



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

Ref: ENF-L

AUG 19 2015

CERTIFIED MAIL # 7008 3230 0003 0726 0665
RETURN RECEIPT REQUESTED

Mr. Stoney Vining, Senior Counsel
Tesoro Companies, Inc.
19100 Ridgewood Parkway
San Antonio, Texas 78259

Re: Notice of Violation

Dear Mr. Vining:

Enclosed is a Notice of Violation (NOV) issued to Tesoro Refining & Marketing Company LLC (Tesoro), under section 113(a)(1) of the Clean Air Act, 42 U.S.C. § 7413(a)(1). In the NOV, the United States Environmental Protection Agency notifies Tesoro of violations of the Prevention of Significant Deterioration provisions of the Clean Air Act, 42 U.S.C. §§ 7410 and 7475, at the Fluidized Catalytic Cracking Unit located at the Tesoro refinery in Salt Lake City, Utah.

Please note the opportunity to confer outlined in the NOV. As indicated in the NOV, any request to confer should be directed to David Rochlin of my staff. He can be reached at 303-312-6892.

Sincerely,

for Suzanne J. Bohan
Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosure

cc: Bryce Bird, Director Utah Division of Air Quality
Elizabeth Loeb, DOJ
Stacie Fletcher, Gibson, Dunn & Crutcher

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 8 2015 AUG 19 PM 2: 33

IN THE MATTER OF:)
)
)
TESORO REFINING & MARKETING)
COMPANY LLC,)
)
)
Proceedings Pursuant to Section 113(a)(1))
Of the Clean Air Act, 42 U.S.C. § 7413(a)(1))
_____)

FILED
EPA REGION VIII
HEARING CLERK
Notice of Violation

DOCKET NO.: CAA-08-2015-0015

NOTICE OF VIOLATION

This Notice of Violation (NOV) is issued to Tesoro Refining & Marketing Company LLC (Tesoro) for violations of the Clean Air Act, as amended (CAA), 42 U.S.C. §§ 7401-7671q, at Tesoro’s refinery in Salt Lake City, Utah.

Tesoro modified and operated its Fluidized Catalytic Cracking Unit (FCCU) at the Utah refinery without first obtaining an appropriate permit authorizing the construction and/or modification and subsequent operation of the FCCU, as required by the CAA, the applicable federal regulations, and the applicable state implementation plan (SIP). Tesoro also failed to apply the best available control technology (BACT) to control emissions of nitrogen oxides (NOx), as required by the applicable federal regulations and the SIP.

This NOV is issued pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). Section 113(a)(1) of the CAA requires the Administrator of the U.S. Environmental Protection Agency (EPA) to notify any person in violation of an applicable implementation plan or permit of the violations, and to notify the state. The authority to issue this NOV has been delegated to the undersigned EPA official.

STATUTORY AND REGULATORY BACKGROUND

1. Section 109 of the CAA, 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 those air pollutants (criteria pollutants) for which air quality criteria have been issued pursuant to Section 108 of the CAA, 42 U.S.C. § 7408.

2. Under Section 107(d) of the CAA, 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. An area that meets the NAAQS for a particular pollutant is an “attainment”

area. An area that does not meet the NAAQS is a “nonattainment” area. An area that cannot be classified due to insufficient data is designated as “unclassifiable.”

3. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the attainment and maintenance of the NAAQS. Pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), and 40 C.F.R. § 52.23, the Administrator thereafter retains the power to enforce any applicable requirement set out in the applicable implementation plan.

Prevention of Significant Deterioration

4. Part C of Title I, Sections 160-169B of the CAA, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration (PSD) of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS. These PSD 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. EPA’s regulations for the PSD program are codified at 40 C.F.R. § 52.21 (herein referred to as the PSD regulations).

5. The CAA and the PSD regulations prohibit the construction, modification or operation of a “major stationary source” in an attainment or unclassifiable area except in compliance with the CAA and the PSD regulations. See Section 165 of the CAA, 42 U.S.C. § 7475. More specifically, the CAA and the PSD regulations prohibit the construction, major modification, and subsequent operation of a major emitting facility in an area designated as attainment or unclassifiable unless a permit has been issued setting forth emission limitations for such facility that conform to the PSD requirements. See 40 C.F.R. § 52.21(a)(2)(iii).

6. Section 161 of the CAA, 42 U.S.C. § 7471, requires applicable 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.

7. A state or regional air authority may comply with Section 161 of the CAA, 42 U.S.C. § 7471, 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 by EPA as part of its SIP, which must be at least as stringent as the requirements set forth at 40 C.F.R. § 51.166. Delegated or federally approved PSD programs are in effect in the area where the refinery at issue in this matter is located. See 40 C.F.R. Part 52 Subpart TT for Utah.

8. A “major emitting facility” is a stationary source in one of the types of source categories listed in Section 169(1) of the CAA that emits or has the potential to emit one hundred tons per year (tpy) or more of a regulated air pollutant. See Section 169(1) of the CAA, 42 U.S.C. § 7479(1). A “major stationary source” is a stationary source that emits or has the potential to emit one hundred tons per year or more of any regulated new source review (NSR)

pollutant, which includes any pollutant for which a NAAQS has been promulgated. 40 C.F.R. § 52.21(b)(1)(i)(a), (b)(50)(i). The Tesoro Salt Lake City refinery is a major emitting facility within the meaning of 42 U.S.C. § 7479(1), 40 C.F.R. § 52.21(b)(1)(i)(a) and (b)(50)(i) and a major stationary source as defined in Section 302(j) of the CAA, 42 U.S.C. § 7602(j), and 40 C.F.R. § 52.21(b)(1)(i)(a).

9. Nitrogen oxides (NO_x) are regulated PSD pollutants. See 40 C.F.R. § 52.21(b)(50).

10. A “major modification” includes 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 a criteria air pollutant. See 40 C.F.R. § 52.21(b)(2)(i). A NO_x net emission increase is “significant” under the PSD regulations if it equals or exceeds 40 tpy. See 40 C.F.R. § 52.21(b)(23)(i).

11. 40 C.F.R. § 52.21(a)(2)(iii) provides that, “No stationary source to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit which states that the major stationary source or major modification would meet those requirements.”

FACTUAL BACKGROUND

12. Tesoro owns and operates a refinery in Salt Lake City, Utah, at 474 West 900 North.

13. At that refinery, Tesoro refines petroleum products using the FCCU as part of the process.

14. The refinery is a “major stationary source” of NO_x, as defined in 40 C.F.R. Part 52 because at all times relevant herein, it has had the potential to emit at least 100 tpy of NO_x.

15. The refinery is a major emitting facility with a potential to emit 100 tpy or more of one or more regulated NSR pollutants as defined in 42 U.S.C. § 7479(1) and 40 C.F.R. § 52.21(b)(1)(i)(a).

16. The refinery is located in a designated attainment area for NO_x and ozone (for which NO_x is a precursor pollutant) and has the potential to emit 100 tpy of one or more regulated NSR pollutants.

17. The refinery is subject to the PSD regulations at 40 C.F.R. Part 52 and the applicable Utah SIP.

18. Tesoro is a “person” within the meaning of Section 113(a) of the CAA, 42 U.S.C. § 7413(a), and as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

VIOLATIONS

19. In 2007, Tesoro constructed and/or modified the Salt Lake City FCCU reactor and regenerator, and following such construction and/or modification, operated the FCCU without first obtaining appropriate permits authorizing the construction and/or modification and subsequent operation of the FCCU; and failed to apply BACT to control emissions of NO_x as the CAA, the applicable federal regulations, and the SIP require.

20. The major modifications performed at the Tesoro Salt Lake City FCCU resulted in a significant net emission increase of NO_x, a regulated NSR pollutant as defined by 40 C.F.R. § 52.21(b)(3)(i) and the Utah SIP.

21. From the time Tesoro performed the major modification(s) to the refinery's FCCU, Tesoro's actions have violated and continue to violate Section 165(a) of the CAA, 42 U.S.C. § 7475(a), and the PSD regulations set forth in 40 C.F.R. § 52.21, and the Utah SIP, by undertaking such major modification(s) and operating the FCCU at the refinery without first obtaining PSD permits as required by 40 C.F.R. § 52.21(a)(2)(iii); and by failing to apply BACT for control of NO_x as required by 40 C.F.R. § 52.21(j) and the Utah SIP.

ENFORCEMENT

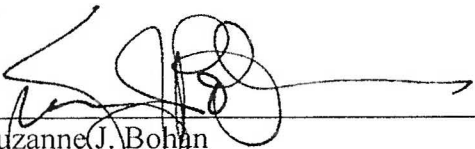
Section 113(a)(1) of the CAA provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the State Implementation Plan or permit, or bring a civil action pursuant to subsection 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation occurring before January 30, 1997. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2471, as amended by 31 U.S.C. § 3701, and as provided in 40 C.F.R. Part 19, the civil penalty amounts increased as follows: \$27,500 per day for each violation occurring on or after January 30, 1997, and before March 15, 2004; \$32,500 per day for each violation occurring on or after March 15, 2004, and before January 12, 2009; and \$37,500 per day for each violation occurring on or after January 12, 2009.

OPPORTUNITY FOR CONFERENCE

Upon request, Tesoro may confer with the EPA. The conference would enable Tesoro to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. Tesoro has a right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

David Rochlin, Senior Air Enforcement Attorney
Legal Enforcement Program (ENF-L)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

8/19/15
Date



Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date noted below, the original and a copy of the NOTICE OF VIOLATION (NOV) were hand-carried to the Regional Hearing Clerk, U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202 and that a true copy of the same was sent to the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Mr. Stoney Vining, Senior Counsel
Tesoro Companies, Inc.
19100 Ridgewood Parkway
San Antonio, TX 78259
CERTIFIED MAIL # 7008 3230 0003 0726 0665

Date: August 19, 2015

By: Dayle Aldinger
Dayle Aldinger