shall vent the tail gas from the sulfur recovery units in the following manner when one of the two Beavon Units is not operable due to malfunctions or preventative maintenance:

(1) Transfer all acid gas streams (which may originate at the amine treating unit, sour water stripper, other gas sweetening processes, etc.) to the sulfur recovery units associated with the operable Beavon Unit.

(2) When the operable Beavon Unit is charged to capacity, all tail gas should be vented to the incinerator. Written justification for each case where venting takes place should be provided to the EPA.

(c) HOVIC shall vent all Claus Plant tail gas to any of the two (2) existing incinerators when neither Beavon Unit is operable due to malfunctions. HOVIC shall provide written justification to the EPA describing the nature of the outage and provide planned mitigation procedures to the EPA for prior approval.

(d) In addition to the conditions set forth in (b) or (c) above, HOVIC shall comply with the following when either one or both Beavon Units are not operable and tail gas is being vented to an incinerator:

(1) HOVIC shall discontinue the use of 1.5% sulfur fuel oil and revert to the use of 0.5% sulfur fuel oil in all new and existing residual fuel oil-burning sources within the HOVIC plant.

(2) HOVIC shall limit SO_2 emissions from all incinerators associated with each pair of sulfur recovery units to a total of thirty (30) tons per day.

(3) In no event shall tail gas not be vented to the Beavon Units for more than thirty (30) days in any 12-month period.

(e) Prior to completion of construction of one of the two Fluid Catalytic Cracking complexes, HOVIC shall install and operate in compliance a continuous emission monitoring (CEM) system for SO_2 at the incinerator stacks which meets the NSPS Performance Specification 2 - Specifications and Test Procedures for SO_2 and NO_x Continuous Emission Monitoring Systems in Stationary Sources, 40 CFR Part 60 Appendix B as well as the monitoring requirements of 40 CFR Part 60.13. The proposed system shall be submitted to EPA for prior approval.

(f) HOVIC shall develop and maintain an operation log specifically for the Claus Plants and Beavon Units. Such logs shall be made available upon request. These proposed logs shall be submitted to EPA for prior approval.

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(g) HOVIC shall limit sulfur emissions from both Beavon Units to no more than fifty (50) ppmv hydrogen sulfide (H_2S).

(h) Prior to completion of construction of one of the two Fluid Catalytic Cracking Complexes, HOVIC shall install and operate in compliance a continuous emission monitoring system (CEM) to track the H_2S concentration, flow rate, and temperature at the Beavon stack. The proposed CEM system shall be submitted to EPA for prior approval.

(i) Prior to completion of construction of one of the two Fluid Catalytic Cracking Complexes, HOVIC shall perform stack tests in accordance with methods 6 and 11 of 40 CFR 60 Appendix A to verify that SO_2 emissions from the Beavon stack are negligible.

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Tab C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

APR 25 2012

05-07-12 P12:16

VIA EXPRESS MAIL –RETURN RECEIPT REQUESTED

Ms. Kathleen Antoine
Environmental Director
HOVENSA, L.L.C.
1 Estate Hope
Christiansted, St. Croix
U.S. Virgin Islands 00820-5652

Re: Finding of Violation, EPA Index No. CAA-02-2012-1601

Dear Ms. Antoine:

The United States Environmental Protection Agency (EPA) issues the enclosed Finding of Violation (FOV) to the above listed addressee. EPA has determined that the HOVENSA L.L.C. facility, located in St. Croix, U.S. Virgin Islands is in violation of Sections 112 and 114 of the Clean Air Act, and regulations promulgated pursuant to those sections.

As indicated in the FOV, if you wish to request a conference with EPA to discuss the violations alleged in the FOV, you must do so within thirty (30) days of your receipt of the FOV. EPA reserves its enforcement discretion under Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a) to, among other things, issue an administrative compliance order, an administrative penalty order, or to bring a separate judicial civil action.

If you have any questions, or would like to schedule the conference provided for in the FOV, please contact James L. Simpson, Assistant Regional Counsel, at (212) 637-3245.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosure

cc: Alicia Barnes, Commissioner
Virgin Islands Department of Planning and Natural Resources
45 Estate Mars Hill
Frederiksted, U.S. Virgin Islands 00840

Kelvin Vidale, Legal Counsel
Division of Environmental Protection
Virgin Islands Department of Planning and Natural Resources
45 Estate Mars Hill
Frederiksted, U.S. Virgin Islands 00840

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

HOVENSA, LLC
St. Croix, U.S. Virgin Islands

Respondent

FINDING OF VIOLATION
CAA-02-2012-1601

SUMMARY

The Director of the Division of Enforcement and Compliance Assistance ("Director") for the United States Environmental Protection Agency ("EPA") Region 2 issues this Finding of Violation ("FOV") to HOVENSA, LLC ("Respondent" or "Hovensa") based on violations of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7401 *et seq.*, and its implementing regulations at Hovensa's petroleum refinery (the "Refinery") in St. Croix, U.S. Virgin Islands.

In the FOV, the Director finds that Hovensa has violated Sections 112 and 114 of the CAA, as well as three sets of regulations promulgated pursuant to those sections: (1) 40 C.F.R. Part 63, Subpart CC (the "Refinery MACT"); (2) 40 C.F.R. Part 63, Subpart Y (the "Marine Loading MACT"); and (3) 40 C.F.R. Part 63, Subpart A (the "Part 63 General Provisions"). The authority to make such findings of violations has been delegated to the Director by the EPA Administrator, through the Region 2 Regional Administrator. The violations at issue here involve: (i) the failure to equip each of the Refinery's marine terminals with a vapor collection system, as required by 40 C.F.R. § 63.562(b)(1); (ii) the failure to capture and reduce hazardous air pollutant emissions from the Refinery's marine tank vessel loading operations, as required by 40 C.F.R. §

63.562(b)(2) of the Marine Loading MACT and 40 C.F.R. § 63.651(a) of the Refinery MACT; and (iii) operating the Refinery's flares in a manner inconsistent with safety and good air pollution control practices for minimizing emissions, in violation of 40 C.F.R. § 63.6(e).

STATUTORY AND REGULATORY BACKGROUND

Sections 112 and 114 of the CAA

1. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of hazardous air pollutants (HAPs), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.

2. Emissions standards promulgated pursuant to Section 112 are commonly known as National Emissions Standards for Hazardous Air Pollutants, or NESHAPs. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61. NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 C.F.R. Part 63. Part 63 NESHAPs are sometimes known as MACT standards, because Section 112(d) of the CAA, as amended in 1990, directs EPA to promulgate emissions standards based on the maximum achievable control technology ("MACT").

3. Section 112(a) of the Act contains definitions relevant to Section 112. More specifically:

   a. Section 112(a)(1) of the Act defines "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

b. Section 112(a)(2) of the Act defines "area source" as any stationary source of hazardous air pollutants that is not a major source.

c. Section 112(a)(3) of the Act defines "stationary source" as a any building, structure, facility or installation which emits or may emit any air pollutant.

d. Section 112(a)(9) defines "owner or operator" as any person who owns, leases, operates, controls or supervises a stationary source.

4. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

5. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, all to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 112 and 114 of the Act.

The Part 63 General Provisions

6. The Part 63 General Provisions are located at 40 C.F.R. Part 63, Subpart A. They set forth general definitions, procedures and requirements that apply to every Part 63 NESHAP, unless the individual NESHAP in question provides differently. More specifically, the owners and operators of sources subject to an individual Part 63 NESHAP or MACT standard are also subject to the portions of the Part 63 General Provisions that are expressly included in that individual Part 63 NESHAP. *See* 40 C.F.R. §§ 63.1(a)(4) ("Each relevant standard in this part 63 must identify explicitly whether each provision in this subpart A is or is not included in such relevant standard.") & (c)(1) ("If a relevant standard has been established under this part, the owner or

operator of an affected source must comply with the provisions of that standard and this subpart as provided in paragraph (a)(4) of this section.").

7. 40 C.F.R. § 63.2 contains the following definitions, among others:

   a. "affected source" means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the Act. This definition of "affected source" applies to each Section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002.

   b. "existing source" means any affected source that is not a new source.

   c. "major source" is defined, in pertinent part, as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

   d. "new source" means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this Part establishing an emission standard applicable to such source.

   e. "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

   f. "stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant.

8. 40 C.F.R. § 63.6(c)(1) provides that after the effective date of the Part 63 NESHAP, the owners and operators of existing sources subject to that NESHAP must comply with the NESHAP by the compliance date established in the applicable Subpart(s) of 40 C.F.R. Part 63, which in this matter is 40 C.F.R. Part 63, Subpart Y and Subpart CC.

9. 40 C.F.R. § 63.6(e)(1) provides, among other things, that at all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Section 63.6(e) indicates that operation and maintenance requirements are enforceable independent of emissions limitations or other requirements.

The Refinery MACT, 40 C.F.R. Part 63, Subpart CC

10. EPA promulgated the Refinery MACT, 40 C.F.R. §§ 63.640 - 63.679, in 1995, pursuant to Sections 112 and 114 of the Act. The Refinery MACT became effective on August 18, 1995. *See* 60 Fed. Reg. 43260.

11. In general, the Refinery MACT sets forth emissions standards, work practice requirements and reporting and recordkeeping requirements that apply to the owners and operators of sources subject to the Refinery MACT. Importantly, and among other requirements, the Refinery MACT provides, in 40 C.F.R. § 63.651, that the owner/operator of a marine tank vessel loading operation that is located at a petroleum refinery shall comply with the Marine Loading MACT, 40 C.F.R. Part 63, Subpart Y.

12. 40 C.F.R. § 63.642(c) and Table 6 of the Refinery MACT identify the provisions of the Part 63 NESHAP General Provisions that apply to owners and operators of sources subject to the Refinery MACT. With certain exceptions not applicable here, 40 C.F.R. § 63.6(e)(1) is one of those provisions.

Applicability of the Refinery MACT

13. 40 C.F.R. § 63.640(a) provides that the Refinery MACT applies to, among

other things, "petroleum refining process units" that are located at a plant site that is a "major source" as defined in Section 112(a) of the Act, and that emit, or have equipment containing or contacting, one or more of the HAPs listed in Table 1 of the Refinery MACT.

14. Table 1 of the Refinery MACT lists the following HAPs, among others: benzene, toluene, and xylene.

15. 40 C.F.R. § 63.640(c) provides that, for purposes of the Refinery MACT, the "affected source" includes all emission points, in combination, listed in 40 C.F.R. §§ 63.640(c)(1) through (c)(8), which are located at a single refinery plant site. The list of emission points includes, in 40 C.F.R. § 63.640(c)(6), all marine vessel loading operations located at a petroleum refinery meeting the criteria in § 63.640(a) and the applicability criteria of 40 C.F.R. § 63.560 of Subpart Y.

Refinery MACT Definitions

16. 40 C.F.R. § 63.641 contains definitions relevant to the Refinery MACT. It provides that if the same term is defined in Part 63 Subpart A and Part 63 Subpart CC, the term shall have the meaning given in Subpart CC.

17. 40 C.F.R. § 63.641 contains the following definitions, among others:

a) "affected source" means the collection of emission points to which the Refinery MACT applies as determined by the criteria in § 63.640.

b) "emission point" means an individual miscellaneous process vent, storage vessel, wastewater stream, or equipment leak associated with a petroleum refining process unit; and, including but not limited to, individual storage vessel and a gasoline loading rack classified under Standard Industrial Classification (SIC) code 2911.

c) "petroleum refining process unit" means a process unit used in an establishment primarily engaged in petroleum refining, and used

primarily for producing transportation fuels, heating fuels or lubricants; separating petroleum; or separating, cracking, reacting or reforming intermediate petroleum streams.

d) "process unit" means the equipment assembled and connected by pipes or ducts to process raw and/or intermediate materials and to manufacture an intended product. A process unit includes any associated storage vessels. For purposes of the Refinery MACT, process unit includes, but is not limited to, chemical manufacturing process units and petroleum refining process units.

The Refinery MACT's Marine Tank Vessel Loading Operations Requirements

18. 40 C.F.R. § 63.651(a) provides that each owner or operator of a marine tank vessel loading operation located at a petroleum refinery must comply with the requirements of 40 C.F.R. §§ 63.560 through 63.568, otherwise known as the Marine Loading MACT, except as provided in 63.651(b) through (d).

19. 40 C.F.R. § 63.651(b) provides that terms used in Section 63.651 shall have the meaning given to them in the Part 63 General Provisions or in Part 63 Subpart Y, unless those terms are defined in Section 63.641. Section 40 C.F.R. § 63.651(b) further provides that the § 63.641 definition of "affected source" applies to Section 63.651.

20. 40 C.F.R. § 63.651(c) provides that owners and operators are not required to submit the notification reports required by Section 63.567(b) of the Marine Loading MACT.

21. 40 C.F.R. § 63.651(d) provides that the deadline for compliance with 40 C.F.R. § 63.651 is specified in Section § 63.640(h)(3), not in the Marine Loading MACT.

The Marine Loading MACT, 40 C.F.R. Part 63, Subpart Y

22. EPA promulgated the Marine Loading MACT, 40 C.F.R. §§ 63.560 - 63.568, on September 19, 1995, pursuant to Sections 112 and 114 of the Act. *See* 60

Fed. Reg. 48388. The Marine Loading MACT became effective that same day.

23. In general, the Marine Loading MACT sets forth MACT standards for marine tank vessel loading operations at existing "sources with emissions of 10 or 25 tons," as that term is defined in 40 C.F.R. § 63.651. The specific MACT standards are found in 40 C.F.R. § 63.652. However, 40 C.F.R. § 63.650(d) provides for certain exemptions to those standards, including the following exemption found in Section 63.560(d)(6): "The provisions of the Marine Loading MACT do not apply to marine tank vessel loading operations at existing offshore loading terminals, as that term is defined in § 63.561, however existing offshore loading terminals must meet the submerged fill standards of 46 C.F.R. § 153.282."

24. Pursuant to 40 C.F.R. § 63.560(e)(1)(i) a new or existing source with emissions of 10 or 25 must comply with the provisions of the Marine Loading MACT pertaining to the MACT standards in § 63.562(b) no later than 4 years after the effective date. Thus, compliance was required by September 19, 1999, four years after the Marine Loading MACT became effective.

Definitions

25. 40 C.F.R. § 63.651 contains definitions relevant to the Marine Loading MACT. It states that all terms not defined in the Marine Loading MACT (Part 63 Subpart Y), shall have the meaning given them in the CAA or in Part 63 Subpart A.

26. 40 C.F.R. § 63.561 contains the following definitions, among others:

a) "affected source" means, among other things, a source with emissions of 10 or 25 tons, a new major source offshore loading terminal, and a source with throughput of 10 M barrels or 200 M barrels, that is subject to the emissions standards in § 63.562.

b) "loading berth" means the loading arms, pumps, meters, shutoff

valves, relief valves, and other piping and valves necessary to fill marine tank vessels. The Section further indicates that the loading berth also includes those items necessary for an offshore loading terminal.

c) "marine tank vessel loading operation" means any operation under which a commodity is bulk loaded onto a marine tank vessel from a terminal, which may include the loading of multiple marine tank vessels during one loading operation. Marine tank vessel loading operations do not include refueling of marine tank vessels.

d) "marine vessel or marine tank vessel" means any tank ship or tank barge that transports liquid product such as gasoline or crude oil in bulk.

e) "offshore loading terminal" means a location that has at least one loading berth that is 0.81 km (0.5 miles) or more from the shore that is used for mooring a marine tank vessel and loading liquids from shore.

f) "source(s)" means any location where at least one dock or loading berth is bulk loading onto marine tank vessels, except offshore drilling platforms and lightering operations.

g) "source(s) with emissions of 10 or 25 tons" means major source(s) having aggregate actual HAP emissions from marine tank vessels loading operations at all loading berths as follows: (a) Prior to the compliance date, emissions of 9.1 Mg (10 tons) or more of each individual HAP calculated on a 24-month annual average basis after September 19, 1997 or of 22.7 Mg (25 tons) or more of all HAP combined calculated on a 24-month annual average basis after September 19, 1997, as determined by emission estimation in § 63.565(*l*); or (b) After the compliance date, emissions of 9.1 Mg (10 tons) or more of each individual HAP calculated annually after September 20, 1999 or of 22.7 Mg (25 tons) or more of all HAP combined calculated annually after September 20, 1999, as determined by emission estimation in § 63.565(*l*).

h) "terminal" means all loading berths at any land or sea based structure(s) that loads liquids in bulk onto marine tank vessels.

i) "vapor collection system" means any equipment located at the source, i.e., at the terminal, that is not open to the atmosphere, that is composed of piping, connections, and flow inducing devices, and that is used for containing and transporting vapors displaced during the loading of marine tank vessels to control device or for vapor

balancing.

Emissions Standards

27. 40 C.F.R. § 63.562(a) provides that the emissions limitations in sections 63.562(b), (c), and (d) of the Marine Loading MACT apply during marine tank vessel loading operations.

28. 40 C.F.R. § 63.562(b)(1)(i) provides that the owner or operator of a new source with emissions less than 10 and 25 tons and an existing or new source with emissions of 10 or 25 tons must equip each terminal with a vapor collection system that is designed to collect HAP vapors displaced from marine tank vessels during marine tank vessel loading operations and to prevent HAP vapors collected at one loading berth from passing through another loading berth to the atmosphere, except for those commodities exempted under § 63.560(d).

29. 40 C.F.R. § 63.562(b)(1)(ii) provides that the owner or operator of a new source with emissions less than 10 and 25 tons and an existing or new source with emissions of 10 or 25 tons must limit marine tank vessel loading operations to those vessels that are equipped with vapor collection equipment that is compatible with the terminal's vapor collection system, except for those commodities exempted under § 63.560(d).

30. 40 C.F.R. § 63.562(b)(1)(iii) provides that the owner or operator of a new source with emissions less than 10 and 25 tons and an existing or new source with emissions of 10 or 25 tons must limit marine tank vessel loading operations to those vessels that are vapor tight and to those vessels that are connected to the vapor collection system, except for those commodities exempted under § 63.560(d).

31. 40 C.F.R. § 63.562(b)(2) provides that the owner or operator of an existing

source with emissions of 10 or 25 tons must reduce captured HAP emissions from marine tank vessel loading operations by 97 weight-percent, as determined using methods in sections 63.565(d) and (*l*) of the Marine Loading MACT.

FINDINGS OF FACT

32. The factual findings set forth below are based on an investigation undertaken by EPA pursuant to Section 114 of the CAA. The investigation included an inspection performed from February 8 through 18, 2011, by EPA's National Enforcement Investigations Center ("NEIC"), along with EPA Region 2 and the U.S. Virgin Islands DPNR, and a review of several documents (together, the "Inspection"). The documents included, among others, Respondent's Refinery MACT records, its Title V Permit, a site plan Hovensa provided at the Inspection, and a presentation given by Hovensa during the Inspection.

Hovensa and the Refinery

33. Hovensa is the owner and/or operator of the Refinery, which is located at 1 Estate Hope, Christiansted, St. Croix, U.S. Virgin Islands.

34. On July 1, 2010, U.S. Virgin Islands Department of Planning and Natural Resources ("DPNR") issued Hovensa a Title V operating permit, STX-TV-003-10 ("Title V Permit") for the Refinery.

35. The Title V Permit indicates that the primary standard industrial classification (SIC) code is 2911 for petroleum refining.

36. The Title V Permit indicates that the Refinery emits or has the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs.

37. The Title V Permit indicates that the Refinery is subject to the Refinery MACT.

38. Based on the inspection, EPA has determined that:

a) the Refinery emits or has the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs;

b) the average gasoline loading in the last 5 years was 54.9 million barrels/yr;

c) estimated HAP emissions are 150.35 tons per year;

d) the Refinery receives crude oil supplied from various suppliers throughout the world.

e) all the crude oil the Refinery receives is offloaded from ships or "super tankers," which dock at one of the Refinery's two deepwater docks; and

f) at the Refinery, Respondent bulk loads crude oil, fuel oil and/or gasoline onto a marine tank vessel from a loading berth; in other words, Respondent conducts "marine tank vessel loading operations," as that term is used in 40 C.F.R. § 63.562.

Lack of a Vapor Collection System

39. During the Inspection on February 14, 2011, the EPA inspectors used a forward looking infra Red ("FLIR") camera to observe VOC emissions from the cargo tank ship named Stena Conqueror, which was being loaded with regular and premium gasoline at Dock #6.

40. During the Inspection on February 17, 2011, the EPA inspectors used an FLIR infrared camera to observe VOC emissions from the cargo tank ship named, Sichem Manila, which was being loaded with xylene at Dock #5.

41. Based on the Inspection and associated document review, EPA has determined that the Refinery's marine terminal is not equipped with a vapor collection

system, and that the Refinery does not use any vapor collection system during its marine tank vessel loading operations.

Oversteaming of the Refinery's Flares

42. Based on the Inspection and associated document review, EPA has determined that several of the flares at the Refinery are steam-assisted, meaning that during flaring events, Hovensa adds steam to the flare for the purpose of improving the mixing and combustion of the waste gas.

43. Based on the Inspection and associated document review, EPA has also determined that, between January 2008 and December 2010, the flare "steam to waste gas" ratio exceeded 5 pounds of steam to 1 pound of waste gas on multiple occasions at several of the Refinery's steam-assisted flares. In particular, during that time period:

a) The ratio at flare # 2 at the Refinery was greater than 5 pounds of steam to 1 pound of waste gas for a 60-minute interval 1,993 times;

b) The ratio for flare # 3 at the Refinery was greater than 5 pounds of steam to 1 pound of waste gas for a 60-minute interval 9,297 times;

c) The ratio for flare # 5 at the Refinery was greater than 5 pounds of steam to 1 pound of waste gas for a 60-minute interval 528 times;

d) The ratio for flare # 6 at the Refinery was greater than 5 pounds of steam to 1 pound of waste gas for a 60-minute interval 1,194 times; and

e) The ratio for flare # 7 at the Refinery was greater than 5 pounds of steam to 1 pound of waste gas for a 60-minute interval 2,569 times.

44. For roughly 30 years, it has been well understood in the refinery

industry, and in other industries that use flares as pollution control devices, that the combustion efficiency of steam-assisted flares drops as steam-to-vent gas ratios approach 4 pounds of steam to 1 pound of vent gas. For example, a 1983 study sponsored by EPA and the Chemical Manufacturer's Association (the "Joint EPA/CMA Flare Efficiency Study") concluded that "steam-to-relief gas ratios ranging from 0.4 to 1.5 yield the best combustion efficiencies," steam-to-vent gas ratios above 3.07 "are regarded as being higher than those that would represent good engineering practices," and "steam-to-relief gas ratios above 3.5 may cause inefficient combustion." Joint EPA/CMA Flare Efficiency Study at 37, 28. The Joint EPA/CMA Flare Efficiency Study, available at: www.epa.gov/ttn/chief/ap42/ch13/related/ref_01c13s05_jan1995.pdf, describes flare combustion tests in which a ratio of 5.67 pounds of steam to one pound of vent gas resulted in a combustion efficiency of just 82.18 percent and a ratio of 6.86 pounds of steam to one pound of vent gas resulted in a combustion efficiency of just 68.95 percent. *Id.* at 28.

The Marine Tank Vessel Loading Operation is Not Offshore

45. Based on the Inspection and associated document review (including the site plan Hovensa provided at the Inspection), EPA has determined that Hovensa has eleven loading berths for mooring a marine tank vessel and loading liquids from shore.

46. Based on the Inspection and associated document review the furthest loading berth is approximately 0.3 miles from the shore used for mooring a marine tank vessel and loading liquids from the shore.

CONCLUSIONS OF LAW

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

47. Respondent owns and/or operates a "petroleum refining process unit" as defined in 40 C.F.R. § 63.641 of the Refinery MACT, that (a) is located at a "major source," as defined in Section 112 of the Act, and (b) emits, or has equipment containing or contacting, one or more of the HAPs listed in table 1 of the Refinery MACT, and is subject to the Refinery MACT.

48. Respondent owns and/or operates a "marine vessel or marine tank vessel," as defined in 40 C.F.R. § 63.561 of the Marine Loading MACT, that is located at a "major source," as defined in Section 112 of the CAA.

49. Respondent's Refinery is an existing "source with emissions of 10 or 25 tons", as that term is defined in 40 C.F.R. § 63.561 of the Marine Loading MACT.

50. Respondent's Refinery does not have any offshore loading terminals, defined as a location that has at least one loading berth that is 0.81 km (0.5 miles) or more from the shore that is used for mooring a marine tank vessel and loading liquids from shore in 40 C.F.R. § 63.651 of the Marine Loading MACT.

51. Respondent's Refinery does not meet any of the Marine Loading MACT exemptions outlined in 40 C.F.R. § 63.560(d).

52. Respondent's failure to equip each terminal with a vapor collection system is a violation of the Marine Loading MACT emissions limitations standard described in 40 C.F.R. § 63.562(b).

53. Respondent's failure to capture and reduce HAP emissions from marine

tank vessel loading operations by 97 weight-percent is a violation of 40 C.F.R. § 63.562(b)(2).

54. Respondent's failure to operate and maintain its flares with a steam to vent gas ratio in a reasonable range is a violation of the NESHAP Part 63 General Provisions' requirement to operate and maintain any affected source, including flares, in a manner consistent with safety and good air pollution control practices for minimizing emissions as described in 40 C.F.R. § 63.6(e)(1).

ENFORCEMENT

Section 113(a)(3) of the Act authorizes EPA, in its discretion, to bring an enforcement action when it finds that any person has violated, or is in violation of, among other things, any requirement or prohibition of CAA Sections 112 and 114, or regulations promulgated pursuant to those sections, including the Refinery MACT and the Marine Loading MACT. When EPA finds such a violation EPA may:

- issue an administrative penalty order, for penalties up to $25,000 per day pursuant to Section 113(d) of the Act and adjust the maximum penalty provided by the Act up to $27,500 per day for each violation that occurs from January 30, 1997 through March 14, 2004, and $32,500 per day for each violation that occurs on or after March 15, 2004, in accordance with the Debt Collection Improvement Act, 31 U.S.C. § 3701 et seq. ("DCIA") and 40 C.F.R. Part 19, promulgated pursuant to the DCIA;

- issue an order requiring such person to comply with such requirement or prohibition; or

- bring a civil action in accordance with Section 113(b) for injunctive relief and/or civil penalties, in accordance with Section 113(d) of the Act, and in accordance with the DCIA and Part 19, as stated directly above.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the CAA states that if a penalty is assessed pursuant to Sections 113 or 304(a) of the Act, the Administrator 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 the Administrator 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 CONFERENCE

Respondent may request a conference with EPA concerning the violations alleged in this FOV. This conference will enable Respondent to present evidence bearing on the findings of violation, on the nature of the violation, and on any efforts Respondent may have taken or may propose to take to achieve compliance. Respondent may arrange to be represented by legal counsel.

Respondent's request for a conference must be confirmed in writing within thirty (30) calendar days of receipt of this FOV. The request for a conference, or other inquiries concerning this FOV, should be made to:

James L. Simpson
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 2
Office of Regional Counsel, Air Branch
290 Broadway
New York, New York 10007-1866
(212) 637-3245

Notwithstanding the nature of this FOV and opportunity for a conference discussed above, the Respondent must comply with all applicable requirements of the Act.

Issued: April 25, 2012

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

To: Ms. Kathleen Antoine
Environmental Director
HOVENSA, LLC
1 Estate Hope
Christiansted, St Croix
US Virgin Islands 00820-5652

Brian Lever, President & COO
HOVENSA, LLC
1 Estate Hope
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US Virgin Islands 00820-5652

cc: Alicia Barnes, Commissioner
Virgin Islands Department of Planning and Natural Resources
45 Estate Mars Hill
Frederiksted, US Virgin Islands 00840-4474

Kelvin Vidale, Legal Counsel
Division of Environmental Protection
Virgin Islands Department of Planning and Natural Resources
45 Estate Mars Hill
Frederiksted, US Virgin Islands 00840-4474

Enclosure 2

CAA § 113

§ 7413.

(a) **In general**

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds 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 plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

(A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action in accordance with subsection (b) of this section.

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

(A) issuing an order requiring such person to comply with such requirement or prohibition,

(B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

(C) bringing a civil action in accordance with subsection (b) of this section.

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

(A) issue an administrative penalty order in accordance with subsection (d) of this section,

(B) issue an order requiring such person to comply with such requirement or prohibition,

(C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or

(D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to

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appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a term or condition of any permit or applicable implementation plan promulgated or approved under this chapter.

(5) Failure to comply with new source requirements

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the modification of existing sources, the Administrator may—

(A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies; [1]

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action under subsection (b) of this section.

Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) of this section at any time for any such violation.

(b) Civil judicial enforcement

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both, in any of the following instances:

(1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced

(A) during any period of federally assumed enforcement, or

(B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such person has violated, or is in violation of, such requirement or prohibition.

(2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter).

(3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

(c) Criminal penalties

(1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411 (e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475 (a) of this title (relating to

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preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a (a) or 7661b (c) of this title (relating to permits), or any requirement or prohibition of subchapter IV–A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly—

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(B) fails to notify or report as required under this chapter; or

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter [2]

shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV–A, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)

(A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than $1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V of this chapter, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

(B) In determining whether a defendant who is an individual knew that the violation

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placed another person in imminent danger of death or serious bodily injury—

(i) the defendant is responsible only for actual awareness or actual belief possessed; and

(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(i) an occupation, a business, or a profession; or

(ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

(D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(E) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(F) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(6) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 7602 (e) of this title, any responsible corporate officer.

(d) Administrative assessment of civil penalties

(1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

(A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued

(i) during any period of federally assumed enforcement, or

(ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

(B) has violated or is violating any other requirement or prohibition of this subchapter or subchapter III, IV–A, V, or VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter); or

(C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action.

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Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)

(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621 (a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to

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attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(e) Penalty assessment criteria

(1) In determining the amount of any penalty to be assessed under this section or section 7604 (a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) 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, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607 (a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604 (a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed $10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV–A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer,[3] or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

(h) Operator

For purposes of the provisions of this section and section 7420 of this title, the term "operator", as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term "a person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a

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corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON **April 30, 2012, I** MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY **CERTIFIED MAIL-RETURN RECEIPT** REQUESTED, **ARTICLE NUMBERS 7005-3110-0000-5947-3566** POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

Ms Kathleen Antoine, Environmental Director
HOVENSA, L.L.C.
1 Estate Hope
Christiansted, St. Croix
U.S. Virgin Islands 00820-5652

Geraldo Villaran

Geraldo Villaran

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JDomike@kilpatricktownsend.com

April 19, 2012

Via Hand Delivery

Myles E. Flint, II
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
ENRD Mail Room, Room 2121
601 D Street, N.W.
Washington, DC 20004

Dear Myles,

We appreciated the opportunity to meet on March 6 and, as requested in your March 23rd letter, will provide the United States and the Virgin Islands with more specific information in advance of any future meeting. HOVENSA's responses to the information requests from EPA and VIDPNR contained in your March 23rd letter are included in the enclosed document and attachments.

The information provided in the enclosed document and attachments is proprietary and confidential in nature; its release to the public would be highly prejudicial to HOVENSA. We therefore claim the protections available under 40 C.F.R. Part 2, as well as the protections available under 3 VIC § 881(g). This submittal is subject to rule 408 of the Federal Rules of Evidence.

Please do not hesitate to contact me if you have any questions or comments regarding the information provided.

Sincerely,

Julie R. Domike
Counsel for HOVENSA L.L.C.

Enclosure
USADMIN 9752305.1

cc: *via U.S. Mail*:
John Fogarty
Flaire Mills
Kara Murphy
Ken Eng
Harish Patel
Patrick Foley
Alicia Barnes

Ex. 4 - CBI claim

CONFIDENTIAL AND PROPRIETARY BUSINESS INFORMATION
PROTECTED FROM DISCLOSURE UNDER 3 VIC 881(g) AND 40 CFR PART 2
SUBJECT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE

Ex. 4 - CBI claim

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PROTECTED FROM DISCLOSURE UNDER 3 VIC 881(g) AND 40 CFR PART 2
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Ex. 4 - CBI claim

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Confidential and Proprietary Business Information Protected from Disclosure
under 3 VIC 881(g) and 40 CFR Part 2. Also Subject to FRE 408.

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