

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2013 JUN -5 AM 9:53

In the Matter of:

National Cooperative Refinery Association) Docket No. CAA-07-2013-0015
2000 South Main Street)
McPherson, Kansas 67460)

ADMINISTRATIVE ORDER ON CONSENT

This Order is entered into voluntarily by the United States Environmental Protection Agency, Region 7 (EPA) and by the Respondent National Cooperative Refinery Association (NCRA), pursuant to Section 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. 7413(a)(3)(B), as amended. This Order requires Respondent to comply with the regulations in § 60.107a as promulgated by EPA pursuant to Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B). Specifically, EPA orders Respondent to install hydrogen sulfide, total reduced sulfur, and nitrogen oxides (NOx) continuous emissions monitoring systems and conduct associated performance testing, as required by 40 C.F.R. §§ 60.107a and 60.104a(j). All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion may be specified herein. The terms of this Order shall not be modified except by a subsequent written agreement between the parties.

I. Statutory and Regulatory Background

1. 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. 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.

2. Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), requires the Administrator of the EPA to promulgate regulations establishing federal standards of performance for new sources of air pollution within each of these categories.

3. "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)

4. "New Sources" are defined as stationary sources, the construction or modification of which is commenced after the publication of the New Source Performance Standards (NSPS)

regulations or proposed NSPS regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a)(2).

5. Pursuant to Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(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.

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

7. The provisions of 40 C.F.R. Part 60 Subpart Ja apply to “affected facilities” which include, *inter alia*, fuel gas combustion devices (including process heaters) that commenced construction, modification or reconstruction after May 14, 2007 and flares that commenced construction, modification or reconstruction after June 24, 2008. 40 C.F.R. § 60.100a(a), (b).

8. “Construction” is defined as the fabrication, erection, or installation of an affected facility. 40 C.F.R. § 60.2.

9. “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.

10. 40 C.F.R. § 60.107a(c) requires the owner or operator of an affected process heater subject to the NOx emission limit in § 60.102a(g)(2) to comply with the requirements in § 60.107a(c)(1) through (5).

11. 40 C.F.R. § 60.107a(a) requires the owner or operator of an affected flare that is subject to the H2S concentration requirements in § 60.103a(h) to comply with the requirements in § 60.107a(a)(2).

12. 40 C.F.R. § 60.107a(e) requires the owner or operator of an affected flare subject to § 60.103a(c) through (e) to determine the total reduced sulfur (TRS) concentration for each gas line directed to the affected flare.

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

II. Finding of Facts and Conclusion of Law

14. National Cooperative Refinery Association (NCRA) is organized under the Kansas Cooperative Marketing Act, and is authorized to do business in Kansas. NCRA is engaged in the petroleum business, and owns and operates a refinery located in McPherson, Kansas.

15. NCRA is 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 these statutes. NCRA is the “owner or operator” of the refinery as defined in Section 111 of the CAA, 42 U.S.C. § 7411.

16. Respondent’s refinery is a “stationary source” as defined by 42 U.S.C. § 7411(a)(3).

17. NCRA is the “owner or operator” of the refinery as defined in Section 111 of the CAA, 42 U.S.C. § 7411.

18. Respondent modified the vacuum unit charge heater, HF-11 (“Process Heater”) after May 14, 2007, and therefore is an affected facility pursuant to the NSPS.

19. Respondent has not installed an instrument for continuously monitoring and recording the concentration of NO_x emissions from the Process Heater into the atmosphere.

20. Respondent installed a new flare (“Main Flare” or “Flare”) at the refinery during calendar year 2010. The Flare became operational (startup) on or about November 1, 2010 and therefore is an affected facility pursuant to the NSPS.

21. Respondent has not installed an instrument for continuously monitoring and recording total reduced sulfur (TRS) in the gas discharged to the Flare.

22. Respondent has not installed an instrument for continuously monitoring and recording the concentration of H₂S in the fuel gases before being burned in the Flare.

23. By failing to install the required monitoring instrument(s) on the new Main Flare and Process Heater, conduct performance evaluations and testing, and monitor streams, Respondent is in violation of NSPS Ja. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the operation of any new or modified source in violation of an NSPS applicable to such source.

IV. Compliance Order

24. Based upon the foregoing Findings of Fact and Conclusion of Law, it is hereby ordered and agreed that Respondent NCRA shall achieve compliance with the NSPS Subpart Ja at the Main Flare and vacuum unit charge heater, HF-11.

25. Install CEMS – Respondent shall:

- a. install a NOx CEMS to monitor NOx emissions from the Process Heater pursuant to § 60.107a(c) no later than December 1, 2013;
- b. install a H2S CEMS to monitor the fuel gases before being burned in the Flare pursuant to § 60.107a(a)(2) no later than December 1, 2013; and
- c. install a total reduced sulfur (TRS) monitor to monitor TRS in gas discharged to the Flare pursuant to § 60.107a(e)(1) no later than December 1, 2013.

26. Performance Evaluations – Respondent shall:

- a. conduct a performance evaluation on the NOx CEMS pursuant to § 60.107a(c)(2) no later than February 1, 2014;
- b. conduct a performance evaluation on the H2S CEMS pursuant to § 60.107a(a)(2)(ii) no later than February 1, 2014; and
- c. conduct a performance evaluation on the TRS CEMS pursuant to § 60.107a(e)(1)(ii) no later than February 1, 2014.

27. Performance Test on Main Flare – Respondent shall conduct a performance test on the Main Flare pursuant to § 60.104a(j) and § 60.107a(a)(2)(i)-(iv) no later than February 1, 2014.

28. Notifications – Respondent shall:

- a. provide written notice of completion within 15 days of installing the CEMS required by Paragraph 25;
- b. provide written notification 30 days prior to conducting the performance evaluations and performance tests required by Paragraph 26 and 27;
- c. provide copies of the final performance evaluation reports within 60 days of the performance evaluations required by Paragraph 26, in accordance with §60.13(c); and
- d. provide copies of the final performance test results within 60 days of the performance test required by Paragraph 27, in accordance with §60.8.

29. All documentation and notifications required to be submitted to EPA by this Order shall contain the following certification signed by an officer of the Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

30. The submissions required by paragraph 28 shall be made via Certified Mail to:

Bill Peterson
Air Permitting and Compliance Branch
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

31. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

VII. Stipulated Penalties

32. Respondent shall be liable for stipulated penalties in the amounts set forth in this paragraph for failure to comply with the requirements of this Order.

a) The following stipulated penalties shall accrue per violation per day for failure to comply with the requirements of paragraph 25 (Installation of CEMS) of this Order:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$2,500	1st through 30th day
\$5,000	31st day and beyond

b) The following stipulated penalties shall accrue per violation per day for failure to comply with the requirements of paragraphs 26 and 27 (Performance Evaluation/Performance Test) of this Order:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 30th day
\$2,000	31st day and beyond

c) The following stipulated penalties shall accrue per day for failure to submit the notifications as required by paragraph 28 (Notification and Submittal of Results) of this Order:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 30th day
\$750	31st day and beyond

33. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity.

34. The payment of penalties shall not alter in any way Respondent's obligation to comply with the provisions of this Order.

35. All penalties accruing under this section shall be due and payable to the United States within thirty (30) days of Respondent's receipt from EPA of a demand for payment of penalties. All payments to the United States under this section shall be paid by certified or cashier's check made payable to "Treasurer, United States of America" and remitted to:

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

36. Failure to pay any portion of the stipulated penalties on the date upon which they are due will result in the accrual of interest on the unpaid portion of the stipulated penalties at the rate of two percent (2%) per annum.

VIII. Potential Liability

37. Section 113(a)(3)(B) of the Clean Air Act grants EPA the authority to issue an Order to Comply to any person found in violation of Section 112(r) of the Clean Air Act and the regulations promulgated pursuant thereto.

38. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the Clean Air Act, 42 U.S.C. § 7413. Under Section 113(a) of the Clean Air Act, the Administrator is authorized to address such a violation as follows:

- a. Issue an administrative penalty order assessing a civil penalty not to exceed \$32,500 per day of violation;
- b. Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$32,500 per day of violation, or both; or
- c. Request the Attorney General to commence a criminal action pursuant to Section 113(c) of the Clean Air Act.

39. Issuance of this Order does not preclude the State of Kansas or EPA from assessing penalties or taking any other action authorized under the Act. This Order does not affect the obligation of the Respondent to comply with all federal, state and local statutes, regulations and permits.

40. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which Respondent may have with respect to any issue of fact or law or any terms and conditions set forth in this Order, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

41. This Order shall become effective on the date that it is signed by the EPA Director of the Air and Waste Management Division and a copy of the signed Order is received by Respondent.
42. This Order shall terminate one year from the effective date of this Order.
43. This Order is binding on the Parties signing below.

COMPLAINANT:

U. S. ENVIRONMENTAL PROTECTION AGENCY

By Becky Weber
Becky Weber
Director
Air and Waste Management Division

Date: 6/3/13

RESPONDENT:

NATIONAL COOPERATIVE REFINERY ASSOCIATION

By Richard K. Leicht
(signature)

Printed Name Richard K. Leicht

Title Vice President-Refining

Date: 5/20/13

IN THE MATTER OF National Cooperative Refinery Association, Respondent
Docket No. CAA-07-2013-0015

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

laboda.sarah@epa.gov

Copy by email Respondent:

rheflin@ncra.coop

JDomike@kilpatricktownsend.com

Dated: 10/5/13



Kathy Robinson
Hearing Clerk, Region 7