

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7

2019 OCT 3 PM 1:43

In the Matter of: )
MAGELLAN MIDSTREAM )
PARTNERS, L.P., ) Docket No. CAA-07-2019-0260
Respondent. )
Proceedings under Sections 113(a) ) ANSWER AND REQUEST FOR
and (d) of the Clean Air Act, ) HEARING
42 U.S.C. § 7413(a) & (d) )

MAGELLAN MIDSTREAM PARTNERS, L.P.'S ANSWER AND REQUEST FOR HEARING

Respondent Magellan Midstream Partners, L.P. ("Magellan") answers as follows the Administrative Complaint ("Complaint") filed by U.S. Environmental Protection Agency Region 7's Enforcement and Compliance Assurance Division ("Complainant"), with reference given to the Paragraphs as denominated in the Complaint:

Jurisdiction

- 1. Paragraph 1 contains Complainant's characterization of this action, to which no response is required.
2. Paragraph 2 contains Complainant's characterization of the effect of its Complaint, to which no response is required.
3. Paragraph 3 contains Complainant's characterization of statutes and regulations, to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein, except to refer to the language of the referenced statutes and regulations, which speaks for itself.

4. Magellan lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 4 and on that basis denies them.

#### **Parties**

5. Magellan lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 5 and on that basis denies them.

6. Magellan admits that it owns and operates certain bulk gasoline terminals located in Kansas City, Kansas; Mason City, Iowa; and Omaha, Nebraska and that it was at all times relevant to the Complaint, the owner and operator of those terminals. Magellan also admits that it 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. Magellan denies the remaining allegations contained in Paragraph 6.

#### **Statutory and Regulatory Framework**

7. Paragraph 7 contains Complainant’s characterization of statutes, to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein, except to refer to the language of the referenced statute, which speaks for itself.

#### **New Source Performance Standards**

##### **A. General**

8-13. Paragraphs 8 through 13 contain Complainant’s characterization of statutes and regulations, to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein, except to refer to the language of the referenced statutes and regulations, which speaks for itself.

**B. Part 60, Subpart A: General**

14-18. Paragraphs 14 through 18 contain Complainant's characterization of statutes and regulations, to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein, except to refer to the language of the referenced statutes and regulations, which speaks for itself.

**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**

19-20. Paragraphs 19 and 20 contain Complainant's characterization of regulations, to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein, except to refer to the language of the referenced regulations, which speaks for itself.

**National Emission Standards for Hazardous Air Pollutants**

**A. General**

21-28. Paragraphs 21 through 28 contain Complainant's characterization of statutes and regulations, to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein, except to refer to the language of the referenced statutes and regulations, which speaks for itself.

**B. Part 63, Subpart A: General**

29-30. Paragraphs 29 and 30 contain Complainant's characterization of statutes and regulations, to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein, except to refer to the language of the referenced statutes and regulations, which speaks for itself.

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

31-34. Paragraphs 31 through 34 contain Complainant's characterization of statutes and regulations, to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein, except to refer to the language of the referenced statutes and regulations, which speaks for itself.

**Enforcement of the CAA by the United States**

35-36. Paragraphs 35 and 36 contain Complainant's characterization of statutes, to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein, except to refer to the language of the referenced statutes, which speaks for itself.

37. Magellan denies each and every allegation in Paragraph 37.

**Factual Background**

38. Magellan admits the allegations in Paragraph 38.

39. Magellan admits the allegations of Paragraph 39, except it denies that the KCK facility includes a "railcar off-loading rack, among other things," that it has a maximum mainline intake capacity of 18 million gallons per day, and that additives are further distributed from the facility (at least as a pure product). Further, due to the Complainant's failure to specify critical assumptions in its meaning of "throughput," Magellan is without basis to admit or deny the allegation concerning throughput rate.

40 - 41. Magellan admits the allegations of Paragraphs 40 - 41.

42. Magellan admits the allegations of Paragraph 42, except it denies that the ethanol or additives are further distributed from the facility, at least as a pure product, and that there are 11 above-ground petroleum storage tanks (there are 19). Further, due to the Complaint's failure to

specify scope and meaning, Magellan is without basis to admit or deny the allegation related to miscellaneous pipeline-related equipment and additive tanks, and therefore denies it.

43. Magellan admits that it was issued a Title V Operating permit for the Mason City facility in 2011, but denies the alleged number of that permit. (The correct number was 98-TV-006R2).

44. Magellan admits the allegations of Paragraph 44.

45. Magellan admits the allegations of Paragraph 45, except it denies that the ethanol or additives are further distributed, at least as a pure product. Further, due to the Complaint's failure to specify scope and meaning, Magellan is without basis to admit or deny the allegation related to miscellaneous pipeline-related equipment, and therefore denies it.

46. Magellan admits the issuance and modification of the referenced permit, but denies that the dates are correct. (The correct dates are on or about November 14, 2012, and November 25, 2013, respectively).

47. Magellan admits that 40 CFR Part 63, Subpart BBBBBB is listed as an applicable requirement on the operating permit for the Omaha Facility. Magellan denies the remainder of the allegations in Paragraph 47, because Subpart Kb is only now proposed to be added by a pending renewal.

48. Paragraph 48 contains Complainant's characterization of its claims and does not require a response. To the extent a response is required, Magellan denies the allegations in Paragraph 48.

49. Magellan admits receiving and responding to U.S. Environmental Protection Agency ("EPA") information requests as described in Paragraph 49. Magellan is without basis to admit or deny Complainant's description of the purpose of EPA's information requests.

50. Magellan admits the allegations in Paragraph 50.

## **General Allegations**

51-52. Magellan admits the allegations in Paragraphs 51 through 52.

53. Magellan admits that the KCK, Mason City, and Omaha Facilities receive petroleum products, including gasoline and diesel fuel oil by pipeline, but denies that these products are received primarily from refineries by pipeline. Magellan also denies that it delivers gasoline to bulk gasoline plants.

54. Paragraph 54 contains legal conclusions to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein.

55. Magellan admits that its KCK, Mason City, and Omaha facilities are area sources of HAPs and subject to the Gasoline Distribution NESHAP. Magellan denies any necessary relationship between emissions of the enumerated HAPs and the applicability of the Gasoline Distribution NESHAP.

56. Magellan denies each and every allegation contained in Paragraph 56 except to admit that EPA conducted inspections of the KCK facility on July 10-12, 2012 and on September 8, 2014.

57. Magellan denies each and every allegation contained in Paragraph 57 except to admit that EPA conducted inspections of the Omaha facility on September 13 and 14, 2016.

## **Violations**

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

58. Magellan incorporates by reference Paragraphs 1 through 58 of its Answer as if fully set forth herein in response to Complainant's incorporation by reference of the same Paragraphs.

59. Magellan admits the allegations in Paragraph 59.

60-61. Paragraphs 60 and 61 contain Complainant's characterization of regulations, to which no response is required. To the extent a response is deemed required, Magellan denies each

and every allegation contained therein, except to refer to the language of the referenced regulations, which speaks for itself.

62. Magellan admits the allegations in Paragraph 62, except it denies the alleged failure to conduct secondary seal gap measurements within 60 days of the initial filling of Tanks 644 and 1242. Magellan further maintains that all allegations related to Tanks 644, 1242, and 1303 are barred by the five-year statute of limitations in 28 U.S.C. § 2462, as stated in the Affirmative Defenses section below. With regard to Tank 735, on March 16, 2016, Magellan determined that there were no excessive gaps in the secondary seals, and on October 3, 2017, Magellan determined that there were no excessive gaps in the primary seals. Accordingly, any delay in taking the required seal gap measurements was without consequence.

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

63. Magellan incorporates by reference Paragraphs 1 through 62 of its Answer as if fully set forth herein in response to the Complaint's incorporation by reference of the same Paragraphs.

64. Magellan admits the allegations in Paragraph 64.

65. Paragraph 65 contains Complainant's characterization of regulations, to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein, except to refer to the language of the referenced regulations, which speaks for itself.

66. Magellan admits that it was required to comply with the requirements of 40 C.F.R. § 60.113b(a) when it installed a slotted guide pole in Tank 635 in 2003, but denies that it elected to comply with the referenced provisions, which require no election.

67. Paragraph 67 contains Complainant's characterization of regulations, to which no response is required. To the extent a response is deemed required, Magellan denies each and every

allegation contained therein, except to refer to the language of the referenced regulations, which speaks for itself.

68. Magellan admits the allegations in Paragraph 68, but maintains that when it performed the required inspection, the inspection confirmed that the tanks had no defects requiring attention pursuant to 40 C.F.R. § 60.113b(a)(4). Accordingly, any delay in performing the required inspection was without consequence.

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

69. Magellan incorporates by reference Paragraphs 1 through 68 of its Answer as if fully set forth herein in response to Complainant's incorporation by reference of the same Paragraphs.

70. Magellan admits the description that a slotted guide pole is a guide pole with perforations, and that any contact with a volatile liquid and the atmosphere can lead to evaporative losses. Magellan lacks sufficient knowledge or information to admit or deny the remaining generalizations in Paragraph 70 and on that basis denies them.

71. Magellan admits the allegations in Paragraph 71.

72. Magellan admits the allegation in Paragraph 72, but maintains that the claim is barred by the five-year statute of limitations in 28 U.S.C. § 2462, as stated in the Affirmative Defenses section below.

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

73. Magellan incorporates by reference Paragraphs 1 through 72 of its Answer as if fully set forth herein in response to the Complaint's incorporation by reference of the same Paragraphs.

74. Magellan admits the allegations in Paragraph 74.



75. Magellan admits that it elected to comply with Part 63, Subpart BBBBBB for Tank 1412 at the Omaha Facility, but avers that it did not elect to comply with Subpart WW sections in Subpart BBBBBB until January 1, 2017, and so denies that it had elected to comply with the floating roof inspection and repair requirements of Subpart WW at the time of the August 29, 2013 inspection.

76. Magellan admits the allegations in Paragraph 76, except that it was a Magellan contractor that performed the inspection, not Magellan..

77. Magellan denies the allegations in Paragraph 77. Magellan avers that Tank 1412 was not subject to 40 C.F.R. § 63.1063(d) at the time of the August 29, 2013, inspection. It further avers that neither this rule nor § 60.113b(a)(4) require repairs within 45 day for tanks that are out of service.

78. Magellan avers that Tank 1412 was not subject to 40 C.F.R. § 63.1063(d) at the time of the August 29, 2013, inspection. Magellan denies each and every remaining allegation in Paragraph 78.

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

**Facility**

79. Magellan incorporates by reference Paragraphs 1 through 78 of its Answer as if fully set forth herein in response to the Complaint's incorporation by reference of the same Paragraphs.

80. Magellan admits the allegations in Paragraph 80.

81. Magellan admits the allegations in Paragraph 81.

82. Paragraph 82 contains Complainant's characterization of regulations, to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein, except to refer to the language of the referenced regulations, which speaks for itself.

83. Magellan admits the allegations in Paragraph 83.

84. Magellan admits the allegations in Paragraph 84, but maintains that when it performed the required inspection, the inspection confirmed that the tanks had no defects requiring attention pursuant to 40 C.F.R. § 60.113b(a)(4). Accordingly, any delay in performing the required inspection was without consequence.

**CLAIM 6: Failure to Notify Permitting Authority of an Operational Change that May**

**Increase Pollutant Emissions – Omaha Facility**

85. Magellan incorporates by reference Paragraphs 1 through 84 of its Answer as if fully set forth herein in response to Complainant's incorporation by reference of the same Paragraphs.

86. Magellan admits the allegations in Paragraph 86.

87. Magellan denies that it installed a slotted guide pole on Tank 637 prior to 2006. Magellan avers that it installed a slotted guide pole on Tank 637 in 2006. Magellan admits the remainder of the allegations in Paragraph 87.

88. Magellan admits the allegations in Paragraph 88.

89. Magellan admits the allegations in Paragraph 89.

90. Magellan admits the allegations in Paragraph 90, but maintains that the claim is barred by the five-year statute of limitations in 28 U.S.C. § 2462, as stated in the Affirmative Defenses section below.

**Relief**

91-95. Paragraphs 91 through 95 present Complainant's basis for assessing civil penalties against Magellan, a request for relief in the form of a civil penalty in the amount of \$420,853, and information on how payment of the penalty may be submitted. To the extent a response is required, Magellan denies that EPA is entitled to any of the relief requested or to any other judgment or relief

in its favor. Magellan further responds that the proposed penalty amount is inconsistent with applicable guidance and otherwise unreasonable, excessive, and arbitrary and capricious.

## **NOTICE OF OPPORTUNITY FOR HEARING**

### **Answer and Request for Hearing**

96. Magellan requests a formal hearing to contest all material facts alleged in the Complaint, as well as the appropriateness of the proposed penalty, pursuant to Section 113 of the Clean Air Act and 40 C.F.R. § 22.14. Magellan denies that Complainant may dictate the manner in which any hearing would be held.

97. Paragraph 97 contains Complainant's legal conclusions to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein, except to refer to the language of the referenced regulations, which speaks for itself. Magellan further avers that this Answer and Request for Hearing fully satisfies the obligations alleged in Paragraph 97.

98. Paragraph 98 contains procedural suggestions to which no response is required.

99. Paragraph 99 contains assertions of procedural burdens imposed on EPA's Hearing Clerk and the parties to this matter, to which no response is required.

100. Paragraph 100 contains Complainant's opinions related to EPA's procedural rules, to which no response is required.

### **Default**

101. Paragraph 101 contains legal conclusions to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein.

### **Informal Settlement Conference**

102. Paragraph 102 contains Complainant's assertions related to settlement opportunities, to which no response is required.

103. Paragraph 103 contains ordering language that the Complainant is not positioned to assert.

104. Paragraph 104 contains legal conclusions to which no response is required. To the extent a response is deemed required, Magellan denies each and every allegation contained therein.

105. Magellan denies each and every allegation of the Complaint not specifically admitted.

#### **Affirmative Defenses**

Magellan, having fully answered EPA's Complaint, further answers, alleges, and states as follows:

106. Complainant's claims are barred, in whole or in part, because it fails to state claims upon which relief may be granted.

107. Complainant's claims are barred, in whole or in part, by the applicable statute of limitations. Magellan specifically avers that Complainant's allegations with respect to Tanks 644, 1242, and 1303 in Claim 1 are barred by the five-year statute of limitations in 28 U.S.C. § 2462. Magellan specifically avers that each and every one of Complainant's allegations in Claim 3 are barred by the five-year statute of limitations in 28 U.S.C. § 2462. Magellan specifically avers that each and every one of Complainant's allegations in Claim 6 are barred by the five-year statute of limitations in 28 U.S.C. § 2462.

108. The proposed penalty is excessive given the seriousness of the alleged violations, which EPA is required to consider under Section 113 of the Clean Air Act. In each instance involving an untimely inspection or seal gap measurement, Magellan ultimately determined, after completing the required inspection or seal gap measurement, that there were no issues with the tanks. Accordingly, any delay in performing the required inspections or taking the required seal gap measurements created no danger to health and public safety or to the environment. The absence of harm has not been adequately considered as a mitigating factor in connection with the penalty

assessment. The proposed penalty is also excessive under the EPA's *Clean Air Act Stationary Source Penalty Policy* because Magellan derived no economic benefit from the alleged violations, voluntarily disclosed them to the appropriate regulatory authority, acted in good faith to come into compliance once it became aware of the alleged violations, and did not willfully commit any of the alleged violations.

109. Magellan further avers, on information and belief and subject to discovery, that Complainant lacks authority to seek a penalty pursuant to Section 113(d)(1) because it lacks a documented and appropriate Department of Justice waiver of statutory limits on the amount and age of claims that Complainant may pursue in this forum.

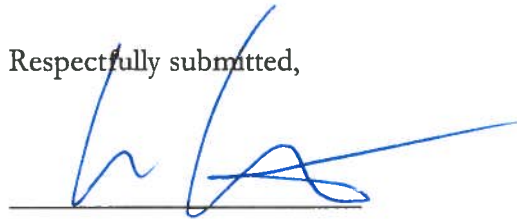
110. Magellan avers that Complainant's pursuit of Claims 1-6 violates controlling EPA management directives to the EPA Regions concerning deference to state enforcement discretion. Each of the states in which the subject facilities are located has received delegation of applicable Part 60 and Part 63 standards, and so in accordance with July 11, 2019, directives from the Assistant Administrator for Enforcement and Compliance Assurance, EPA Regions must defer to those states' decisions with respect to the enforcement response, if any, to the claims made here.

111. Magellan reserves the right to raise and assert any and all additional affirmative defenses as may appear appropriate in light of continuing proceedings herein, whenever and however such defenses may appear, and hereby puts EPA on notice of Magellan's intention to do so.

112. Based on the above, Magellan hereby requests a formal hearing to contest all material facts alleged as well as the appropriateness of the proposed penalty in the U.S. Environmental Protection Agency's Administrative Complaint.

Dated: October 2, 2019.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Eric Groten', written over a horizontal line.

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L.P.

## CERTIFICATE OF SERVICE

I hereby certify that on this 2<sup>nd</sup> day of October, 2019, the original and one true and correct copy of the foregoing Answer and Request for Hearing were served on the following by Federal Express overnight delivery service:

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

I further hereby certify that on this 2<sup>nd</sup> day of October, 2019, one true and correct copy of the foregoing Answer and Request for Hearing were served on the following by Federal Express overnight delivery service:

DeAndre Singletary, Acting Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

Alex Chen, Senior Counsel  
Office of Regional Counsel  
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Eric Groten