

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
and)
)
STATE OF NEW MEXICO,)
STATE OF MONTANA,)
)
Plaintiff-Intervenors,) Civil No.
)
v.)
)
NAVAJO REFINING COMPANY, L.P.,)
MONTANA REFINING COMPANY,)
)
Defendants.)
_____)

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges:

NATURE OF ACTION

1. This is a civil action brought against the Navajo Refining Company (“Navajo”) and the Montana Refining Company (“Montana Refining”) pursuant to Section 113(b) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413(b), for alleged environmental violations at petroleum refineries located in Artesia, New Mexico; Lovington, New Mexico; and Great Falls, Montana (“Covered Refineries”).

2. Upon information and belief, the Covered Refineries have been and are in violation of EPA's regulations implementing the following Clean Air Act statutory and regulatory requirements applicable to the petroleum refining industry: Prevention of Significant Deterioration ("PSD"), Part C of Subchapter I of the Act, 42 U.S.C. § 7475, and the regulations promulgated thereunder at 40 C.F.R. § 52.21, and Non-Attainment New Source Review, Part D of Subchapter I of the Act, 42 U.S.C. §§ 7502-7503, and the regulations promulgated thereunder at 40 C.F.R. § 51.165, Part 51, Appendix S, and § 52.24 ("PSD/NSR Regulations"); New Source Performance Standards ("NSPS") promulgated at 40 C.F.R. Part 60, Subpart J; Leak Detection and Repair ("LDAR") standards at 40 C.F.R. Part 60, Subparts VV and GGG, Part 61, Subparts J and V, and Part 63, Subparts F, H, and CC; National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Benzene Waste Operations, 40 C.F.R. Part 61, Subpart FF; and the New Mexico and Montana state implementation plans ("SIPs") which incorporate and/or implement the above-referenced federal regulations.

3. The United States seeks an injunction ordering Navajo and Montana Refining to comply with the above-referenced statutes and the regulations promulgated thereunder, and civil penalties for 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; and Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1395(a); and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), because Navajo is doing business in the District of New Mexico, and certain of the violations alleged herein occurred at Navajo's refineries in Artesia and Lovington which are located in the District of New Mexico. In addition, Montana Refining, a company which is related to Navajo Refining, has consented to venue in this Court.

NOTICE TO STATES

6. Notice of the commencement of this action has been given to the State of New Mexico and the State of Montana as required by Section 113(a)(1) and (b) of the CAA, 42 U.S.C. § 7413(a)(1) and (b).

DEFENDANTS

7. Navajo is a corporation doing business in Artesia and Lovington, New Mexico.
8. Montana Refining is a corporation doing business in Great Falls, Montana.
9. Navajo and Montana Refining are each a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and applicable federal and state regulations promulgated pursuant to the CAA.

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. 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.

Prevention of Significant Deterioration/New Source Review

14. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7479, 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 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 (VOCs); for carbon monoxide (CO), 100 tons per year; for nitrogen oxides (NO_x), 40 tons per year; for sulfur dioxide (SO₂), 40 tons per year; for particulate matter, 25 tons per year of particulate matter or 15 tons per year of PM₁₀ (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 must install and operate the 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, 42 U.S.C. § 7471, 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. Pursuant to the PSD regulations, any owner or operator who commences construction or modification of a major source without applying for and receiving approval for such construction or modification is subject to an enforcement action. 40 C.F.R. § 52.21(s).

22. 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 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.

23. 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 source*s 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.

24. As set forth in 40 C.F.R. § 52.24, no major stationary source can be constructed or modified in any non-attainment area as designated in 40 C.F.R. Part 81, Subpart C (“non-attainment 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.

25. A state may comply with Sections 172 and 173 of the Act by having its own non-attainment 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.

26. Pursuant to Section 113(b)(1) of the CAA, 42 U.S.C. § 7413(b)(1), the violation of any requirement or provision of an applicable implementation plan is a violation of the CAA.

27. Whenever any person has violated, or is in violation of, any requirement or prohibition of any SIP, the United States is authorized to commence a civil action for a permanent or temporary injunction, and/or for a civil penalty of up to \$27,500 per day for each such violation. 42 U.S.C. § 7413(b); Pub. L. 104-134 and 61 Fed. Reg. 69369.

Flaring and New Source Performance Standards

28. Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of EPA to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause or significantly contribute to air pollution which may endanger public health or welfare.

29. Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), requires the Administrator of EPA to promulgate regulations establishing federal standards of performance for new sources of air pollutants within each of these categories. "New sources" are defined as stationary

sources, the construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a)(2).

30. Pursuant to Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), EPA has identified petroleum refineries as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare.

31. Pursuant to Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), EPA promulgated NSPS for various industrial categories, including petroleum refineries. NSPS requirements for petroleum refineries are codified at 40 C.F.R. Part 60, Subpart J, §§ 60.100-60.109.

32. The provisions of 40 C.F.R. Part 60, Subpart J, apply to specified "affected facilities," including, *inter alia*, Claus sulfur recovery plants that have a capacity greater than 20 long tons per day and that commenced construction or modification after October 4, 1976, and all fluid catalytic cracking unit catalyst regenerators and fuel gas combustion devices that commenced construction or modification after June 11, 1973. 40 C.F.R. § 60.100(a),(b).

33. 40 C.F.R. § 60.102(a) prohibits the discharge into the atmosphere from any fluid catalytic cracking unit catalyst regenerator of (1) particulate matter in excess of 1.0 kg/1000 kg (1.0 lb/1000 lb) of coke burn-off in the catalyst regenerator, and (2) gases exhibiting greater than 30 percent opacity, except for one six-minute average opacity reading in any one hour period; except as provided for in 40 C.F.R. § 60.102(b).

34. 40 C.F.R. § 60.103(a) prohibits the discharge into the atmosphere from any catalytic cracking unit catalyst regenerator any gases that contain carbon monoxide ("CO") in excess of 500 ppm by volume (dry basis).

35. 40 C.F.R. § 60.104(b) requires the owner or operator of any affected fluid catalytic cracking unit catalyst regenerator to comply with one of the standards set forth in 40 C.F.R. § 60.104(b)(1), (2), or (3), relating to emissions of sulfur dioxide (SO₂).

36. 40 C.F.R. § 60.104(a)(2) prohibits sulfur recovery plants subject to 40 C.F.R. Part 60, Subpart J with reduction control systems followed by incineration from discharging in excess of 250 ppm by volume (dry basis) of SO₂ at zero percent excess air. 40 C.F.R. § 60.104(a)(2) prohibits sulfur recovery plants subject to 40 C.F.R. Part 60, Subpart J with reduction control systems not followed by incineration from discharging in excess of 300 ppm by volume of reduced sulfur compounds and in excess of 10 ppm by volume of hydrogen sulfide, each calculated as ppm SO₂ by volume (dry basis) at zero percent excess air.

37. 40 C.F.R. § 60.104(a)(1) prohibits the burning in any fuel gas combustion device any fuel gas that contains hydrogen sulfide in excess of 230 milligrams per dry standard cubic meter, or, stated in terms of grains per dry standard cubic foot, 0.10. The combustion in a flare of process upset gases or fuel gas that is released to the flare as a result of relief valve leakage or other emergency malfunctions is exempt from the emission limit of 40 C.F.R. § 60.104(a)(1).

38. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), EPA has promulgated general NSPS provisions, codified at 40 C.F.R. Part 60, Subpart A, §§ 60.1-60.19, that apply to owners or operators of any stationary source that contains an "affected facility" subject to regulation under 40 C.F.R. Part 60.

39. 40 C.F.R. § 60.11(d) requires that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

40. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source. Thus, a violation of an NSPS is a violation of Section 111(e) of the CAA.

41. Whenever any person has violated, or is in violation of, any requirement or prohibition of any applicable New Source Performance Standard, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each such violation occurring prior to January 30, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, up to \$27,500 per day for violations occurring on or after January 31, 1997.

Leak Detection and Repair

42. Pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated New Source Performance Standards for Equipment Leaks of VOCs in Petroleum Refineries at 40 C.F.R. Part 60, Subpart GGG. Subpart GGG, in turn, incorporated many of the NSPS standards at 40 C.F.R. Part 60, Subpart VV. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated emission standards for hazardous air pollutants (“National Emission Standards for Hazardous Air Pollutants” or “NESHAPs”) at 40 C.F.R. Part 61, and NESHAPs for source categories at 40 C.F.R. Part 63. The relevant NESHAPs are found at 40 C.F.R. Part 61, Subpart J (for equipment leaks of benzene) and Subpart V (for equipment leaks); and 40 C.F.R. Part 63, Subpart F (for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry), Subpart H (for organic hazardous air pollutants for equipment leaks) and Subpart CC (for hazardous air pollutants from petroleum refineries).

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

44. Whenever any person has violated, or is in violation of, any requirement or prohibition of any applicable New Source Performance Standard or any applicable National Emission Standard for a Hazardous Air Pollutant, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each such violation occurring prior to January 30, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C.

§ 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, up to \$27,500 per day for violations occurring on or after January 31, 1997.

Benzene Waste NESHAP

45. 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.

46. In March 1990, EPA promulgated national emission standards applicable to benzene-containing waste streams. Benzene is a listed HAP and a known carcinogen. The benzene waste regulations are set forth at 40 C.F.R. Part 61, Subpart FF (National Emission Standard for Benzene Waste Operations). Benzene is a naturally-occurring constituent of petroleum products 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.

47. Pursuant to the benzene waste NESHAP, refineries are required to calculate the total annual benzene (“TAB”) content in their waste streams. If the TAB is over 10 megagrams per year, the refinery is required to elect a control option for control of benzene.

48. Pursuant to Section 113(b) of the CAA, 42 U.S.C. §7413(b), the United States 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.

FIRST CLAIM FOR RELIEF
(CAA PSD/NSR Violations at FCCUs and Heaters and Boilers)
(All Covered Refineries)

49. Paragraphs 1 through 48 are realleged and incorporated by reference as if fully set forth herein.

50. Navajo owns and operates a fluidized catalytic cracking unit regenerator and a sulfur recovery plant at its Artesia Refinery and heaters and boilers at both its Artesia and Lovington Refineries. Montana Refining owns and operates a fluidized catalytic cracking unit regenerator and heaters and boilers at its Great Falls Refinery.

51. EPA has conducted investigations at one or more of the Covered Refineries, which included site inspections, review of permitting history and emissions data, and/or analyses of other relevant information concerning construction and operation at the Covered Refineries. Based on the results of EPA's investigation, and on information and belief, the United States alleges that Navajo and Montana Refining have modified the fluidized catalytic cracking unit regenerators, the sulfur recovery plant, and the heaters and boilers at the Covered Refineries.

52. Upon information and belief, each modification was a "major modification"

within the meaning of 40 C.F.R. § 52.21(b)(2) to existing major stationary sources that resulted in a significant net emissions increase of: (i) NO_x, SO₂, PM, PM₁₀, and CO from the fluidized catalytic cracking unit regenerator at the Artesia Refinery; (ii) NO_x, SO₂, and CO from the fluidized catalytic cracking unit regenerator at the Great Falls Refinery; (iii) SO₂ from the Artesia sulfur recovery plant; and (iii) NO_x and SO₂ from the heaters and boilers at all of the Covered Refineries.

53. Since the initial construction or major modification of: (i) the FCCUs at the Artesia and Great Falls Refineries; (ii) the sulfur recovery plant at the Artesia Refinery; and (iii) the heaters and boilers at all of the Covered Refineries, Navajo and Montana Refining 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/NSR review for the fluidized catalytic cracking units, the sulfur recovery plant, and the heaters and boilers, by failing to obtain permits, and by failing to install the best available control technology for the control of those pollutants for which a significant net emissions increase occurred.

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

55. Pursuant to 42 U.S.C. § 7413(b), the violations of Navajo and Montana Refining, as set forth above, subject them to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, to injunctive relief and civil penalties of up to \$27,500 per day per violation for violations occurring on or after January 31, 1997.

SECOND CLAIM FOR RELIEF
(CAA/NSPS Violations at Fluidized Catalytic Cracking Units)
(Artesia and Great Falls Refineries)

56. Paragraphs 1 through 55 are realleged and incorporated by reference as if fully set forth herein.

57. EPA has conducted investigations at one or more of the Covered Refineries, which included site inspections, review of permitting history and emissions data, and/or analyses of other relevant information concerning construction and operation at the Covered Refineries.

58. Navajo and Montana Refining are each the "owner or operator," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of a fluidized catalytic cracking unit regenerator at, respectively, the Artesia Refinery ("Artesia FCCU Regenerator") and at the Great Falls Refinery ("Great Falls FCCU Regenerator").

59. The Artesia FCCU Regenerator and the Great Falls FCCU Regenerator are each a "fluid catalytic cracking unit catalyst regenerator" as defined in 40 C.F.R. § 60.101(n), and a "stationary source" within the meaning of Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

60. The Artesia FCCU Regenerator and the Great Falls FCCU Regenerator each are an "affected facility" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a), and a "new source" within the meaning of Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

61. The Artesia FCCU Regenerator and the Great Falls FCCU Regenerator each are subject to the General Provisions of the NSPS, 40 C.F.R. Part 60, Subpart A, and to the Standards of Performance for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J.

62. The Artesia FCCU Regenerator and the Great Falls FCCU Regenerator each are subject to the emission limitations set forth in 40 C.F.R. §§ 60.102(a), 60.103(a), and 60.104(b).

63. 40 C.F.R. § 60.102(a) prohibits the discharge into the atmosphere from any fluid catalytic cracking unit catalyst regenerator of (1) particulate matter in excess of 1.0 kg/1000 kg (1.0 lb/1000 lb) of coke burn-off in the catalyst regenerator, and (2) gases exhibiting greater than 30 percent opacity, except for one six-minute average opacity reading in any one hour period; except as provided for in 40 C.F.R. § 60.102(b).

64. 40 C.F.R. § 60.103(a) prohibits the discharge into the atmosphere from any catalytic cracking unit catalyst regenerator any gases that contain carbon monoxide (“CO”) in excess of 500 ppm by volume (dry basis).

65. 40 C.F.R. § 60.104(b) requires the owner or operator of any affected fluid catalytic cracking unit catalyst regenerator to comply with one of the standards set forth in 40 C.F.R. § 60.104(b)(1), (2), or (3), relating to emissions of sulfur dioxide (SO₂).

66. Based upon information and belief, Navajo has violated 40 C.F.R. §§ 60.102(a), 60.103(a) and/or 60.104(b), and thus Section 111 of the CAA, at its Artesia FCCU Regenerator by not complying with the emissions standards set forth in those sections. Based upon information and belief, Montana Refining has violated 40 C.F.R. §§ 60.103(a) and/or 60.104(b), and thus Section 111 of the CAA, at its Great Falls FCCU Regenerator by not complying with the emissions standards set forth in those sections.

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

68. Pursuant to 42 U.S.C. § 7413(b), the violations of Navajo and Montana Refining, as set forth above, subject them to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, to injunctive relief and civil penalties of up to \$27,500 per day per violation for violations occurring on or after January 31, 1997.

THIRD CLAIM FOR RELIEF - CAA
(CAA/NSPS Violations at the Artesia Sulfur Recovery Plant)
(Artesia Refinery)

69. The allegations in Paragraphs 1 through 68 are hereby realleged and incorporated by reference as if fully set forth herein.

70. Navajo is the "owner or operator," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of a sulfur recovery plant ("SRP"), located at the Artesia Refinery ("Artesia SRP").

71. The Artesia SRP is a "Claus sulfur recovery plant" as defined in 40 C.F.R. § 60.101(i), and a "stationary source" within the meaning of Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

72. The Artesia SRP has a capacity of more than 20 long tons of sulfur per day.

73. The Artesia SRP is an "affected facility" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a), and a "new source" within the meaning of Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

74. The Artesia SRP is subject to the General Provisions of the NSPS, 40 C.F.R. Part 60, Subpart A, and to the Standards of Performance for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J.

75. The Artesia SRP is subject to the emission limitation set forth in 40 C.F.R. § 60.104(a)(2)(i).

76. Based on information and belief, Navajo has emitted into the atmosphere gases containing in excess of (1) 250 ppm by volume (dry basis) of sulfur dioxide at zero percent excess air, or (2) 300 ppm by volume of reduced sulfur compounds, from the Artesia SRP, in violation of 40 C.F.R. § 60.104(a)(2) and Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

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

78. Pursuant to 42 U.S.C. § 7413(b), the violations of Navajo, as set forth above, subject it to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, to injunctive relief and civil penalties of up to \$27,500 per day per violation for violations occurring on or after January 31, 1997.

FOURTH CLAIM FOR RELIEF
(CAA/NSPS Violations at Flaring Devices and Heaters and Boilers)
(All Covered Refineries)

79. The allegations in Paragraphs 1 through 78 are hereby realleged and incorporated by reference as if fully set forth herein.

80. Navajo and Montana Refining are the "owners or operators," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of flaring devices and heaters and boilers located at the Covered Refineries.

81. The flaring devices and heaters and boilers are "fuel gas combustion devices" as defined in 40 C.F.R. § 60.101(g), and "stationary sources" within the meaning of Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

82. The flaring devices and heaters and boilers are "affected facilities" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a), and "new sources" within the meaning of Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

83. The flaring devices and heaters and boilers are subject to the emission limitation set forth in 40 C.F.R. § 60.104(a)(1).

84. Navajo and Montana Refining have burned in the flaring devices and heaters and boilers at the Covered Refineries fuel gas that contained hydrogen sulfide in excess of 230 milligrams per dry standard cubic meter, or, stated in terms of grains per dry standard cubic foot, 0.10, in violation of 40 C.F.R. § 60.104(a)(2) and Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

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

86. Pursuant to 42 U.S.C. § 7413(b), the violations of Navajo and Montana Refining, as set forth above, subject them to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, and, pursuant to Section 113(b) of the CAA,

42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, to injunctive relief and civil penalties of up to \$27,500 per day per violation for violations occurring on or after January 31, 1997.

FIFTH CLAIM FOR RELIEF
(CAA/NSPS: 40 C.F.R. § 60.11(d))
(Failing to Operate and Maintain the SRP, the FCCU Regenerators,
the Heaters and Boilers and the Flaring Devices
in a Manner Consistent with Good Air Pollution Control Practice)
(All Covered Refineries)

87. The allegations in Paragraphs 1 through 86 are hereby realleged and incorporated by reference as if fully set forth herein.

88. Upon information and belief, since at least 1996: (i) Navajo has emitted unpermitted quantities of SO₂, CO, PM and PM₁₀, from the Artesia FCCU; (ii) Navajo has emitted unpermitted quantities of SO₂ from its heaters and boilers; (iii) Montana Refining has emitted unpermitted quantities of SO₂ and CO from the Great Falls FCCU; and (iv) Montana Refining has emitted unpermitted quantities of SO₂ from its heaters and boilers. These pollutants were emitted under circumstances that did not represent good air pollution control practices, in violation of 40 C.F.R. § 60.11(d).

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

90. Pursuant to 42 U.S.C. § 7413(b), the violations of Navajo and Montana Refining, as set forth above, subject them to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, to injunctive relief and civil penalties of up to \$27,500 per day per violation for violations occurring on or after January 31, 1997.

SIXTH CLAIM FOR RELIEF
(Leak Detection and Repair Requirements)
(All Covered Refineries)

91. The allegations in Paragraphs 1 through 90 are realleged and incorporated by reference as if fully set forth herein.

92. Navajo and Montana Refining 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 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 refinery equipment in light liquid and gas and/or vapor service, constructed or modified after January 4, 1983.

93. Pursuant to 40 C.F.R. § 60.483-2(b)(1), an owner or operator of valves in light liquid and gas and/or vapor service 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.

94. Pursuant to 40 C.F.R. Part 61 Subpart J, Navajo and Montana Refining are required to comply with the requirements set forth in 40 C.F.R. Part 61, Subpart V, for certain refinery equipment in light liquid and gas and/or vapor benzene service.

95. Upon information and belief, since 1996, Navajo and Montana Refining have failed to accurately monitor the valves and other components in light liquid and gas and/or vapor service at the Covered Refineries as required by Standard Method 21, to report the valves and other components in light liquid and gas and/or vapor service that were leaking, and to repair all leaking VOC valves and other components in light liquid and gas and/or vapor service in a timely manner.

96. Upon information and belief, Navajo's and Montana Refining's acts or omissions referred to in the preceding Paragraphs constitute violations of the 40 C.F.R. Part 60, Subparts GGG and VV; 40 C.F.R. Part 61, Subparts J and V; and 40 C.F.R. Part 63, Subparts F, H, and CC.

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

98. Pursuant to 42 U.S.C. § 7413(b), the violations of Navajo and Montana Refining, as set forth above, subject them to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, to injunctive relief and civil penalties of up to \$27,500 per day per violation for violations occurring on or after January 31, 1997.

SEVENTH CLAIM FOR RELIEF
(Benzene Waste NESHAP)
(All Covered Refineries)

99. The allegations in Paragraphs 1 through 98 are hereby re-alleged and incorporated by reference as if fully set forth herein.

100. At all times relevant to this Complaint, Navajo and Montana Refining have asserted that the Total Annual Benzene ("TAB") at the Covered Refineries is less than 10 megagrams per year, and that the Covered Refineries are not subject to the control requirements of 40 C.F.R. § 61.342.

101. Upon information and belief, Navajo and Montana Refining failed to include all waste streams in calculating their TABs, and otherwise failed to comply with the requirements of the Benzene Waste NESHAP that are applicable to facilities with a TAB of less than 10 megagrams per year.

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

103. Pursuant to 42 U.S.C. § 7413(b), the violations of Navajo and Montana Refining, as set forth above, subject them to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, to injunctive relief and civil penalties of up to \$27,500 per day per violation for violations occurring on or after January 31, 1997.

PRAYER FOR RELIEF

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

1. Order Navajo and Montana Refining to immediately comply with the statutory and regulatory requirements cited in this Complaint under the Clean Air Act;
2. Order Navajo and Montana Refining to take appropriate measures to mitigate the effects of their violations;

3. Assess civil penalties against Navajo and Montana Refining 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,

Date: _____

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