UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
v.) CIVIL ACTION NO.
)
MOTIVA ENTERPRISES LLC,)
EQUILON ENTERPRISES LLC,)
and DEER PARK REFINING LIMITED) June 18, 2003June 18, 2003
PARTNERSHIP,)
)
Defendants.)
)

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States andthrough the undersigned attorneys, acting at the request of the Administrator of the United StatesEnvironmental Protection Agency ("EPA"), alleges:

NATURE OF ACTION

1. This is a civil action brought against Motiva Enterprises LLC, Equilon Enterprises LLC, andDeer Park Refining Limited Partnership (collectively hereinafter "the Companies" or "Defendants"),pursuant to Section 113(b) of the Clean Air Act ("CAA" or the Act), 42 U.S.C. § 7413(b), foralleged environmental violations at their nine petroleum refineries. The United States herebyalleges claims against each of these Defendants, as owners and operators of an alliance ofrefineries in five states. All of the Companies' refineries have been and are in violation ofEPA's regulations implementing the following Clean Air Act statutory and regulatory requirementsapplicable to the petroleum refining industry: Part C of Title I of the Act, 42 U.S.C. §7470-7492, Prevention of Significant Deterioration ("PSD"); Section 173 of Part D of the Act, 42U.S.C. §§ 7503-7515, New Source Review ("NSR"); New Source Performance Standards ("NSPS"), 40C.F.R. Part 60, Subpart J; Leak Detection and Repair ("LDAR"), 40 C.F.R. Parts 60 and 63; NationalEmission Standards for Hazardous Air Pollutants ("NESHAP") for Benzene, 40 C.F.R. Part 61; and theCalifornia, Delaware, Louisiana, Texas, and Washington state implementation plans ("SIPs") whichincorporate and/or implement the above-listed federal regulations.

2. In addition the United States alleges that Defendants Motiva Enterprises LLC ("Motiva"), andDeer Park Refining Limited Partnership ("DPRLP") have been and are in violation of the

followingfederal environmental statutes and their implementing regulations at Motiva's Convent, Louisiana,and Port Arthur, Texas, refineries, and DPRLP's Deer Park, Texas, refinery: the ResourceConservation and Recovery Act, ("RCRA"), 42 U.S.C. § 6901 et seq., and the Toxic SubstancesControl Act, ("TSCA"), 15 U.S.C. § 2601et seq.

3. The United States seeks an injunction ordering Defendants to comply with the above statutes and the laws and regulations promulgated thereunder, and civil penalties for Defendants' past and ongoing violations.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 3008(a) of RCRA, 42U.S.C. § 6928(a); and Section 17(a)(1)(A) of TSCA, 15 U.S.C. § 2616(a)(1)(A).

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(c); Section 113(b) of the CAA,42 U.S.C. § 7413(b); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); and Section 17(a)(1)(A) ofTSCA, 15 U.S.C. § 2616(a)(1)(A), because the Companies' are located and are doing business in thisdistrict.

NOTICE TO STATE

6. Notice of the commencement of this action has been given to the States of California, Delaware,Louisiana, Texas, and Washington as required under Section 113(b) of the CAA, 42 U.S.C. § 7413(b),and to the States of Louisiana and Texas as required under Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2).

DEFENDANTS

7. The Companies own and operate nine (9) domestic petroleum refineries located as follows: Delaware City, Delaware (Motiva)

Norco, Louisiana (Motiva)

Convent, Louisiana (Motiva)

Port Arthur, Texas (Motiva)

Bakersfield, California (Equilon)

Los Angeles, California (Equilon)

Martinez, California (Equilon)

Anacortes, (Puget) Washington (Equilon)

The Deer Park, Texas, refinery is operated by Deer Park Refining Limited Partnership ("DPRLP").Each of the Defendants is licensed to conduct business in the state of Texas.

8. The Defendants are "persons" as defined in Section 302(e) of the CAA, 42 U.S.C. §7602(e); Section 1004(15) of RCRA, 42 U.S.C. §6903(15); and in accordance with Section 8(a) of TSCA, 15U.S.C. § 2607(a), and the federal and state regulations promulgated pursuant to these statutes.

9. The petroleum refining process at the Companies' nine refineries results in emissions of significant quantities of regulated air pollutants, including nitrogen oxides ("NOx"), carbon monoxide ("CO"), particulate matter ("PM"), sulfur dioxide ("SO2"), as well as volatile organic compounds ("VOCs") and hazardous air pollutants ("HAPs"), including benzene. The primary sources of these emissions are the fluid catalytic cracking units ("FCCUs"), the fluid coking unit (at Delaware City, only), process heaters and boilers, the sulfur recovery plants, the wastewater treatment system, fugitive emissions from leaking components, and flares throughout the refinery.

STATUTORY AND REGULATORY BACKGROUND

CLEAN AIR ACT REQUIREMENTS

10. The Clean Air Act established a regulatory scheme 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. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

11. Prevention of Significant Deterioration. - Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for certain criteria air pollutants. The primary NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

12. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan ("SIP") that provides for the attainment and maintenance of the NAAQS.

13. Under Section 107(d) of the Act, 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. These designations have been approved by EPA and are located at 40 C.F.R. Part 81. An area that meets the NAAQS for a particular pollutant is classified as an "attainment" area; one that does not is classified as a "non-attainment" area.

14. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as attaining 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. These provisions are referred to herein as the "PSD program."

15. Section 165(a) of the Act, 42 U.S.C. § 7475(a), prohibits the construction and subsequent operation of a major emitting facility in an area designated as attainment unless a PSD permit has been issued. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines "major emitting facility" as a source with the potential to emit 250 tons per year ("tpy") or more of any air pollutant.

16. As set forth at 40 C.F.R. § 52.21(k), the PSD program generally requires a person who wishes to construct or modify a major emitting facility in an attainment area to demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount.

17. As set forth at 40 C.F.R. § 52.21(i), any major emitting source in an attainment area that intends to construct a major modification must first obtain a PSD permit. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as meaning any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any criteria pollutant subject to regulation under the Act. "Significant" is defined at 40 C.F.R. § 52.21(b)(23)(i) in reference to a net emissions increase or the potential of a source to emit any of the following criteria pollutants, at a rate of emissions that would equal or exceed any of the following: for ozone, 40 tons per year of volatile organic compounds ("VOC"s); for carbon monoxide ("CO"), 100 tons per year; for nitrogen oxides ("NOx"), 40 tons per year; for sulfur dioxide ("SO2"), 100 tons per year, (hereinafter "criteria pollutants").

18. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a major modification in an attainment area shall install and operate best available control technology ("BACT") for each pollutant subject to regulation under the Act that it would have the potential to emit in significant quantities.

19. Section 161 of the Act, 42 U.S.C. § 7471, requires state implementation plans to contain emission limitations and such other measures as may be necessary, as determined under the regulations promulgated pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas.

20. A state may comply with Section 161 of the Act either by being delegated by EPA the authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as

those set forth at 40 C.F.R. § 51.166.

21. Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, sets forth provisions which direct States to include in their SIPs requirements to provide for reasonable progress towards attainment of the NAAQS in nonattainment areas. Section § 172(c) (5) of the Act, 42 U.S.C.§ 7502(c) (5), provides that these SIPs shall require New Source Review ("NSR") permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with Section 173 of the Act, 42 U.S.C. § 7503, in order to facilitate "reasonable further progress" towards attainment of the NAAQS.

22. Section 173 of Part D of the Act, 42 U.S.C. § 7503, requires that in order to obtain such a permit the source must, among other things: (a) obtain federally enforceable emission offsets at least as great as the new sources emissions; (b) comply with the lowest achievable emission rate as defined in Section 171(3) of the Act, 42 U.S.C. § 7501(3); and (c) analyze alternative sites, sizes, production processes, and environmental control techniques for the proposed source and demonstrate that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

23. As set forth in 40 C.F.R. § 52.24, no major stationary source shall be constructed or modified in any nonattainment area as designated in 40 C.F.R. Part 81, Subpart C ("nonattainment area") to which any SIP applies, if the emissions from such source will cause or contribute to concentrations of any pollutant for which a NAAQS is exceeded in such area, unless, as of the time of application for a permit for such construction, such plan meets the requirements of Part D, Title I, of the Act.

24. A state may comply with Section 172 and 173 of the Act by having its own nonattainment new source review regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.165.

25. Flaring and New Source Performance Standards. - Section 111 of the CAA, 42 U.S.C. § 7411, requires EPA to promulgate standards of performance for certain categories of new air pollution sources ("New Source Performance Standards" or "NSPS"). Pursuant to Section 111(b), 42 U.S.C. § 7411(b), EPA promulgated general regulations applicable to all NSPS source categories. Those general regulations are set forth at 40 C.F.R. Part 60 Subpart A.

26. EPA's NSPS regulations applicable to petroleum refineries, including requirements for implementing and utilizing good air pollution control practices at all times, are set forth at 40 C.F.R. Part 60 Subpart J. The NSPS requirements establish an emission limit of 250 ppm of SO_2 from the sulfur recovery plants, which represents a 99.9% reduction of SO_2.

27. Leak Detection and Repair. - Section 112 of the CAA, 42 U.S.C. § 7412, requires EPA to promulgate emission standards for certain categories of sources of hazardous air pollutants ("National Emission Standards for Hazardous Air Pollutants" or "NESHAPs") Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA promulgated national emission standards

for equipment leaks (fugitive emission sources). Those regulations are set forth at 40 C.F.R. Parts 61 Subpart J and V, and Part 63 Subparts F (National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry), H (NESHAP for Equipment Leaks) and CC (NESHAP for Petroleum Refineries) and Part 60 Subparts VV and GGG.

28. The focus of the LDAR program is the refinery-wide inventory of all possible leaking valves, the regular monitoring of those valves to identify leaks, and the repair of leaks as soon as they are identified.

29. Benzene Waste NESHAP. - The CAA requires EPA to establish emission standards for each "hazardous air pollutant" ("HAP") in accordance with Section 112 of the CAA, 42 U.S.C. § 7412.

30. In March 1990, EPA promulgated national emission standards applicable to benzene-containing wastewaters. Benzene is a listed HAP and a known carcinogen. The benzene waste regulations are set forth at 40 C.F.R. Part 61 Subparts FF, (National Emission Standard for Benzene Waste Operations). Benzene is a naturally-occurring constituent of petroleum product and petroleum waste and is highly volatile. Benzene emissions can be detected anywhere in a refinery where the petroleum product or waste materials are exposed to the ambient air.

31. Pursuant to the Benzene Waste NESHAP, refineries are required to tabulate the total annual benzene ("TAB") content in their wastewater. If the TAB is over 10 megagrams, the refinery is required to elect a control option that will require the control of all waste streams, or control of certain select waste streams.

32. Pursuant to Section 113(b) of the CAA, 42 U.S.C. §7413(b), EPA may commence a civil action for injunctive relief and civil penalties for violations of the Act, not to exceed $25,000 per day of violation for violations of the CAA. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69369, civil penalties of up to $27,500 per day per violation may be assessed for violations occurring on or after January 30, 1997.

RESOURCE CONSERVATION AND RECOVERY ACT REQUIREMENTS

33. The Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), Public Law No. 98-616, 98 Stat. 3221 (1984), establishes a comprehensive statutory scheme for the management of hazardous wastes from their initial generation until their final disposal.

34. Regulations promulgated pursuant to RCRA regulate generators of hazardous wastes, as well as owners and operators of facilities that treat, store, or dispose of hazardous wastes ("TSD facilities"). The federal regulations implementing RCRA are codified at 40 C.F.R. Part 260 et seq.

35. Under Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, any state may apply for and receive authorization to enforce its own hazardous waste management program in place of the federal hazardous waste management program described in the preceding Paragraph, provided the state requirements are consistent with and equivalent to the federal requirements. To the extent that the state hazardous waste program is authorized by EPA pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the requirements of the state program are effective in lieu of the federal hazardous waste management program set forth in 40 C.F.R. Part 260 et seq, and are being enforced under this Complaint by EPA.

36.Pursuant to Section 3006(b) of RCRA, 42 U.S.C. §6926(b), the States of Louisiana and Texas received approval from EPA to administer and enforce a hazardous waste program in their states. Louisiana's program, administered by the Louisiana Department of Environmental Quality ("LDEQ"), received final authorization by EPA effective February 7, 1985, (50 Fed. Reg. 3348, January 24, 1985), and the Texas program, administered by the Texas Natural Resource Conservation Commission ("TNRCC"), received final authorization by EPA in 1984, (49 Fed. Reg. 4830, December 26, 1984).

37. Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), provides EPA with authority to implement and enforce those portions of the HSWA requirements for which the States of Louisiana and Texas are not authorized.

38. Any violations of regulations promulgated pursuant to Subtitle C, Sections 3001-3009 of RCRA, 42 U.S.C. §§ 6921-6939, or a State provision approved pursuant to Section 3006 of RCRA, are subject to the assessment of civil or criminal penalties and compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

39. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. §6928(a), EPA may issue an order assessing a civil penalty for any past or current violation and require compliance.

40. Pursuant to Section 3004 of RCRA, 42 U.S.C. § 6924, EPA promulgated regulations applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.

41. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, EPA promulgated regulations regarding permitting for the treatment, storage, or disposal of hazardous waste.

42. On December 6, 1994, EPA issued a set of these regulations at 40 C.F.R. Parts 264 and 265, Subpart CC. These standards apply to certain tanks, surface impoundments, and containers used to manage hazardous waste. 40 C.F.R. Parts 264 and 265, Subpart CC regulations became effective on December 6, 1996 (61 Fed. Reg. 59932, November 25, 1996).

43. Pursuant to Section 3001(e)(2) of RCRA, 42 U.S.C. §6921(e), EPA promulgated regulations on November 2, 1990, to list new hazardous wastes from non-specific sources at petroleum refineries. The newly listed waste code F037, found at 40 C.F.R. § 261.31, applies to certain surface impoundments that contain any sludge generated from the gravitational separation of oil,

water, and solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. The final rule became effective on May 2, 1991. (55 Fed. Reg. 46354).

44. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), provides that any person who violates a requirement of RCRA shall be liable for a civil penalty of up to $25,000 per day for each such violation. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69369, civil penalties of up to $27,500 per day per violation may be assessed for violations occurring on or after January 30, 1997.

TOXIC SUBSTANCES CONTROL ACT

45. Pursuant to Section 8(a) of TSCA, 15 U.S.C. §2607(a), the Administrator of EPA has promulgated regulations at 40 C.F.R. Part 710 (Inventory Reporting Regulations), requiring persons who manufacture or process a regulated chemical substance or mixture, to maintain records and submit reports concerning the total amount of each substance maintained by the facility, the persons exposed, and documentation of known environmental and health effects.

46. TSCA Section 15(c), 15 U.S.C. § 2614(c), and EPA's implementing regulations at 40 C.F.R. §710.33(b), make it unlawful for any person to fail or refuse to (A) establish or maintain records, (B) submit reports, notices or other information, or (C) permit access to or copying of records, as required by this chapter.

47. TSCA Section 17, 15 U.S.C. § 2616(a), provides the District Court with jurisdiction over civil actions to restrain any violation of Section 2614 or 2689.

FIRST CLAIM FOR RELIEF

PSD and NSR Requirements

48. Paragraphs 1 through 32 are realleged and incorporated by reference.

49. The Companies own and operate the 9 petroleum refineries identified in Paragraph 7. Petroleum refining involves the physical, thermal and chemical separation of crude oil into marketable petroleum products.

50. EPA has conducted investigations of one or more of the Companies' petroleum refineries, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information concerning the Companies' modification and operation of these facilities. The United States alleges the following based on the results of EPA's investigation, information and belief:

51. The Companies' petroleum refining process results in emissions of significant quantities of criteria air pollutants, including nitrogen oxides ("NOx"), carbon monoxide ("CO"), particulate matter ("PM"), sulfur dioxide ("SO2"), as well as volatile organic compounds ("VOCs") and

hazardous air pollutants ("HAPs"), including benzene. The primary sources of these emissions are the fluid catalytic cracking units ("FCCUs"), the fluid coking unit ("FCU") (at Delaware City only), process heaters and boilers, and the sulfur recovery plants ("SRPs").

52. The Companies' facilities are "petroleum refineries" in accordance with Section 169(1) of the CAA, 42 U.S.C. § 7479(1), which defines "major emitting facility" for certain listed stationary sources as a source with the potential to emit 100 TPY or more of any criteria air pollutant. The Companies' petroleum refineries are major emitting facilities with the potential to emit in excess of 100 TPY of NOx, PM, and SO2, which are listed criteria air pollutants.

53. At all times relevant to this Complaint, the following of the Companies' refineries were located in an area that was designated as "Class II" under Section 162(b) of the Act, 42 U.S.C. § 7472(b), and that has attained the National Ambient Air Quality Standards for Ozone, of which NOx is a precursor, SO2, and PM under Section 107(d) of the Act, 42 U.S.C. § 7407(d): Norco, Louisiana; Convent, Louisiana; and Puget, Washington.

54. At all times relevant to this Complaint, the following of the Companies' refineries were located in an area that has been designated "non-attainment" for ozone, of which NOx is an precursor, under Section 107(d) of the Act, 42 U.S.C. § 7407(d), as defined in Section 171 of the Act, 42 U.S.C. § 7501: Delaware City, Delaware; Port Arthur and DPRLP, Texas; Bakersfield, Los Angeles, and Martinez, California.

55. At all times relevant to this Complaint, and on numerous occasions since commencement of operations, the Companies have failed to fully and accurately identify the emissions from its petroleum refineries of one or more criteria pollutants.

56. During the time period relevant to this Complaint, the Companies have modified the FCCU's, FCU, heaters and boilers, and SRPs at their respective petroleum refineries causing a significant increase in emissions of NOx, PM, and SO2, which is defined as a "major modification" within the meaning of 40 C.F.R. § 52.21(b)(2).

57. Since the major modification of its petroleum refineries, the Companies have been in violation of Section 165(a) of the CAA, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21, and the corresponding state implementation plans, by failing to undergo PSD and NSR review, by failing to obtain all appropriate permits, and failing to install the best available control technology and/or the meet the lowest achievable emission rate for the control of NOx, PM, and SO2 emissions from all FCCUs, process heaters and boilers, and sulfur recovery plants, and the FCU at Delaware City.

58. Unless restrained by an Order of the Court, these violations of the CAA and the implementing regulations will continue.

59. As provided in 42 U.S.C. § 7413(b), the Companies' violations, as set forth above, subject it to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act

prior to January 31, 1997, and $27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SECOND CLAIM FOR RELIEF

New Source Performance Standards

60. Paragraphs 1 through 32 are realleged and incorporated by reference.

61. EPA has conducted investigations of one or more of the Companies' petroleum refineries, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information concerning the Companies' modification and operation of these facilities. The United States alleges the following based on the results of EPA's investigation, information and belief:

62. On one or more occasions, since January 31, 1996, the Companies's refinery flares have emitted unpermitted quantities of SO2, a criteria air pollutant, under circumstances that did not represent good air pollution control practices, in violation of NSPS, 40 C.F.R. § 60.11(d).

63. On one or more occasions, since January 31, 1996, the Companies's refinery flares have been utilized for combustion of refinery fuel gas in violation of NSPS Subpart J, 40 C.F.R. §§ 60.104, et seq.

64. Unless restrained by an Order of the Court, these violations of the Act and the implementing regulations will continue.

65. As provided in 42 U.S.C. § 7413(b), the Companies' violations, as set forth above, subject it to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act prior to January 30, 1997, and $27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

THIRD CLAIM FOR RELIEF

Leak Detection and Repair Requirements

66. Paragraphs 1 through 32 are realleged and incorporated by reference.

67. EPA has conducted investigations of one or more of the Companies' petroleum refineries, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information concerning the Companies' modification and operation of these

facilities. The United States alleges the following based on the results of EPA's investigation, information and belief:

68. The Companies are required under 40 C.F.R. Part 60 Subpart GGG, to comply with standards set forth at 40 C.F.R. § 60.592, which in turn references standards set forth at 40 C.F.R. §§ 60.482-1 to 60.482-10, and alternative standards set forth at 40 C.F.R. §§ 60.483-1 to 60.483-2, for certain of its refinery equipment in VOC service, constructed or modified after January 4, 1983,

69. Pursuant to 40 C.F.R. § 60.483-2(b)(1), an owner or operator of subject VOC valves must initially comply with the leak detection monitoring and repair requirements set forth in 40 C.F.R. § 60.482-7, including the use of Standard Method 21 to monitor for such leaks.

70. Pursuant to 40 C.F.R. Part 61 Subpart J, the Companies are required to comply with the requirements set forth in 40 C.F.R. Part 61, Subpart V, for certain specified equipment in benzene service.

71. On one or more occasions since February 23, 1996, the Companies failed to accurately monitor the subject VOC valves and other components at each of its refineries as required by Standard Method 21, to report the VOC valves and other components that were leaking, and to repair all leaking VOC valves and other components in a timely manner.

72. On one or more occasions, since February 23, 1996, the Companies failed to monitor all valves at its petroleum refineries that were subject to the above described requirements.

73. The Companies' acts or omissions referred to in Paragraphs 71 and 72 constitute violations of the LDAR.

74. Unless restrained by an Order of the Court, these violations of the Act and the implementing regulations will continue.

75. As provided in 42 U.S.C. § 7413(b), the Companies' violations, as set forth above, subject it to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act prior to January 30, 1997, and $27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FOURTH CLAIM FOR RELIEF

RCRA Violations at Convent, Louisiana

76. Paragraphs 1 through 9, and 33 through 44 are realleged and incorporated by reference.

77. The Convent, Louisiana, refinery is owned and operated by Defendant Motiva Enterprise LLC ("Convent refinery").

78. On October 20, 2000, LDEQ conducted an inspection of the Convent refinery pursuant to the authority granted by Section 3007(a) of RCRA, 42 U.S.C. § 6927(a).

79. On one or more occasions prior to October 20, 2000, the Convent refinery violated the requirements of state and federal RCRA regulations at LAC 33:V.303.B, and 40 C.F.R. § 262.34(a)(1)(i) and 265.174, by failing to obtain a standard treatment, storage or disposal ("TSD") permit prior to storing and treating hazardous wastewater containing greater than 0.5 ppm benzene in a surface impoundment (aeration basin).

80. On one or more occasions prior to October 20, 2000, the Convent refinery violated the requirements of state and federal RCRA regulations at LAC 33:V.2903, and 40 C.F.R. §265.221, by failing to meet the hazardous waste surface impoundment design and operation standards for surface impoundments prior to discharging hazardous wastewater that contains greater than 0.5 parts per million ("ppm") of benzene.

81. On one or more occasions prior to October 20, 2000, the Convent refinery violated the requirements of its state-issued RCRA Subtitle D permit, Standard Permit P-0126, and state regulations at LAC 33:VII.315.N and LAC 33:VII.713D.1.a, which prohibits receiving and processing hazardous waste in its two (2) non-hazardous aeration basins.

82. Motiva's acts or omissions at its Convent refinery referred to in Paragraphs 79 through 81 constitute violations of RCRA § 3005(a) and 40 C.F.R. §§ 270.1 and 270.10, for operating a hazardous waste storage unit without permit coverage or interim status, as well as violations of Permit No. HW-50188.

83. Unless restrained by an Order of the Court, these violations of RCRA and the implementing regulations will continue.

84. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Pub. L. 104-134 and 61 Fed. Reg. 69,360 (Dec. 31, 1996), Motiva's violations as set forth above subject it to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act prior to January 30, 1997, and $27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. §2461, as amended by 31 U.S.C. §3701.

FIFTH CLAIM FOR RELIEF

RCRA Violations at Port Arthur, Texas

85. Paragraphs 1 through 9, and 33 through 44 are realleged and incorporated by reference.

86. The Port Arthur, Texas, refinery is owned and operated by Defendant Motiva Enterprises LLC ("Port Arthur refinery").

87. EPA conducted an inspection of the Port Arthur refinery from June 7th through 11th, 1999, pursuant to the authority granted by Section 3007(a) of RCRA, 42 U.S.C. § 6927(a).

88. During the course of its inspection, EPA determined that the Port Arthur refinery was subject to state and federal RCRA requirements regarding the treatment, storage and disposal of RCRA-regulated hazardous waste, and that Port Arthur has failed, on one or more occasion since June 11, 1999, to comply with all applicable RCRA requirements.

89. During the time period of June 7-11, 1999, the Port Arthur refinery failed to comply with 30 TAC § 335.69 and 40 C.F.R. § 262.34, requiring that a facility properly label storage containers with the words "Hazardous Waste". Port Arthur had failed to properly label two 30-cubic yards roll-off boxes holding waste contaminated with TCLP Benzene, a RCRA-regulated hazardous waste.

90. During the time period of June 7-11, 1999, the Port Arthur refinery failed to comply with 30 TAC § 335.69 and 40 C.F.R. §§ 262.34(a)(1)(i) and 265.174, requiring that the facility conduct weekly inspections of the "less than 90-day" Container Storage Areas ("CSA"), applicable to its hazardous waste tank T-1825 when operated as a RCRA unit.

91. During the time period of June 7-11, 1999, the Port Arthur refinery failed to comply with 30 TAC § 335.69 and 40 C.F.R. §§ 262.34(a)(1)(ii) and 265.195(c), requiring that the facility conduct daily inspections and maintain records of the inspections for hazardous waste tanks.

92. On May 3, 2000, Motiva disclosed to EPA that its Port Arthur refinery was subject to RCRA § 3005(a) and 40 C.F.R. § 270.1 and 270.10, for operation of a hazardous waste storage unit, and the Port Arthur refinery had failed, on one or more occasion prior to Motiva's disclosure, to comply with all applicable RCRA requirements.

93. On one or more occasions prior to Motiva's May 3, 2000, disclosure, the Port Arthur refinery failed to comply with 30 TAC § 335.2 and 40 C.F.R. §§ 270.1 and 270.10, which require that a facility meet the hazardous waste surface impoundment design and operation standards prior to receiving hazardous wastewater that contains greater than 0.5 ppm of benzene.

94. On one or more occasions prior to Motiva's May 3, 2000, disclosure, the Port Arthur refinery failed to comply with Permit No. HW-50188, which Sections VII.A.3 and B.1 require the facility to maintain training records.

95. On one or more occasions prior to Motiva's May 3, 2000, disclosure, the Port Arthur refinery failed to comply with conditions of its Permit No. HW-50188, Section VIII.C (Vo. I, Section

II.B incorporated by reference), which requires that the refinery conduct daily inspections at the permitted CSAs during the weekends and holidays.

96. On one or more occasions prior to Motiva's May 3, 2000, disclosure, the Port Arthur refinery failed to meet the "less than 90-day" storage exemption by failing to conduct weekly inspections and keep records of the inspections for its paint waste in violation of 30 TAC 335.69 and 40 C.F.R. §§ 262.34(a)(1)(i) and 265.174.

97. Motiva's acts or omissions at its Port Arthur refinery referred to in Paragraphs 88 through 96 constitute violations of RCRA § 3005(a) and 40 C.F.R. §§ 270.1 and 270.10, for operating a hazardous waste storage unit without permit coverage or interim status, as well as violations of Permit No. HW-50188.

97. Unless restrained by an Order of the Court, these violations of RCRA and the implementing regulations will continue.

98. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Pub. L. 104-134 and 61 Fed. Reg. 69,360 (Dec. 31, 1996), Motiva's violations as set forth above subject it to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act prior to January 30, 1997, and $27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. §2461, as amended by 31 U.S.C. §3701.

SIXTH CLAIM FOR RELIEF

RCRA Violations at Deer Park, Texas

99. Paragraphs 1 through 9, and 33 through 44 are realleged and incorporated by reference.

100. Defendant's Deer Park, Texas, refinery is owned and operated by Deer Park Refining Limited Partnership ("DPRLP refinery").

101. EPA and TNRCC conducted a joint multimedia inspection of the DPRLP refinery April 26-30, 1999, pursuant to the authority granted by Section 3007(a) of RCRA, 42 U.S.C. § 6927(a).

102. During the course of their inspection, EPA and TNRCC determined that the DPRLP refinery was subject to state and federal RCRA requirements regarding the treatment, storage and disposal of RCRA-regulated hazardous waste, and that the DPRLP refinery had failed, on one or more occasion prior to April 30, 1999, to comply with all applicable RCRA requirements.

103. Prior to April 30, 1999, DPRLP refinery failed to maintain sufficient secondary

containment for two tanks located in the landfill area holding FO39 landfill leachate in violation of 30 TAC 335.112(a)(9) and 40 C.F.R. § 265.193(a).

104. Prior to April 30, 1999, the DPRLP refinery violated state and federal RCRA requirements at 30 TAC § 335.2 and 40 C.F.R. §§ 270.1 and 270.10, by failing to obtain a TSD permit prior to storing and treating hazardous wastewater that contained greater than 0.5 ppm benzene in a surface impoundment (aeration basin).

105. On one or more occasions prior to April 30, 1999, DPRLP refinery violated Permit No. HW-50099-001, Section III.D.10.g and h, by allowing the leachate level to rise in excess of twelve inches in depth above the liner, and by failing to analyze the leachate.

106. Prior to April 30, 1999, DPRLP exceeded the height of the dike located on the perimeter of the refinery landfill cell #2 in violation of Permit No. HW-50099-001, Section III.D.10.

107. Defendant's acts or omissions at its DPRLP refinery referred to in Paragraphs 102 through 106 constitute violations of RCRA § 3005(a) and 40 C.F.R. §§ 270.1 and 270.10, for operating a hazardous waste storage unit without permit coverage or interim status, as well as violations of Permit No. HW-50188.

108. Unless restrained by an Order of the Court, these violations of RCRA and the implementing regulations will continue.

109. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Pub. L. 104-134 and 61 Fed. Reg. 69,360 (Dec. 31, 1996), DPRLP's violations as set forth above subject it to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act prior to January 30, 1997, and $27,500 per day for each violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. §2461, as amended by 31 U.S.C. §3701.

SEVENTH CLAIM FOR RELIEF

TSCA Violations at Port Arthur, Texas

99. Paragraphs 1 through 9, and 45 through 47 are realleged and incorporated by reference.

100. The Port Arthur, Texas, refinery is owned and operated by Motiva Enterprises LLC ("Port Arthur refinery").

101. On June 8, 1999, Motiva disclosed to EPA a possible TSCA Section 8(a) violation at its Port Arthur, Texas facility, and EPA conducted an inspection of the facility on June 10, 1999, pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, to determine compliance with TSCA Sections 4, 5, 8, 12 and 13.

102. Pursuant to the authority of Section 8(a) of TSCA, 15 U.S.C. § 2607(a), EPA promulgated 40 C.F.R. Part 710, Inventory Reporting Regulations.

103. EPA's regulations at 40 C.F.R. §§ 710.28(b) or 710.28(c) require any person who manufactured or imported for commercial purposes 10,000 pounds or more of a chemical substance which is in the Master Inventory File at the beginning of a reporting period, at any single site owned and/or controlled by that person, at any time during the person's latest complete corporate fiscal year before August 25, 1998, to report for the Partial Updating of the Inventory Data Base unless the chemical is specifically excluded by 40 C.F.R. Section 710.26.

104. EPA's regulations at 40 C.F.R. § 710.33(b) provides that persons subject to recurring reporting must so report between August 25, 1998, and December 23, 1998, the later date being extended to January 31, 1999 (See 63 Fed. Reg. 71599, December 29, 1998).

105. On or about, December 3, 1998, Motiva submitted a Partial Updating of TSCA Inventory Data Base Production and Site Report ("Production and Site Report") to EPA. Motiva's Production and Site Report was required to include all the reportable chemicals that were manufactured and/or imported from January 1, 1997 through December 31, 1997, for Motiva's Port Arthur, Texas facility.

106. As indicated above, Motiva disclosed to EPA its omission of two chemical substances, C1-3 (CAS No.: 68527-16-2) and an Alkylation naphtha (light C4-10 (CAS No.: 64741-66-8)), from the December 3, 1998 Production and Site Report, which were chemicals subject to the TSCA reporting requirement.

107. Motiva's failure to timely submit the Production and Site Report to EPA for the chemicals listed above by the regulatory deadline of January 31, 1999, (for two reportable chemicals manufactured and/or imported from January 1, 1997 to December 31, 1997), constitutes a violation of 40 C.F.R. Section 710.33(b), a rule promulgated under Section 8(a) of TSCA, and thereby constitutes a violation of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

108. Unless restrained by an Order of the Court, these violations of the TSCA and the implementing regulations will continue.

109. As provided in Section 17(a) of TSCA, 16 U.S.C. § 2616(a), Motiva's violation, as set forth above, subjects it to injunctive relief under the statute and implementing regulations.

EIGHTH CLAIM FOR RELIEF

Violation of Requirements of the Washington State Implementation Plan

110. Paragraphs 1 through 32 are realleged and incorporated by reference.

111. The Companies own and operate the refinery identified in Paragraph 7 and located in Puget Sound, Washington ("Puget Refinery").

112. EPA has conducted investigations of the Puget Refinery, and based on those investigations, information and belief, alleges the following:

113. The Puget Refinery's petroleum refining process has on numerous occasions since the commencement of operations resulted in emissions of sulfur dioxide from flares in excess of 1,000 parts per million, and continues to result in emissions of sulfur dioxide from flares in excess of 1,000 parts per million.

114. Sections of the Washington Administrative Code have been approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. §7410, are identified at 40 C.F.R. § 52.2479, and are commonly referred to as the Washington State Implementation Plan ("Washington SIP").

115. The Companies constitute a "person" as defined by Wash. Admin. Code § 173-400-030(59), as approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, and identified at 40 C.F.R § 52.2479.

116. The refinery constitutes a "stationary source" as defined by Wash. Admin. Code § 173-400-030(75), as approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. §7410, and identified at 40 C.F.R. § 52.2479.

117. Each individual flare at the refinery constitutes an "emissions unit" as defined by Wash. Admin. Code § 173-400-030 (24), as approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. §7410, and identified at 40 C.F.R. § 52.2479.

118. A portion of Wash. Admin. Code § 173-400-040(6) was approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. §7410, on June 2, 1995 (60 Fed. Reg. 28,726), and is contained in the Washington SIP. This section, and NEAPA Section 462.1, provide that no person shall cause or permit the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes.

119. The Puget refinery has on numerous occasions violated, and continues to violate, the requirements of the Washington SIP described in Paragraph 118 through operation of its flares.

120. Unless restrained by an Order of the Court, these violations of the CAA, as implemented through the EPA-approved Washington SIP, will continue.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States, respectfully requests that this Court:

1. Order the Companies to immediately comply with the statutory and regulatory requirements cited in this Complaint, under the Clean Air Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act;

2. Order the Companies to take appropriate measures to mitigate the effects of its violations;

3. Assess civil penalties against the Companies for up to the amounts provided in the applicable statutes; and

4. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

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JOHN CRUDEN

Acting Assistant Attorney General

Environment and Natural Resources

Division

U.S. Department of Justice

____

DIANNE SHAWLEY

Senior Counsel

Environmental Enforcement Section

U.S. Department of Justice

P.O. Box 7611

Washington, D.C. 20044-7611

(202) 514-0096

Mervyn A. Mosbacker

United States Attorney

By:

Gordon M Speights Young

Assistant United States Attorney

Southern District of Texas

P.O. 61129

Houston, TX 77208

OF COUNSEL:

NEIL BIGIONI

Assistant Regional Counsel

U.S. Environmental Protection Agency

Region III (3RC10)

1650 Arch Street

Philadelphia, PA 19103

MARY MCAULIFFE

EDWARD MECINA

WILLIAM WAGNER

Associate Regional Counsel

U.S. Environmental Protection Agency

Region 5 (C-14J)

77 West Jackson Blvd.

Chicago, IL 60604-3590

JAN GERRO

Assistant Regional Counsel (6RC-EA)

U.S. Environmental Protection Agency

Region 6

1445 Ross Avenue

Dallas, Texas 75202-2733