REGION 8
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FILED
8/5/2024
8:57 AM
U.S. EPA REGION 8
HEARING CLERK

August 5, 2024

Mr. Jon Armstrong
Regulatory & Environmental Engineer 2
Berry Petroleum Company, LLC and
Berry Corporation (bry)
11117 River Run Blvd
Bakersfield, CA 93311
jarmstrong@bry.com

Re: Notice of Violation to Berry Petroleum Company, LLC, and Berry Corporation (bry)
CAA-08-2024-0012

Dear Mr. Armstrong:

The U.S. Environmental Protection Agency (EPA) and the Utah Department of Environmental Quality, Utah Division of Air Quality (UDAQ) are jointly issuing Berry Petroleum Company, LLC, and Berry Corporation (bry) the enclosed Notice of Violation and offering an opportunity to confer regarding alleged violations of the Clean Air Act and its implementing regulations.

Specifically, at the facilities located on lands within the State of Utah's regulatory jurisdiction, the EPA and the UDAQ jointly allege that Berry has violated and is violating the Standards of Performance for Stationary Spark Ignition Internal Combustion Engines under 40 C.F.R. Part 60, Subpart JJJJ, as well as federally enforceable provisions of Approval Orders (state permits) issued by the State of Utah under the EPA-approved state permitting program.

At the facilities located in Indian Country, the EPA separately alleges that Berry has violated and is violating the Standards of Performance for Stationary Spark Ignition Internal Combustion Engines under 40 C.F.R. Part 60, Subpart JJJJ.

We are offering Berry an opportunity to confer with the EPA and the UDAQ about the violations alleged in the NOV. The conference will provide an opportunity to present information on the specific alleged violations and any efforts that Berry has taken to comply or prevent future noncompliance.

To reach a timely conclusion of this matter, the EPA and the UDAQ would like to hold an initial meeting on or before September 13, 2024. To schedule this meeting,

please have your counsel call or email Nick DiMascio, Senior Assistant Regional Counsel for EPA Region 8, at (303) 312-6759 or dimascio.nicholas@epa.gov by August 19, 2024.

Sincerely,

SUZANNE BOHAN

Digitally signed by SUZANNE BOHAN
Date: 2024.07.31 15:06:53 -06'00'

Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

Enclosure

cc (w/Encl.):
Nick Michaelson, CPC Group, nick.michaelson@cpcgroupllc.com
Matt Guest, Berry EHS, mguest@bry.com
Aaron R. Hoopes, Berry Production Coordinator, ahoopes@bry.com
Lonnie Favel, Director, Air Quality Program, Ute Indian Tribe (UITAQ), lonnief@utetribe.com
Marie Kaufusi, UITAQ, mariek@utetribe.com
Rik Ombach, Oil and Gas Compliance Section, UDAQ, rombach@utah.gov
Marina Thomas, Utah Assistant Attorney General, Utah Attorney General's Office, marinathomas@agutah.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

and

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
UTAH DIVISION OF AIR QUALITY

IN THE MATTER OF:	)	**NOTICE OF VIOLATION**
	)	
Berry Petroleum Company, LLC	)	**EPA Docket No.** CAA-08-2024-0012
and Berry Corporation (bry)	)	
11117 River Run Boulevard	)	
Bakersfield, CA 93311	)	Proceedings Pursuant to
	)	the Clean Air Act,
	)	42 U.S.C. §§ 7401-7671q
	)	and Utah Code, Title 19, Chapter 2

NOTICE OF VIOLATION

The U.S. Environmental Protection Agency (EPA) and the Utah Department of Environmental Quality, Utah Division of Air Quality (UDAQ) jointly allege that Berry Petroleum Company, LLC, and Berry Corporation (bry) (collectively, Berry) have violated and are violating the Clean Air Act (the Act) at oil and natural gas production operations located on state land in the Uinta Basin. Specifically, at the facilities located on state land, the EPA and the UDAQ jointly allege Berry has violated and is violating the Standards of Performance for Stationary Spark Ignition Internal Combustion Engines under 40 C.F.R. Part 60, Subpart JJJJ (NSPS Subpart JJJJ). The EPA and the UDAQ further jointly allege that Berry has violated and is violating federally enforceable provisions of Approval Orders (state permits) issued by the State of Utah pursuant to an EPA-approved state permitting program. At the facilities located in Indian Country, the EPA separately alleges that Berry has violated and is violating NSPS Subpart JJJJ.

I. STATUTORY AND REGULATORY BACKGROUND

1. The Act's purpose is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1).
2. Section 108 of the Act, 42 U.S.C. § 7408, directs the EPA to identify pollutants that "may reasonably be anticipated to endanger public health or welfare" and to issue air quality criteria based on the "latest scientific knowledge" about the effects of the

pollutants on public health and the environment. These pollutants are known as "criteria pollutants."

3. Section 109 of the Act, 42 U.S.C. § 7409, requires the EPA to establish national ambient air quality standards (NAAQS) for criteria pollutants. The primary standard must be set at a level "requisite to protect the public health" with an adequate margin of safety, and the secondary standard is intended to protect the "public welfare."

4. Ground-level ozone is one of six criteria pollutants for which the EPA has promulgated national standards, due to its adverse effects on human health and the environment. Short-term exposures (1 to 3 hours) to ground-level ozone can cause acute health effects observed even at low concentrations, including temporary pulmonary inflammation. Long-term exposure (months to years) may cause permanent damage to lung tissue. Children and adults who are active outdoors are particularly susceptible to the adverse effects of exposure to ozone. *See* National Ambient Air Quality Standards for Ozone, 73 Fed. Reg. 16,436, 16,440 (Mar. 27, 2008).

5. Ozone is not emitted directly from sources of air pollution. Ozone is a photochemical oxidant, formed when volatile organic compounds (VOCs) and nitrogen oxides (NO_x) react in the presence of sunlight. NO_x and VOCs are known as "ozone precursors." Sources that emit ozone precursors are regulated to reduce ground-level ozone. *See* National Ambient Air Quality Standards for Ozone, 62 Fed. Reg. 38,856, 38,858 (July 18, 1997).

6. A "stationary source" is a building, structure, facility, or installation that emits or may emit any air pollutant. 42 U.S.C. § 7411(a)(3).

A. New Source Performance Standards (NSPS)

7. Section 111(b) of the Act authorizes the Administrator of the EPA to promulgate standards of performance applicable to "new sources" within categories of sources that cause "air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7411(b).

8. A "new source" is any stationary source, the construction or modification of which is commenced after the promulgation of the standards of performance that will apply to such source. 42 U.S.C. § 7411(a)(2).

9. In 1979, the EPA listed "Crude Oil and Natural Gas Production" as a source category that contributes significantly to air pollution and for which standards of performance would be established. Priority List and Additions to the List of Categories of Stationary Sources, 44 Fed. Reg. 49,222 (Aug. 21, 1979).

10. It is unlawful for owners or operators of any new source to operate in violation of applicable standards of performance after the standards have gone into effect. 42 U.S.C. § 7411(e).

1. NSPS Subpart JJJJ

11. In 2008, the EPA promulgated "Subpart JJJJ – Standards of Performance for Stationary Spark Ignition Internal Combustion Engines" under section 111 of the Act, 73 Fed. Reg. 3591 (Jan. 18, 2008). These standards are set forth in 40 C.F.R., Part 60, Subpart JJJJ.

12. The provisions of NSPS Subpart JJJJ are applicable to manufacturers, owners, and operators of stationary spark ignition (SI) internal combustion engines (ICE).

13. The "date that construction commences" is the date the engine is ordered by the owner or operator. 40 C.F.R § 60.4230(a).

14. Owners and operators of stationary SI ICE are subject to the requirements of NSPS Subpart JJJJ if the maximum engine power is less than 500 horsepower (HP) and the stationary SI ICE is manufactured on or after July 1, 2008. 40 C.F.R. § 60.4230(a)(4)(iii).

15. Owners and operators of stationary SI ICE with a maximum engine power less than or equal to 19 kilowatts (kW) (25 HP) manufactured on or after July 1, 2008, must comply with the same emission standards as manufacturers of such engines stated in 40 C.F.R. § 60.4231(a). 40 C.F.R. § 60.4233(a).

16. Stationary SI ICE with engine displacement at or above 225 cubic centimeters (cc) that were manufactured January 1, 2011, or later must meet the Phase 3 non-

handheld emission standards identified in 40 C.F.R. part 1054. 40 C.F.R. § 60.4231(a).

17. Under those Phase 3 standards, exhaust emissions from Class II non-handheld engines may not exceed 8.0 g/kW-hr (5.97 g/HP-hr) for the sum of hydrocarbons plus NO_x (HC + NO_x) and 610 g/kW-hr (454.88 g/HP-hr) for carbon monoxide (CO). 40 C.F.R. § 1054.105(a) & Table 1. *See also id.* § 1054.801 (defining hydrocarbon). These emissions standards apply to all testing, including certification, production-line, and in-use testing. *Id.* § 1054.105(e).
    a. Emissions must be measured using the applicable steady-state test procedures described in 40 C.F.R. Part 1054, Subpart F. 40 C.F.R. § 1054.105(a).
    b. Class II nonhandheld engines are nonhandheld engines with total displacement above 225 cc. 40 C.F.R. § 1054.801.
    c. When calculating the HC + NO_x emissions limit for nonhandheld engines fueled by natural gas, the applicable hydrocarbon group is nonmethane hydrocarbons (NHMC). 40 C.F.R. § 1054.105(a).
    d. NHMC is the sum of all hydrocarbon species except methane. 40 C.F.R. § 1054.801 (referring to 40 C.F.R. § 1065.1001).
18. An owner or operator of a stationary SI ICE that must comply with the emission standards in 40 C.F.R. § 60.4233(a) must purchase an engine certified to the emission standards in 40 C.F.R. § 60.4231(a) for the same engine class and maximum engine power. 40 C.F.R. § 60.4243(a).
19. If an owner or operator operates and maintains the certified stationary SI ICE and associated control device according to the manufacturer's emission-related written instructions, they must keep records of conducted maintenance to demonstrate compliance, but no performance testing is required as to the owner or operator. 40 C.F.R. § 60.4243(a)(1).
20. If an owner or operator does not operate and maintain the certified stationary SI ICE and associated control device according to the manufacturer's emission-related

written instructions, the engine will be considered a non-certified engine. 40 C.F.R. § 60.4243(a)(2).

21. Owners and operators of non-certified stationary SI ICE less than 100 HP must keep a maintenance plan and records of conducted maintenance to demonstrate compliance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions, but the owner or operator is not required to conduct performance testing. 40 C.F.R. § 60.4243(a)(2)(i).

2. Approval Orders

22. All potential sources of air pollution subject to the State of Utah's air quality regulations must submit a notice of intent and receive an Approval Order (AO) from the State prior to initiation of construction, modification, or relocation, unless exempt under the regulations. *See* Utah Admin. Code r. R307-401.

23. The EPA approved the State of Utah's notice of intent and AO requirements into Utah's State Implementation Plan minor new source review program. *See* 79 Fed. Reg. 7,072 (Feb. 6, 2014). Requirements in AOs are therefore federally enforceable. *See* 40 C.F.R. § 52.23.

a. Conolly Tribal 2-11D-54

24. On October 27, 2016, the UDAQ issued AO DAQE-AN156290001-16 for Conolly Tribal 2-11D-54 to LINN Operating, Inc. (Conolly AO). This facility was subsequently sold to Berry and notification of ownership change was filed with UDAQ on August 16, 2017. *See* Notification of Company Name and Ownership Change for Several Locations, DAQE-060-17 (Aug. 16, 2017) ("Notification of Ownership Change"). The Conolly AO was in effect at the time of the inspection and is currently in effect.

25. The Conolly AO authorizes the operation of natural gas-fired pumpjack engines at Conolly Tribal 2-11D-54. *See* Conditions II.A.2 and II.B.1.b. The Conolly AO contains conditions applicable to pumpjack engines with a maximum engine power less than or equal to 25 HP, requiring compliance with NSPS Subpart JJJJ,

specifically 40 C.F.R. §§ 60.4233(f)(1), 60.4243(c) and (e), and 60.4245, *see* Condition II.B.3.b, and generally with all applicable provisions of NSPS Subpart JJJJ, *see* Section III. The Conolly AO also requires that Berry use only natural gas as fuel in each engine on site. *See* Condition II.B.1.b.

26. Conolly Tribal 2-11D-54 has an Arrow, C-101, 2014 engine (serial number BGC101022; engine type 4SRB) with HP of 24.5 operating at the site.

b. LC Fee 8-29-45

27. LC Fee 8-29-45 has the site ID 15625 in the UDAQ oil and gas facilities' registration system. It is a part of the multi-well site where each well is designated under the same site ID. On April 20, 2017, the UDAQ issued AO DAQE-AN156250001-17 for LC Fee 8-29-45 to LINN Operating, Inc. (LC Fee AO). This facility was subsequently sold to Berry, and notification of ownership change was filed with UDAQ on August 16, 2017. *See* Notification of Ownership Change. The LC Fee AO was in effect at the time of the inspection and is currently in effect.

28. The LC Fee AO authorizes the operation of natural gas-fired pumpjack engines at LC Fee 8-29-45. *See* Conditions II.A.2 and II.B.1.b. The LC Fee AO contains conditions applicable to pumpjack engines with a maximum engine power less than or equal to 25 HP, requiring compliance with NSPS Subpart JJJJ, specifically 40 C.F.R. §§ 60.4233(f)(1), 60.4243(c) and (e), and 60.4245, *see* Condition II.B.3.b, and generally with all applicable provisions of NSPS Subpart JJJJ, *see* Section III. The LC Fee AO also requires that Berry use only natural gas as fuel in each engine on site. *See* Condition II.B.1.b.

29. LC Fee 8-29-45 has an Arrow, C-101, 2012 engine (serial number 310444; engine type 4SRB) with HP of 24.5 operating at the site.

c. LC Fee 4-28D-45

30. LC Fee 4-28D-45 has the site ID 15625 in the UDAQ oil and gas facilities' registration system. It is a part of the multi-well site where each well is designated under the same site ID. On April 20, 2017, the UDAQ issued LC Fee AO for LC Fee 8-29-45 to LINN Operating, Inc. This AO also applies to LC Fee 4-28D-45 because

LC Fee 4-28D-45 is listed under the same site ID as LC 8-29-45. The facilities with site ID 15625 were subsequently sold to Berry, and notification of ownership change was filed with UDAQ on August 16, 2017. *See* Notification of Ownership Change. The LC Fee AO was in effect at the time of the inspection and is currently in effect.

31. The LC Fee AO authorizes the operation of natural gas-fired pumpjack engines at LC Fee 4-28D-45. *See* Conditions II.A.2 and II.B.1.b. The LC Fee AO contains conditions applicable to pumpjack engines with a maximum engine power less than or equal to 25 HP, requiring compliance with NSPS Subpart JJJJ, specifically 40 C.F.R. §§ 60.4233(f)(1), 60.4243(c) and (e), and 60.4245, *see* Condition II.B.3.b, and generally with all applicable provisions of NSPS Subpart JJJJ, *see* Section III. The LC Fee AO also requires that Berry use only natural gas as fuel in each engine on site. *See* Condition II.B.1.b.

32. LC Fee 4-28D-45 has an Arrow, C-101, 2014 engine (serial number BIC 101001; engine type 4SRB) with HP of 24.5 operating at the site.

d. LC Fee 10-29D-45

33. LC Fee 10-29D-45 has the site ID 15625 in the UDAQ oil and gas facilities' registration system. It is a part of the multi-well site where each well is designated under the same site ID. On April 20, 2017, the UDAQ issued LC Fee AO for LC Fee 8-29-45 to LINN Operating, Inc.. This AO also applies to LC Fee 10-29D-45 because LC Fee 10-29D-45 is listed under the same site ID as LC 8-29-45. The facilities with site ID 15625 were subsequently sold to Berry, and notification of ownership change was filed with UDAQ on August 16, 2017. *See* Notification of Ownership Change. The LC Fee AO was in effect at the time of the inspection and is currently in effect.

34. The LC Fee AO authorizes the operation of natural gas-fired pumpjack engines at LC Fee 10-29D-45. *See* Conditions II.A.2 and II.B.1.b. The LC Fee AO contains conditions applicable to pumpjack engines with a maximum engine power less than or equal to 25 HP, requiring compliance with NSPS Subpart JJJJ, specifically 40 C.F.R. §§ 60.4233(f)(1), 60.4243(c) and (e), and 60.4245, *see* Condition II.B.3.b, and generally with all applicable provisions of NSPS Subpart JJJJ, *see* Section III. The

LC Fee AO also requires that Berry use only natural gas as fuel in each engine on site. *See* Condition II.B.1.b.

35. LC Fee 10-29D-45 has an Arrow, C-101, 2014 engine (serial number BIC 101005; engine type 4SRB) with HP of 24.5 operating at the site.

II. FACTUAL BACKGROUND & FINDINGS OF VIOLATION

A. Factual Background

36. Berry Petroleum Company, LLC is a limited liability company incorporated in the State of Delaware and at all relevant times to this NOV was and is doing business in the State of Utah. Berry Petroleum Corporation, LLC is a subsidiary of Berry Corporation (bry), which is a publicly traded corporation incorporated in the State of Delaware. Berry Corporation (bry) is the sole member of its subsidiary, Berry Petroleum Corporation, LLC.

37. Berry is a "person" within the meaning of Section 302(e) of the Act. 42 U.S.C. § 7602(e).

38. Berry owns and/or operates oil and natural gas production facilities located in the Uinta Basin.

39. A pumpjack is a device used to extract crude oil from an oil well where there is not high enough pressure in the well to force the oil to the surface. A pumpjack engine powers the pumpjack and also may provide power to the heat-trace pumps, which provide heat to the rest of the natural gas production facility. All pumpjack engines operated by Berry are fueled with casing gas, which is field-quality natural gas. *See* 40 C.F.R. § 60.4248 ("Natural gas may be field or pipeline quality.").

40. Berry operates the engines continuously. When the production of oil and natural gas is down, the engines are still operated to generate power for heat trace circulation pumps or other onsite operations. In the response received from Berry on September 7, 2022, Berry noted that "the engines are operated at varying schedules from continuous operations to 25% operation." However, Berry does not maintain records to support engine operating status, such as hour meters or continuous parameter monitoring systems.

41. On September 8, 2021, and September 27, 2021, the EPA, the UDAQ, and the Ute Indian Tribal Air Program jointly conducted inspections of Berry's oil and natural gas production facilities in the Uinta Basin. Alliance Source Testing, LLC (Alliance), an EPA contractor, performed EPA Test Methods 3A, 7E, 10, 19, and 25A (stack testing) for 10 engines located at the oil and natural gas production facilities.
42. On November 15, 2021, the EPA sent an inspection report to Berry describing the September 8 and 27, 2021, inspection findings.
43. On July 19, 2022, and July 20, 2022, the EPA conducted inspections of Berry's oil and natural gas production facilities in the Uinta Basin. Alliance Source Testing, LLC (Alliance), an EPA contractor, performed EPA Test Methods 3A, 7E, 10, 19 and 25A for 16 engines located at the oil and gas production facilities.
44. On November 15, 2022, the EPA sent an inspection report to Berry describing the July 19, 2022, and July 20, 2022, inspection findings.
45. The pumpjack engines inspected were manufactured by Arrow Engine Company and bore markings for both the Arrow C-106 and Arrow C-101 model engines.
46. According to Arrow Engine Company's C-Series Overview specification sheet publicly posted to their website, the C-106 has a maximum engine power of 32 HP, whereas the Arrow C-101 has a maximum engine power of 24.5 HP.
47. When the EPA inspector asked why the engines bore both markings, the Berry representatives onsite explained that the engines were originally purchased as C-106 engines but were downrated to C-101 engines through the addition of an orifice plate installed between the carburetor and the cylinder head. The inlet valve to the carburetor is designed to restrict fuel flow, which purportedly reduces the maximum engine power to 24.5 HP.
48. After the inspection, Berry provided a maintenance spreadsheet purporting to show 2021 and 2022 maintenance dates for 16 of the engines inspected. The records provided do not show that Berry performed all required maintenance according to the maintenance schedule Arrow Engine Company specifies for its C-101 engines.

49. Additionally, the inspected engines have exceeded the Useful Life Period for the Arrow C-101 engine, which is 1,000 hours or 5 years.

50. Berry has not operated and maintained the engines according to Arrow Engine Company's written instructions, so the engines are considered non-certified.

B. Findings of Violation

1. NSPS Subpart JJJJ at Sites on State Lands and Subject to State AOs (jointly alleged by the EPA and Utah)

51. Berry owns and/or operates the four engines listed in Table 1 below, which qualify as SI ICE under NSPS Subpart JJJJ.

52. The SI ICE identified in Table 1 below are subject to the requirements of NSPS Subpart JJJJ because they were manufactured on or after January 1, 2011, and have a maximum engine power of less than 500 HP.

53. On information and belief, the SI ICE listed in Table 1 below are Arrow C-101 engines that have a maximum engine power of 24.5 HP.[1]

54. According to the certificates of conformity for Arrow C-101 engines manufactured on January 1, 2011, or later, the Engine Displacement Value is 6400 cc.

55. Accordingly, the SI ICE listed in Table 1 below are subject to the Phase III emissions standards for Class II engines stated in Table 1 of 40 C.F.R. § 1054.105(a), which includes a limit of 8.0 g/kW-hr [5.97 g/hp-hr] for HC + NO_x.

56. The stack test results from the inspections conducted on September 8, 2021, September 27, 2021, July 19, 2022, and July 20, 2022, demonstrate that the 13 SI ICE identified in Table 1 below exceeded the HC + NO_x emission standard of 8.0 g/kW-hr [5.97 g/hp-hr] in 40 C.F.R. § 1054.105(a), as set forth in Table 1.

[1] EPA and UDAQ may further investigate the reasons why the inspected engines contain markings for both Arrow C-106 and C-101 engines and may revise this NOV should it be determined that the engines are more properly classified as C-106 engines with a maximum engine power of 32 HP.

Table 1:

Facility Name	Year Inspected	Manufacturer, Model, Year Manufactured	Serial Number	Engine Type	HP	NMHC + NO_x (g/hp-hr)
Conolly Tribal 2-11D-54	2021	Arrow, C-101, 2014	BGC101022	4SRB	24.5	17.3
LC Fee 4-28D-45	2022	Arrow, C-101, 2014	BIC 101001	4SRB	24.5	106.03
LC Fee 8-29-45	2022	Arrow, C-101, 2012	310444C	4SRB	24.5	53.687
LC Fee 10-29D-45	2022	Arrow, C-101, 2014	BIC 101005	4SRB	24.5	16.85

57. Berry has operated and continues to operate the SI ICE identified in Table 1 in violation of 40 C.F.R § 60.4233(a) and the emission standards as set forth in 40 C.F.R. § 1054.105(a) Table 1.

58. Berry has not kept a maintenance plan and records of conducted maintenance for non-certified SI ICE listed in Table 1 to demonstrate compliance with the applicable emissions standards. Nor has Berry maintained and operated these engines in a manner consistent with good air pollution control practices for minimizing emissions. Therefore, Berry has operated and continues to operate the engines in violation of 40 C.F.R. § 60.4243(a)(2)(i).

59. Accordingly, Berry has violated and continues to violate Section 111(e) of the Act, 42 U.S.C. § 7411(e), and its implementing regulations at NSPS Subpart JJJJ, as well as the applicable State AOs.

2. NSPS Subpart JJJJ at Sites in Indian Country and Sites on State Lands not Subject to State AOs (alleged by EPA only)

60. Berry owns and/or operates the 9 engines listed in Table 2 below, which qualify as SI ICE under NSPS Subpart JJJJ.

61. The SI ICE identified in Table 2 below are subject to the requirements of NSPS Subpart JJJJ because they were manufactured on or after January 1, 2011, and have a maximum engine power of less than 500 HP.

62. On information and belief, the SI ICE listed in Table 2 below are Arrow C-101 engines that have a maximum engine power of 24.5 HP.[2]

63. According to the certificates of conformity for Arrow C-101 engines manufactured on January 1, 2011, or later, the Engine Displacement Value is 6400 cc.

64. Accordingly, the SI ICE listed in Table 2 below are subject to the Phase III emissions standards for Class II engines stated in Table 1 of 40 C.F.R. § 1054.105(a), which includes a limit of 8.0 g/kW-hr [5.97 g/hp-hr] for HC + NO_x.

65. The stack test results from the inspections conducted on September 8, 2021, September 27, 2021, July 19, 2022, and July 20, 2022, demonstrate that the 13 SI ICE identified in Table 2 below exceeded the HC + NO_x emission standard of 8.0 g/kW-hr [5.97 g/hp-hr] in 40 C.F.R. § 1054.105(a), as set forth in Table 2.

Table 2:

Facility Name	Year Inspected	Manufacturer, Model, Year Manufactured	Serial Number	Engine Type	HP	NMHC + NO_x (g/hp-hr)
Heiner Tribal 4-11-54	2021	Arrow, C-101, 2013	AIC101014	4SRB	24.5	7.44
Ute Tribal 03-10-54	2021	Arrow, C-101, 2012	310446C	4SRB	24.5	20.19
Ute Tribal 03-10-54	2022	Arrow, C-101, 2012	310441C	4SRB	24.5	46.14
State Tribal 1-18D-54	2022	Arrow, C-101, 2014	BAC 101021	4SRB	24.5	74.7
State Tribal 2-18D-54	2022	Arrow, C-101, 2014	BAC 101012	4SRB	24.5	28.72
State Tribal 8-18D-54	2022	Arrow, C-101, 2014	BAC 101005	4SRB	24.5	25.6

[2] EPA may further investigate the reasons why the inspected engines contain markings for both Arrow C-106 and C-101 engines and may revise this NOV should it be determined that the engines are more properly classified as C-106 engines with a maximum engine power of 32 HP.

Facility Name	Year Inspected	Manufacturer, Model, Year Manufactured	Serial Number	Engine Type	HP	NMHC + NO_x (g/hp-hr)
Appaloosa 9-12D-5-5	2022	Arrow, C-101, 2014	BIC 101013	4SRB	24.5	18.09
Wilcox Eliason 7-15-56	2022	Arrow, C-101, 2011	310193C	4SRB	24.5	11.85
LC Tribal 9-22D-56	2022	Arrow, C-101, 2012	310372C	4SRB	24.5	34.85

66. Berry has operated and continues to operate the SI ICE identified in Table 2 in violation of 40 C.F.R § 60.4233(a) and the emission standards as set forth in 40 C.F.R. § 1054.105(a) Table 1.

67. Berry has not kept a maintenance plan and records of conducted maintenance for non-certified SI ICE listed in Table 2 to demonstrate compliance with the applicable emissions standards. Nor has Berry maintained and operated these engines in a manner consistent with good air pollution control practices for minimizing emissions. Therefore, Berry has operated and continues to operate the engines in violation of 40 C.F.R. § 60.4243(a)(2)(i).

68. Accordingly, Berry has violated and continues to violate Section 111(e) of the Act, 42 U.S.C. § 7411(e), and its implementing regulations at NSPS Subpart JJJJ.

III. ENFORCEMENT AUTHORITY

69. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides the Administrator with the authority that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement of prohibition of the Act other than State Implementation Plans, including New Source Performance Standards, the Administrator may issue an order requiring such person to comply with the requirements or prohibition of the Act, issue an administrative penalty order in accordance with section 113(d) of the Act, or bring a civil action in accordance with section 113(b) of the Act for injunctive relief or civil penalties.

70. Section 19-2-107(2)(a)(xiii) of the Utah Code authorizes the Director of the UDAQ (subject to the provisions of the Utah Air Conservation Act) to enforce rules through the issuance of orders, including (A) prohibiting or abating discharges of wastes affecting ambient air; (B) requiring the construction of new control facilities or any parts of new control facilities or the modification, extension, or alteration of existing control facilities or any parts of new control facilities; or (C) adopting other remedial measures to prevent, control, or abate air pollution.

71. Section 19-2-110(1) of the Utah Code provides that whenever the Director "has reason to believe that a violation of any provision of this chapter [Utah Air Conservation Act, Title 19, Chapter 2] or any rule issued under it has occurred, the director may serve a written notice of the violation upon the alleged violator."

72. Violations of the State of Utah AOs may result in imposition of the civil penalties under Section 19-2-115(2)(a) of the Utah Code. Declaratory and injunctive relief may be sought under Section 19-2-116 of the Utah Code.

73. The issuance of this NOV does not in any way limit or preclude the EPA or the UDAQ from pursuing additional enforcement options concerning inspections referenced in this NOV. Also, this NOV does not preclude enforcement action for violations not specifically addressed in this NOV.

Date Issued: 7/31/2024

SUZANNE BOHAN
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Date: 2024.07.31 15:06:03 -06'00'

Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division
Environmental Protection Agency, Region 8

Date Issued: 07/30/2024

Bryce C. Bird, Director
Utah Division of Air Quality
Utah Department of Environmental Quality