U.S. Department of Justice

Environment and Natural Resources Division

DJ No. 90-5-2-1-09915

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February 17, 2012

Celena Cage, Administrator
Enforcement Division
Louisiana Department of Environmental Quality
P.O. Box 4312
Baton Rouge, LA 70821-4312

Chris Piehler, Administrator
Inspection Division
Louisiana Department of Environmental Quality
P.O. Box 4312
Baton Rouge, LA 70821-4312

Re: Notice of Violation: Marathon Refinery in Garyville, Louisiana

Dear Ms. Cage and Mr. Piehler:

As the Louisiana Department of Environmental Quality ("LDEQ") recently became aware, for several years, the Environmental Protection Agency ("EPA"), the Department of Justice ("DOJ"), and Marathon Petroleum Company LP ("Marathon") have been engaged in cooperative negotiations designed to minimize the amount of flaring done at each of Marathon's refineries—including its refinery in Garyville, Louisiana—and to ensure that, when gas is flared, it is adequately combusted. Through the course of these negotiations, Marathon already has taken significant steps to reduce flaring and to ensure adequate combustion efficiency. We hope to file a Consent Decree soon that will memorialize the measures already taken and also will require additional measures.

As demonstrated by the draft Consent Decree previously shared with LDEQ, the scope of the injunctive relief in this matter is broad and comprehensive in the area of flaring. If the Consent Decree is lodged and entered, MPC will be required to, among other things, submit and implement a waste gas minimization plan to minimize the amount of gas sent to its flares; limit the total amount of flaring at each refinery; install and operate vent gas and steam flow monitors on each flare; automate the introduction of steam and natural gas to the flares; and agree to certain flare operating parameters that are designed to ensure a 98% combustion efficiency at the flares.

The purpose of this letter is to formally notify you that, if we file the Consent Decree described above, the United States also will file a complaint that will allege that Marathon violated numerous federal and state SIP requirements related to flare emissions. Because of Marathon's cooperation, EPA did not undertake any investigation of the Garyville Refinery. Therefore, if the Consent Decree is finalized, we expect to allege, on information and belief, violations of the following provisions:

a. The Prevention of Significant Deterioration ("PSD") requirements found in 42 U.S.C. § 7475 and 40 C.F.R. §§ 52.21(a)(2)(iii) and 52.21(j)–52.21(r)(5);

b. The Non-Attainment New Source Review ("NNSR") requirements found in 42 U.S.C. §§ 7502(c)(5), 7503(a)–(c) and 40 C.F.R. Part 51, Appendix S, Part IV, Conditions 1–4;

c. The New Source Performance Standards ("NSPS") promulgated 40 C.F.R. Part 60, Subparts A, J, VV, VVa, GGG, and GGGa pursuant to Section 111 of the CAA, 42 U.S.C. § 7411;

d. The National Emission Standards for Hazardous Air Pollutants ("NESHAPs") promulgated at 40 C.F.R. Part 63, Subparts A, CC, and UUU, pursuant to Section 112 of the CAA, 42 U.S.C. § 7412;

e. The requirements of Title V of the CAA found at 42 U.S.C. §§ 7661a(a), 7661b(c), 7661c(a), and the regulations promulgated thereunder 40 C.F.R. §§ 70.1(b), 70.5(a) and (b), 70.6(a) and (c), and 70.7(b);

f. The portions of Title V permits of MPC's Refineries that implement, adopt, or incorporate the provisions cited in Subparagraphs a–d and g–h; and

g. The federally enforceable State Implementation Plan for Louisiana that adopts, incorporates, and/or implements the federal requirements set forth in Subparagraphs a–e;

h. The federally enforceable Louisiana Minor New Source Review requirements;

i. The federal enforceable Louisiana SIP regulations found at La Admin. Code tit. 33 §§ 905 and 1503C; and

j. The emergency notification requirements of CERCLA, 42 U.S.C. § 9603(a), and EPCRA, 42 U.S.C. § 11004(b).

PSD/NNSR Allegations. With respect to the PSD and NNSR allegations, if this settlement goes forward, we expect to assert that, on information and belief, Marathon engaged in a major modification of its Garyville Refinery that resulted in a significant emissions increase of sulfur dioxide ("SO_2"), hydrogen sulfide ("H_2S"), volatile organic compounds ("VOCs"), and carbon monoxide ("CO") and a significant net emissions increase of these pollutants from the flares at the Garyville Refinery.

NSPS/NESHAP Allegations. With respect to the NSPS/NESHAP allegations, if this settlement goes forward, we expect to assert that, on information and belief, Marathon violated: (1) the NSPS Subpart J limit on H_2S in fuel gas directed to flares; (2) the NSPS Subpart J requirement that requires an H_2S continuous emissions monitoring system on flares; (3) the NSPS and NESHAP Subpart A flare control requirements (40 C.F.R. §§ 60.18 and 63.11(b)), including violations of the requirement that flare gas have a net heating value of 300 BTU/scf, and violations of the requirement that flares be monitored to ensure operation according to design; (4) the NSPS and NESHAP Subpart A requirement (40 C.F.R. §§ 60.11(d) and 63.6(e)(1)(i)) that good air pollution control practices be used at flares to minimize emissions (the claim is that Marathon oversteamed its flares, resulting in emissions of uncombusted H_2S and VOCs).

Title V and Title V Permit Allegations. If this settlement goes forward, we expect to assert that, on information and belief, Marathon violated Title V and Title V permit requirements based on the acts and omissions identified above. These claims are wholly derivative of the substantive claims identified above.

Louisiana SIP.

(1) If this settlement goes forward, we expect to assert that, on information and belief, Marathon violated the provisions of the Louisiana SIP that adopt, incorporate, and/or implement the federal requirements identified above. These claims are wholly derivative of the substantive claims identified above.

(2) If this settlement goes forward, we expect to assert that MPC engaged in modifications of its Garyville Refinery that resulted in emissions of SO_2, H_2S, VOCs, and CO from its flares that did not trigger significance levels but did require MPC to secure a Minor NSR Permit, which it did not do.

(3) If this settlement goes forward, we expect to assert that, on information and belief, as a result of Marathon's oversteaming and poor operation of the flares at its Garyville Refinery, Marathon violated La. Admin. Code tit. 33, § 905 (requirement to install air pollution control facilities and to use and diligently maintain them in proper working order); and La. Admin. Code tit. 33 § 1503C (prohibition against discharges of SO_2 in excess of 2000 ppmv).

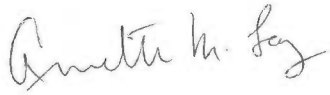
CERCLA/EPCRA. If this settlement goes forward, we expect to assert that, on information and belief, the oversteaming mentioned earlier resulted in emissions of H_2S and SO_2 in excess of the reportable quantities.

If a Consent Decree in this matter is entered, it will resolve the claims in the Complaint. However, EPA and DOJ understand that Marathon has agreed with LDEQ that MPC will not use the liability release in the Consent Decree as a defense to separate flare claims that LDEQ plans to advise MPC of. Instead, we understand that Marathon and LDEQ will separately negotiate a resolution of those claims.

I would like to add my apology for the communication problems that occurred in the course of this matter.

No action on your part is required. If you have any questions, please do not hesitate to call me (202 514-4213).

Sincerely yours,



Annette M. Lang

cc: Esteban Herrara, EPA R6
Patricia Welton, EPA R6
Robert Parrish, EPA HQ
Jim Wilkens, MPC
Virginia King, MPC