U.S. Department of Justice

Environment and Natural Resources Division

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February 14, 2012

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, OH 43216

Re: Notice of Violation: Marathon Refinery in Canton, Ohio

Dear Mr. Hodanbosi:

As I recently discussed with Tom Kalman of Ohio EPA, Terri Dzienis and Abby Gurdy of the Canton City Health Department, and Gregg Bachmann of the Ohio Attorney General's office, for several years, the United States Environmental Protection Agency ("U.S. 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 Canton, Ohio—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 Tom, Terri, Abby, and Gregg already are aware, the scope of the injunctive relief in the draft Consent Decree is broad and comprehensive. If the Consent Decree is lodged and entered, MPC will have 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 provide you with notice 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 provisions, their corresponding state SIP requirements, and additional state SIP requirements related to flare emissions.

Because of Marathon's cooperation, U.S. EPA did not undertake any investigation of the Canton 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 Ohio that adopts, incorporates, and/or implements the federal requirements set forth in Subparagraphs a–e;

h. Two Ohio SIP provisions where the claims are relevant to and derived from the above-referenced claims; and

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

<u>PSD/NNSR Allegations</u>. 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 Canton 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 Canton 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.

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

In addition, 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 its Canton Refinery, Marathon violated Ohio Admin. Code 3745-15-07(A) (declaring emissions that endanger health, safety, or welfare a public nuisance); and Ohio Admin. Code 3745-15-06(B) (notice and reporting requirements for malfunctions and breakdowns that result in violations of applicable laws).

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.

It was a pleasure to talk with Tom, Terri, Abby, and Gregg about this matter. U.S. EPA and I look forward to continuing to work cooperatively with Ohio EPA and the Ohio Attorney General's Office in matters in the future.

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
Trial Attorney

cc: Brian Dickens, EPA R5
Bill Wagner, EPA R5
Robert Parrish, EPA HQ