

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 Renner Boulevard
Lenexa, Kansas 66219

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2019 SEP -4 PM 3: 10

In the Matter of:

MAGELLAN MIDSTREAM
PARTNERS, L.P.,

Respondent.

Proceedings under Sections 113(a)
and (d) of the Clean Air Act,
42 U.S.C. § 7413(a), (d)

)
) Docket No. CAA-07-2019-0260
)
)
)

) ADMINISTRATIVE COMPLAINT
) AND NOTICE OF OPPORTUNITY
) FOR HEARING
)
)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Complaint serves as notice that the U.S. Environmental Protection Agency (“EPA”) has reason to believe that Respondent has violated Sections 111 and 112 of the Clean Air Act (“CAA”), as amended, 42 U.S.C. §§ 7411, 7412, as alleged below.

3. Section 113(d) of the CAA states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to no more than \$37,500 per

day for each violation occurring after January 12, 2009 through November 2, 2015, and \$47,357 per day for each violation occurring after November 2, 2015, for which penalties are assessed on or after January 15, 2019.

4. The EPA Administrator and the United States Attorney General, through their delegated representatives, have jointly determined that this administrative penalty action is appropriate for a larger penalty amount or longer period of violation than the time and penalty limitations set forth in Section 113(d) of the CAA.

Parties

5. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator of the EPA Region 7, is the Director of the Enforcement and Compliance Assurance Division, EPA Region 7.

6. Respondent, Magellan Midstream Partners, L.P., is a Delaware limited partnership and is, and was at all times relevant to this Complaint, the owner and operator of the bulk gasoline terminals located at the Kansas City, Kansas; Mason City, Iowa; and Omaha, Nebraska facilities. Magellan is a “person” within the meaning of Sections 113(b) and 302(e) of the CAA, 42 U.S.C. §§ 7413(b) and 7602(e), and the applicable federal and state regulations promulgated pursuant to these statutes.

Statutory and Regulatory Framework

7. The Clean Air Act establishes a regulatory scheme designed “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).

New Source Performance Standards

A. General

8. Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), requires EPA to publish and periodically revise a list of categories of stationary sources including those categories that, in EPA's judgment, cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

9. Once a category is included on the list, Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), requires EPA to promulgate a federal standard of performance for new sources within the category, also known as a New Source Performance Standard ("NSPS"). Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a NSPS after the effective date of the NSPS applicable to such source.

10. "Owner or operator" is defined as "any person who owns, leases, operates, controls, or supervises a stationary source." 42 U.S.C. §§ 7411(a)(5).

11. "New source" is defined as "any stationary source, the construction or modification of which is commenced after the publication of [the NSPS] regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source." 42 U.S.C. § 7411(a)(2).

12. "Stationary source" is defined as a "building, structure, facility, or installation which emits or may emit any air pollutant." 42 U.S.C. § 7411(a)(3).

13. The New Source Performance Standards are located in Part 60 of Title 40 of the Code of Federal Regulations.

B. Part 60, Subpart A: General

14. Pursuant to Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), EPA promulgated regulations that contain general provisions applicable to all NSPS sources. 40 C.F.R. Part 60, Subpart A (“Part 60, Subpart A”).

15. Under Part 60, Subpart A, the provisions of 40 C.F.R. Part 60 “apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the publication [in Part 60] of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.” 40 C.F.R. § 60.1.

16. “Affected facility” is defined as “any apparatus to which a standard is applicable.” 40 C.F.R. 2§ 60.2.

17. “Modification” is defined as “any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted. Id.

18. Within Part 60, Subpart A, EPA promulgated a regulation that requires that any owner or operator subject to Part 60 to furnish the EPA written notification of “any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies.” This notice must be postmarked 60 days or as soon as practicable before the change is commenced and shall include information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change. 40 C.F.R. § 60.7(a)(4).

C. Part 60, Subpart Kb: Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984

19. Within Part 60, Subpart Kb, EPA promulgated specific regulations that apply to each storage vessel with a capacity greater than or equal to 75 cubic meters that is used to store volatile organic liquids and for which construction, reconstruction, or modification was commenced after July 23, 1984. 40 C.F.R. § 60.110b(a).

20. Storage vessels that are subject to Subpart Kb are thereby “affected facilities” under 40 C.F.R. § 60.2 and are therefore also subject to the requirements of Subpart A.

National Emission Standards for Hazardous Air Pollutants

A. General

21. Through the Clean Air Act Amendments of 1990, Congress established a list of 188 hazardous air pollutants believed to cause adverse health or environmental effects, 42 U.S.C. § 7412(b)(1), and directed EPA to publish a list of all “categories and subcategories” of “major sources” of hazardous air pollutants (“HAPs”). 42 U.S.C. § 7412(c).

22. “Owner or operator” is defined as “any person who owns, leases, operates, controls, or supervises a stationary source.” 42 U.S.C. § 7412(a)(9).

23. “Major source” is defined as any “stationary source” or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs. 42 U.S.C. § 7412(a)(1).

24. A “stationary source” is defined as any building, structure, facility, or installation which emits or may emit any air pollutant. 42 U.S.C. § 7412(a)(3).

25. An “area source” is any stationary source of HAPs that is not a major source. 42 U.S.C. § 7412(a)(2).

26. Congress directed EPA to promulgate regulations establishing emission standards for each category or subcategory of major sources of HAPs. 42 U.S.C. § 7412(d)(1). These emission standards must require the maximum degree of reduction in emissions of HAPs that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for the new or existing sources in the category or subcategory to which the emission standard applies. 42 U.S.C. § 7412(d)(2).

27. The emission standards promulgated under Section 112 of the CAA, 42 U.S.C. § 7412, are known as the National Emission Standards for Hazardous Air Pollutants (“NESHAPs”) for Source Categories. These emission standards are found in Part 63 of Title 40 of the Code of Federal Regulations.

28. After the effective date of any emission standard, limitation, or regulation promulgated pursuant to Section 112 of the CAA, no person may operate a source in violation of such standard, limitation, or regulation. 42 U.S.C. § 7412(i)(3).

B. Part 63, Subpart A: General

29. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated regulations that contain general provisions applicable to sources that are subject to the standards of Part 63 of Title 40 of the Code of Federal Regulations. 40 C.F.R. Part 63, Subpart A (“Part 63, Subpart A”).

30. Under Part 63, Subpart A, the provisions of 40 C.F.R. Part 63 “apply to the owner or operator of any stationary source that (i) [e]mits or has the potential to emit any hazardous air

pollutant listed in or pursuant to Section 112(b) of the Act [CAA]; and (ii) is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to this part.” 40 C.F.R. § 63.1(b).

C. Part 63, Subpart BBBBBB: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

31. Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA promulgated the NESHAP for Source Categories for Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities (also known as the “Gasoline Distribution NESHAP”). These standards are codified at 40 C.F.R. Part 63 Subpart BBBBBB (§ 63.11080 through § 63.11100).

32. 40 C.F.R. § 63.11081(a) states that Subpart BBBBBB of 40 C.F.R. Part 63 applies to each area source bulk gasoline terminal, pipeline breakout station, pipeline pumping station, and bulk gasoline plant identified in paragraphs (a)(1) through (4). For the purposes of Subpart BBBBBB, a bulk gasoline terminal is defined as any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, or cargo tank and has a gasoline throughput of 20,000 gallons per day or greater. *Id.* § 63.11100.

33. Each gasoline storage tank at a bulk gasoline terminal must meet the emission limit and management practices outlined in Subpart BBBBBB, Table 1. 40 C.F.R. § 63.11087(a). Generally, owners or operators of a gasoline storage tank that has a capacity of greater than or equal to 75 m³ must either: reduce emissions of total organic HAPs by 95 weight-percent with a closed vent system; equip each internal floating roof and external floating roof gasoline storage tank according to applicable requirements in 40 C.F.R. Part 60 Subpart Kb; or equip and operate each internal and external floating roof gasoline storage tank according to the applicable requirements in 40 C.F.R. Part 63 Subpart WW.

34. Pursuant to 40 C.F.R. § 63.11087(c), each gasoline storage tank at a bulk gasoline terminal must comply with the applicable testing and monitoring requirements specified in 40 C.F.R. § 63.11092(e). 40 C.F.R. § 63.11092(e) requires each owner or operator subject to 40 C.F.R. § 63.11087 for gasoline storage tanks to comply with the requirements of paragraphs (e)(1) through (3).

a. 40 C.F.R. § 63.11092(e)(1) states that if a gasoline storage tank is equipped with an internal floating roof, the owner or operator must perform inspections of the floating roof system according to the requirements of either 40 C.F.R. § 60.113b(a) (in Subpart Kb) or 40 C.F.R. § 63.1063(c)(1) (in Subpart WW). If a failure (as defined in each respective regulation) is noted during those inspections, the owner or operator must perform repairs within 45 days. 40 C.F.R. §§ 60.113b(a), 63.1063(e).

b. 40 C.F.R. § 63.11092(e)(2) states that if a gasoline storage tank is equipped with an external floating roof, the owner or operator must perform inspections of the floating roof system according to the requirements of either 40 C.F.R. § 60.113b(b) (in Subpart Kb) or 40 C.F.R. § 63.1063(c)(2) (in Subpart WW). If a failure (as defined in each respective regulation) is noted during those inspections, the owner or operator must perform repairs within 45 days. 40 C.F.R. §§ 60.113b(b), 63.1063(e).

Enforcement of the CAA by the United States

35. Section 113(a) of the CAA, 42 U.S.C. §§ 7413(a), authorizes EPA to issue an order if EPA finds that any person is in violation of any requirement or prohibition of a state implementation plan, a state-issued operating permit, the NSPS program, the NESHAP/MACT

program, the Title V permit program, or a Title V permit. Such order will require such person to comply with said requirement or prohibition. Section 113(a) also authorizes EPA to issue an order in accordance with Section 113(d) of the CAA.

36. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes EPA to issue an administrative penalty order whenever, on the basis of any available information, EPA finds that a person has violated, or is in violation of any requirement or prohibition of an applicable implementation plan; or rule, order, waiver, or permit promulgated, issued, or approved under, *inter alia*, Sections 111 and 112 of the CAA, 42 U.S.C. §§ 7411, 7412.

37. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), Magellan is liable for civil penalties of up to \$37,500 per day for each violation between January 12, 2009 through November 2, 2015; and \$47,357 per day for each violation occurring after November 2, 2015 in which penalties are assessed on or after January 15, 2019, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 84 Fed. Reg. 2058 (Feb. 6, 2019).

Factual Background

38. Respondent owns or operates bulk petroleum storage and distribution facilities located at or near the following locations: 1) 401 East Donovan Road in Kansas City, Kansas (“the KCK facility”), 2) 2810 East Main Avenue in Clear Lake, Iowa (the “Mason City facility”), and 3) 2205 North 11th Street in Omaha, Nebraska (the “Omaha facility”) (collectively referred to as the “Facilities”).

39. The KCK facility is a petroleum products and additives distribution terminal. The facility is comprised of incoming and outgoing pipelines, approximately 35-40 above-ground storage tanks, electric mainline pumping units, a loading rack with five loading bays, and a

railcar off-loading rack, among other things. The maximum mainline capacity into this facility is 18 million gallons per day, and has a throughput of more than 1.3 million gallons per day. Magellan's tanks receive and temporarily store liquid petroleum products from the mainline pipelines. The products are then delivered to the truck-loading rack or pumped back to the pipelines for transfer to other locations outside the terminal.

40. Magellan was issued a Class I Air Operating Permit ("Permit") by the Kansas City, Kansas, Public Health Department on January 11, 2005. This permit was renewed on December 8, 2009, with an expiration date of December 9, 2014. On March 15, 2013, Magellan submitted an application to renew its Permit.

41. Magellan's operating permit lists the following requirements among those that are applicable to the KCK facility: 40 CFR Part 60 Subparts A and Kb and 40 CFR Part 63 Subparts A and BBBB.

42. The Mason City facility is a bulk petroleum products and additives distribution terminal. The facility receives petroleum products, including gasoline and diesel fuel via pipeline and also receives ethanol by truck, for storage and distribution. The tank farm is composed of 11 above-ground petroleum storage tanks and other miscellaneous pipeline related equipment and additive tanks.

43. Magellan was issued a Title V Operating Permit (98-TV-006R3) by the Iowa Department of Natural Resources ("IDNR") on March 8, 2011. This permit was renewed on November 9, 2015, with an expiration date of November 8, 2020.

44. Magellan's operating permit lists the following requirements among those that are applicable to the Mason City facility: 40 CFR Part 60 Subparts A and Kb and 40 CFR Part 63 Subpart BBBB.

45. The Omaha facility is a bulk petroleum products and additives distribution terminal. The facility receives petroleum products, including gasoline and diesel fuel oil, via pipeline and also receives ethanol by truck, for storage and distribution. The tank farm is comprised of 27 above-ground petroleum product storage tanks and other miscellaneous pipeline related equipment and additive tanks. These 27 tanks have a combined capacity of over 39 million gallons.

46. The City of Omaha issued Magellan a Class I Title V operating permit on November 12, 2012, which was later modified on July 11, 2016.

47. Magellan's operating permit lists the following requirements among those that are applicable to the Omaha Facility: 40 CFR Part 60, Subpart Kb and 40 CFR Part 63, Subpart BBBB. BBBB.

48. The claims in this Complaint relate to Magellan's bulk petroleum product storage tanks at these Facilities.

49. As part of EPA's investigation into Magellan's compliance status with the CAA, EPA issued a Section 114 information request on September 12, 2013, requiring Magellan to provide information about certain tanks at its Kansas City facility. Magellan responded to this information request on December 11, 2013.

50. EPA sent a second information request letter on December 7, 2016, to provide updated information on the Kansas City facility, as well as provide information about Magellan's Great Bend, Mason City, and Omaha facilities. Magellan responded to this information request on February 23, 2017.

General Allegations

51. Magellan is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
52. Magellan is the “owner or operator,” within the meaning of the CAA, of the KCK, Mason City, and Omaha Facilities.
53. Each of the facilities receives petroleum products, including gasoline and diesel fuel oil, from refineries primarily by pipeline, and delivers gasoline to bulk gasoline plants.
54. As a result, all three facilities are considered bulk gasoline terminals, as that term is defined in 40 C.F.R. Part 63, Subpart BBBBBB.
55. By storing gasoline and petroleum products in the storage tanks at these facilities, each facility is an area source of HAPs. These HAPs include, but are not limited to, benzene, ethyl benzene, hexane, toluene, xylenes, and 2,2,4-trimethylpentane, and are thus subject to the Gasoline Distribution NESHAP.
56. EPA conducted inspections of the KCK Facility on July 10-12, 2012, and on September 8, 2014. During this time, the EPA inspector observed emissions of VOCs around the loading rack and associated vapor recovery system, as well as at the petroleum storage tanks.
57. EPA conducted an inspection of the Omaha facility on September 13 and 14, 2016. During this time, the EPA inspector observed emissions of VOCs around the loading rack and associated vapor collection system, as well as at a number of loading bays and petroleum storage tanks.

Violations

CLAIM 1: Failure to Take Primary and/or Secondary Seal Gap Measurements in a Timely Manner – Kansas City Facility

58. Plaintiff realleges and incorporates by reference the foregoing Paragraphs.

59. Magellan owns and operates Tanks 644, 735, 1242, and 1303 at the KCK facility.

These tanks all have external floating roofs.

60. Pursuant to 40 C.F.R. § 63.11092(e), which is contained within SubpartBBBBBB, each owner or operator who has an external floating roof must perform inspections of the floating roof system in accordance with the requirements of either 40 C.F.R. § 60.113b(b) or § 63.1063(c)(2).

61. Pursuant to 40 C.F.R. § 60.113b(b)(1), for external floating roofs, the owner or operator must measure the gap areas and maximum gap widths between the primary seal and the wall of the storage vessel, and between the secondary seal and the wall of the storage vessel, within 60 days of the initial fill with volatile organic liquids, and at least once every 5 years thereafter.

62. Based on information provided by Magellan in its information request responses and its correspondence with the Wyandotte County Health Department, Magellan failed to take primary and/or secondary seal gap measurements within the first 60 days of initial fill at Tanks 644, 735, 1242, and 1303 at the Kansas City facility, in violation of either 40 C.F.R. § 60.113b(b)(1).

CLAIM 2: Failure to Conduct Tank Inspections in a Timely Manner – Mason City Facility

63. Plaintiff realleges and incorporates by reference the foregoing Paragraphs.

64. Magellan owns and operates Tank 635 at the Mason City facility. Tank 635 has an internal floating roof.

65. Pursuant to 40 C.F.R. § 63.11092(e), which is contained within Subpart BBBBBB, each owner or operator who has an internal floating roof must perform inspections of the floating roof system in accordance with the requirements of either 40 C.F.R. § 60.113b(a) or § 63.1063(c)(1).

66. For Tank 635, Magellan elected to comply with the requirements of 40 C.F.R. § 60.113b(a) when it installed a slotted Guidepole in 2003.

67. Pursuant to 40 C.F.R. § 60.113b(a)(4), the owner or operator must visually inspect the internal floating roof, the primary seal, the secondary seal (if one is in service), gaskets, slotted membranes and sleeve seals (if any) each time the storage vessel is emptied and degassed. In no event shall such inspections occur at intervals greater than 10 years.

68. Based on information provided by Magellan in its information request responses, Magellan did not conduct the required 10-year inspection of the internal floating roof of Tank 635 at the Mason City Facility in a timely manner, in violation of 40 C.F.R. § 60.113b(a)(4).

CLAIM 3: Failure to Notify Permitting Authority of an Operational Change that May Increase Pollutant Emissions – Mason City Facility

69. Plaintiff realleges and incorporates by reference the foregoing Paragraphs.

70. Slotted guidepoles are hollow poles with holes or slots that perforate the length of the pole and are typically a foot long and 1-2 inches wide. Where the pole passes through a floating roof, there is an opening in the roof and a gap between the pole and the roof. These holes, slots and gaps can constitute a pathway for evaporative product losses and VOC emissions.

71. On Tank 635 at the Mason City Facility, Magellan installed a slotted guidepole in 2003. This constitutes a “modification” as defined in Subpart Kb, since this was a physical or operational change to an existing facility which may have increased the emission rate of any air pollutant to which a standard applies.

72. Magellan did not provide EPA with timely written notice that this tank was undergoing this physical or operational change, in violation of 40 C.F.R. § 60.7(a).

**CLAIM 4: Failure to Complete Required Repairs to Tank within 45 days –
Omaha Facility**

73. Plaintiff realleges and incorporates by reference the foregoing Paragraphs.

74. Magellan owns and operates Tank 1412 at the Omaha facility. Tank 1412 has an internal floating roof.

75. For Tank 1412, Magellan elected to comply with Part 63, Subpart BBBB, and specifically, with the floating roof inspection and repair requirements of Subpart WW.

76. On or about August 29, 2013, an inspection conducted by Magellan indicated a worn column well, gauge funnel and gauge pole and ladder well seals, as well as gaps and product stains on the roof of Tank 1412 of the Omaha Facility. The inspection report indicated that these seals should be replaced.

77. These observed conditions constitute inspection failures, as defined in 40 C.F.R. § 63.1063(d), thereby triggering a requirement to perform repairs within 45 days.

78. Magellan’s records indicate that these inspection failures were not repaired until at least January 14, 2014, which is more than 45 days after the issues were first detected, in violation of 40 C.F.R. § 63.1063(e).

**CLAIM 5: Failure to Conduct Tank Inspections in a Timely Manner –
Omaha Facility**

79. Plaintiff realleges and incorporates by reference the foregoing Paragraphs.

80. Magellan owns and operates Tank 637 at the Omaha Facility. This tank has an internal floating roof.

81. Tank 637 became subject to the requirements of Subpart Kb when Magellan installed a slotted ladder in 2006.

82. Pursuant to 40 C.F.R. § 60.113b(a)(4), the owner or operator must visually inspect the internal floating roof, the primary seal, the secondary seal (if one is in service), gaskets, slotted membranes and sleeve seals (if any) each time the storage vessel is emptied and degassed. In no event shall such inspections occur at intervals greater than 10 years.

83. Magellan conducted an out-of-service inspection on Tank 637 in 2006, and therefore was required to conduct the next inspection no later than 2016.

84. Based on information provided by Magellan in its information request responses and its annual compliance certifications, Magellan did not conduct the required 10-year inspection of the internal floating roof of Tanks 637 by the end of 2016, in violation of 40 C.F.R. § 60.113b(a)(4).

**CLAIM 6: Failure to Notify Permitting Authority of an Operational Change that May
Increase Pollutant Emissions – Omaha Facility**

85. Plaintiff realleges and incorporates by reference the foregoing Paragraphs.

86. Magellan owns and operates Tanks 637, 740, and 750 at the Omaha Facility.

87. On Tank 637 at the Omaha facility, Magellan installed a slotted guidepole prior to 2006. This constitutes a “modification” as defined in Subpart Kb, since this was a physical or

operational change to an existing facility which may have increased the emission rate of any air pollutant to which a standard applies.

88. On Tank 740 at the Omaha facility, Magellan installed a slotted guidepole in 2006. This constitutes a “modification” as defined in Subpart Kb, since this was a physical or operational change to an existing facility which may have increased the emission rate of any air pollutant to which a standard applies.

89. On Tank 750 at the Omaha facility, Magellan installed a slotted ladder and gauge well in 2004. This constitutes a “modification” as defined in Subpart Kb, since this was a physical or operational change to an existing facility which may have increased the emission rate of any air pollutant to which a standard applies.

90. Magellan did not provide EPA with written notice that Tanks 637, 740 and 750 were undergoing this physical or operational change, in violation of 40 C.F.R. § 60.7(a).

Relief

91. By this Complaint, Complainant seeks to assess civil penalties against Respondent of up to \$37,500 per day per violation occurring after January 12, 2009 and on or before November 2, 2015, and \$47,357 per day per violations for violations occurring after November 2, 2015, where the penalties are assessed on or after January 15, 2019. *See* 42 U.S.C. § 7413(d)(1); 40 C.F.R. Part 19.4 (Tables 1 and 2); *see also* Pub. L. 104-134 (Civil Monetary Inflation Rule); 84 Fed. Reg. 2059 (Feb. 6, 2019).

92. In determining the amount of the penalty to be assessed under Section 113 of the CAA, EPA must take into consideration the size of the violator’s business, the economic impact of the penalty on the business, the violator’s full compliance history and good faith efforts to comply, the duration of the violations, payment by the violator of penalties previously assessed

for the same violations, the economic benefit of the violations, the seriousness of the violations, and such other factors as justice may require. *See* CAA Section 113(e), 42 U.S.C. § 7413(e).

93. To assess a penalty for the alleged violations set forth in this Complaint, Complainant will take into account the particular facts and circumstances of this case with specific reference to EPA's *Clean Air Act Stationary Source Penalty Policy* ("Penalty Policy"), dated October 25, 1991. The Penalty Policy assigns penalty components reflecting the seriousness or the gravity of the violations and the size of the violator's business. The Penalty Policy also provides for a penalty component based on the estimated economic benefit Respondent derived from the violations. Adjustments to a proposed penalty are considered in light of the violator's degree of willfulness or negligence in committing the violations, its degree of cooperation with the EPA, any good faith efforts to comply, and any pertinent compliance history or previous penalty payments for the same violation. The Penalty Policy provides a rational, consistent, and equitable methodology for applying the statutory penalty factors enumerated above to particular cases.

94. Complainant proposes that Respondent be assessed a civil penalty in the amount of \$420,853 for the CAA violations alleged in this Complaint. Complainant's civil penalty request is based on the best information available to the EPA at the time the Complaint is issued. The proposed penalty may be adjusted in the EPA's discretion if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate civil penalty amount.

95. Payment of the total penalty may be made by certified or cashier's check payable to the Treasurer, United States of America, referencing Docket Number CAA-07-2019-0260, and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency".

A copy of the check of other payment must simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219;

and

Alex Chen, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

NOTICE OF OPPORTUNITY FOR HEARING

Answer and Request for Hearing

96. In accordance with Section 113 of the CAA and 40 C.F.R. § 22.14, Respondent may request a hearing to contest any material fact contained in the Complaint above or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, a copy of which is enclosed herein.

97. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to hearing, Respondents must file a written Answer within thirty (30) days of receipt of this Complaint if Respondent: a) contests any material fact upon which this Complaint is based; b) contends that the penalty proposed in this Complaint is inappropriate; or c) contends that it is entitled to judgment as a matter of law. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer shall so state. Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes an admission of the allegation. The Answer shall also state: a) the circumstances or arguments which are alleged to constitute the grounds of any defense; b) the facts that Respondent disputes; c) the basis for opposing the proposed penalty; and d) whether a hearing is requested.

98. Respondent's written Answer to the Complaint, and any motions or other filings prior to the filing of the Answer, should be filed with the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

99. After the filing of a Respondent's Answer to the Complaint, the Hearing Clerk at EPA Headquarters will serve as the Regional Hearing Clerk, and all further filings in this matter must be filed with the Hearing Clerk at the following addresses, as appropriate:

If Using the US Postal Service:

Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Avenue, NW
Washington, DC 20460

If Using UPS/FedEx/DHL:

Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20460

100. Additionally, Respondent may file and serve documents using electronic filing, pursuant to the terms of the August 11, 2014, Standing Order, issued by EPA's Office of Administrative Law Judges, which may be found at the following internet address:

<https://www.epa.gov/sites/production/files/2014-10/documents/alj-standing-order-efiling.pdf>

Default

101. If, within thirty (30) days of receipt of a Complaint, a Respondent fails to file a written Answer to the Complaint, the Respondent may be found in default. Default by a Respondent constitutes, for the purposes of this proceeding, an admission of all facts alleged in

the Complaint and a waiver of a Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Office and the civil penalty proposed in the Complaint shall be assessed unless the Presiding Officer finds that the proposed penalty is clearly inconsistent with the record of the proceeding or the CAA.

Informal Settlement Conference

102. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the CAA and the regulations upon which this action is based. Regardless of whether Respondents request a hearing, Respondents may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request an informal settlement conference, please Contact:

Alex Chen, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Telephone: (913) 551-7962.

103. Any settlement which may be reached as a result of such a conference shall be recorded in a written consent agreement signed by all parties or their representatives and shall conform with the provisions of Section 22.18(b)(2) of the Consolidated Rules. No settlement or consent agreement shall dispose of this proceeding without a final order from the Regional Judicial Officer or the Regional Administrator.

104. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer must be filed.

In the Matter of
Magellan Midstream Partners, L.P.
Complaint and Notice of Opportunity for Hearing
Docket No. CAA-07-2019-0260



DeAndré Singletary, Acting Director
Enforcement and Compliance Assurance Division




Alex Chen, Senior Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, on this date. A true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits were sent by certified mail to Respondent:

The Corporation Company, Inc.
Registered Agent
Magellan Midstream Partners, L.P.
112 SW 7th Street Suite 3C
Topeka, Kansas 66603


for Lisa Haugen
Regional Hearing Clerk