

5. Pursuant to 40 C.F.R. § 63.640(c)(1), the affected source shall comprise all emission points, including all miscellaneous process vents from petroleum refining process units meeting the criteria of 40 C.F.R. § 63.640(a).

6. A “petroleum refining process unit” means a process unit used in an establishment primarily engaged in petroleum refining as defined in the Standard Industrial Classification code for petroleum refining (2911) and used primarily for (1) Producing transportation fuels, heating fuels, lubricants; (2) Separating petroleum; or (3) Separating, cracking, reacting, or reforming intermediate petroleum streams. *See* 40 C.F.R. § 63.641.

7. The MACT: Petroleum Refinery Sector Amendments that became effective on February 1, 2016, revised Table 13 of MACT Subpart CC to include additional accuracy and calibration requirements for CPMS parameters such as flare vent gas flow rates, temperature, pressure, and hydrogen analyzers. 80 *Fed. Reg.* 75177 (December 1, 2015). The MACT: Petroleum Refinery Sector Amendments also added 40 C.F.R. § 63.670 to MACT Subpart CC. The MACT: Petroleum Refinery Sector Amendments that became effective on February 1, 2016, established that owners or operators are required to comply with the new operating and monitoring requirements for existing flares no later than 3 years after the effective date of the final rule.

8. Pursuant to 40 C.F.R. § 63.670, on or before January 30, 2019, the owner or operator of a flare used as a control device for an emission point subject to MACT Subpart CC shall meet the applicable requirements in § 63.671.

9. Pursuant to 40 C.F.R. § 63.671(a)(1), for each CPMS, the owner or operator is required to install, operate, calibrate, and maintain the CPMS to meet the applicable minimum accuracy, calibration and quality control requirements specified in Table 13 of MACT Subpart CC.

10. Pursuant to 40 C.F.R. § 63.658(a), the owner or operator shall conduct sampling along the facility property boundary and analyze the samples in accordance with Methods 325A and 325B of Appendix A of MACT CC and 40 C.F.R. § 63.658(b) through 40 C.F.R. § 63.658(k).

11. Pursuant to 40 C.F.R. § 63.658(b), the target analyte for the fenceline monitoring is benzene.

12. Pursuant to 40 C.F.R. § 63.658(e), the owner or operator shall use a 14-day sampling period and a sample collection frequency of once for each contiguous 14-day sampling period.

13. Pursuant to 40 C.F.R. 63.658(j), the owner or operator shall comply with the applicable recordkeeping and reporting requirements in 40 C.F.R. § 63.655(h).

14. Pursuant to 40 C.F.R. § 63.655(h)(8), the owner or operator shall submit quarterly fenceline monitoring reports, which shall include the individual sample results for benzene reported in units of $\mu\text{g}/\text{m}^3$.

MACT Subpart UUU

15. On April 11, 2002, EPA promulgated MACT Subpart UUU, pursuant to Section 112(d) of the CAA, 67 *Fed. Reg.* 17773. MACT Subpart UUU established emission standards for HAPs emitted from petroleum refineries and requirements to demonstrate continuous compliance with the emission limitations and work practice standards.

16. MACT Subpart UUU applies to petroleum refineries that are located at a major source of HAP emissions. 40 C.F.R. § 63.1561(a).

17. A “petroleum refinery” means an establishment engaged primarily in petroleum refining as defined in the Standard Industrial Classification code 2911 and the North American Industry Classification code 32411, and used mainly for producing transportation fuels, heating fuels, or lubricants; separating petroleum; or separating, cracking, reacting or reforming an intermediate petroleum stream, or recovering a by-product(s) from the intermediate petroleum stream. 40 C.F.R. § 63.1561(1).

18. Pursuant to 40 C.F.R. § 63.1562(a), MACT Subpart UUU applies to each new, reconstructed, or existing affected source at a petroleum refinery.

19. Pursuant to 40 C.F.R. § 63.1562(b)(1), the process vent or group of process vents on fluidized catalytic cracking units that are associated with regeneration of the catalyst used in the unit (*i.e.*, the catalyst regeneration flue gas vent) are affected sources.

20. Pursuant to 40 C.F.R. § 63.1572(c)(1), the owner and operator of petroleum refineries located at a major source of HAP emissions is required to install, operate, and maintain each CPMS according to the requirements in Table 41 of MACT Subpart UUU.

21. The MACT: Petroleum Refinery Sector Amendments that became effective on February 1, 2016, revised Table 41 of MACT Subpart UUU to include additional accuracy and maintenance requirements for CPMS such as air and gas flow rate sensors. 80 *Fed. Reg.* 75177 (December 1, 2015).

22. On July 13, 2016, U.S. EPA published the Technical Corrections Rule, clarifying that an 18-month transition period to the new CPMS quality assurance requirements in Table 41 of Subpart UUU had been provided since the effective date of the MACT: Petroleum Refinery Sector Amendments. 81 *Fed. Reg.* 45232 (July 13, 2016).

Title V

23. U.S. EPA promulgated full approval of Ohio’s Title V program on August 15, 1995. Ohio’s Title V program became effective on October 1, 1995. 60 *Fed. Reg.* 42045 (August 15, 1995).

24. On July 13, 2017, Ohio EPA (“OEPA”) issued a Title V Operating Permit (ID P0104782) for BP-Husky, Ohio Facility ID 0448020007. The effective date of this Title V Permit was August 3, 2017.

25. On November 18, 2021, OEPA issued a Title V Operating Permit ID P0128721) for BP-Husky, Ohio Facility ID 0448020007. The effective date of this Title V Permit was November 18, 2021.

Factual Background

26. BP-Husky owns and operates a petroleum refinery and petroleum refining process units at 4001 Cedar Point Road, Oregon, Ohio 43616 (the Toledo Refinery).

27. The Toledo Refinery is a major source as defined in 40 C.F.R. § 63.2.

28. Relevant to this matter, BP-Husky owns and operates the following emissions units at the Toledo Refinery: the East Hydrocarbon flare (“P003”), West Hydrocarbon flare (“P004”), and the Fluid

Catalytic Cracking (“FCC”) and CO Boiler Units (collectively “P007”); these emissions units are listed in Title V Permits effective August 3, 2017, and November 18, 2021 (“Title V Permits”).

29. Emissions from P003, P004, and P007 were at all relevant times subject to the terms of the Title V Permits.

30. BP-Husky’s Title V Permits identify that P003 and P004 are subject to MACT Subpart CC, and specifically identify that these emissions units are subject to 40 C.F.R. §§ 63.640-679.

31. P003 and P004 are equipped with, among other things, CPMS, waste gas, natural gas, and hydrogen gas flow meters.

32. P007 consists of an FCC Reactor, Catalyst Regenerator, Fractionator, Strippers and Absorbers.

33. BP-Husky’s Title V Permits identify that P007 is subject to MACT Subpart UUU, and specifically identify that the emissions unit is subject to 40 C.F.R. §§ 63.1560-63.1579.

34. The Catalyst Regenerator associated with P007 is equipped with flow meters and sensors to demonstrate continuous compliance with a nickel emission limit from the catalyst regenerator vent (0.001 lb/1,000 lb of coke burn-off).

35. On November 1, 2018, OEPA granted the Toledo Refinery a one-year extension of compliance related to the installation of the flare monitoring systems required by the MACT: Petroleum Refinery Sector Amendments. This extension required the Toledo Refinery to demonstrate compliance with 40 C.F.R. §§ 63.670 and 63.671 by January 30, 2020.

36. Beginning in BP-Husky’s Title V Quarterly Deviation Report for the third quarter of 2020, BP-Husky reported that there were “two flow meters to the hydrocarbon flare system that do not meet the accuracy requirement of 40 CFR 63.671 of Subpart CC that were promulgated as part of the Refinery Sector Rule updates, during low flow events.” This deviation was reported for emissions unit P003/P004.

37. In BP-Husky’s Title V Quarterly Deviation Report for the second quarter of 2022 (“2Q 2022 Title V Report”), BP-Husky reported that “BPH immediately began implementing their plan to come in to compliance and as they have operated, additional flare instrumentation has been identified that does not meet the MACT CC - Table 13 requirements.” BP-Husky further stated that a project has been initiated “to bring six natural gas system flow meters and one hydrogen gas flow meter into compliance.” This deviation was reported for emissions unit P003/P004.

38. In BP-Husky’s Refinery MACT UUU Compliance Report for the second half of 2020, BP-Husky reported that “the FCCU instrumentation used to demonstrate compliance with the Nickel Coke Burn emission limit may not be in compliance with all the installation, operation, and maintenance requirements of MACT UUU Table 41.” The Nickel Coke Burn emission limit in this report refers to the nickel limit set forth at 40 C.F.R. § 63.1564(a)(1)(vi) and applies to the FCCU Regenerator CO Boiler Exhaust Vent and the FCCU Regenerator Vent Bypass Line.

39. Beginning in BP-Husky’s Title V Quarterly Deviation Report for the fourth quarter of 2020, BP-Husky similarly reported that the “FCCU Instrumentation used to demonstrate compliance may not be in compliance with all the installation, operation and maintenance requirements of MACT

UUU Table 41.” BP-Husky further reported that “one of the flow meters is known to be out of compliance.” BP-Husky reported the start date of the violation as January 1, 2019.

40. BP-Husky continued to report the FCCU instrumentation deviation in its Title V Quarterly Deviation Reports until the 2Q 2022 Title V Report, in which it reported the end date of the violation as April 23, 2022, and stated it had achieved compliance with the FCCU instrumentation requirements of MACT Subpart UUU.

41. In its third quarter 2022 fenceline monitoring report, BP-Husky stated that samples were missing from sample stations 21-28 due to being corrupted by moisture in the sample tubes. This was for the 14-day sampling period of August 25, 2022, to September 9, 2022.

Violations

42. Since January 31, 2020, BP-Husky has violated and continues to be in violation of 40 C.F.R. § 63.671(a)(1) by not maintaining two flare gas flow meters, six natural gas system flow meters, and one hydrogen gas flow meter according to requirements in Table 13 of MACT Subpart CC.

43. For the sampling period of August 25, 2022, to September 9, 2022, BP-Husky violated 40 C.F.R. § 63.658(a) by failing to analyze samples for benzene at sample stations 21-28.

44. From January 1, 2019, to April 23, 2022, BP-Husky violated 40 C.F.R. § 63.1572(c)(1) by not installing, operating, and maintaining a FCCU Regeneration flow meter according to the requirements in Table 41 of MACT Subpart UUU.

for

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