

IN THE MATTER OF:

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Proceedings Pursuant to
Section 113(a)(1) and (3) of the Clean Air Act,
42 U.S.C. § 7413(a)(1) and (3)

2. Section 111 of the CAA authorizes EPA to develop technology-based standards which apply to specific categories of stationary sources.

3. 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.
4. Once a category is included on the list, Section 111(b)(1)(B) of the Act, 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.
5. The NSPS rules are in Part 60 of Title 40 of the Code of Federal Regulations.
 - a. **40 C.F.R. Part 60, Subpart Kb – Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984, and On or Before October 4, 2023 ("NSPS Subpart Kb")**
6. Pursuant to 40 C.F.R. § 60.110b(a), the affected facility to which NSPS Subpart Kb applies is "each storage vessel with a capacity greater than or equal to 75 cubic meters (m³) that is used to store volatile organic liquids ("VOL") for which construction, reconstruction, or modification is commenced after July 23, 1984, and on or before October 4, 2023."
7. A "storage vessel" is defined as "each tank, reservoir, or container used for the storage of VOL but does not include: (1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of liquids or vapors; (2) Subsurface caverns or porous rock reservoirs; or (3) Process tanks." 40 C.F.R. § 60.111b.
8. "Volatile organic liquid" or "VOL" is defined as "any organic liquid which can emit volatile organic compounds (as defined in 40 C.F.R. § 51.100) into the atmosphere." 40 C.F.R. § 60.111b.
9. 40 C.F.R. § 60.112b(a)(2)(ii) requires that "... each opening in the [external floating] roof is to be equipped with a gasketed cover, seal, or lid that is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use."
10. 40 C.F.R. § 60.113b(b)(1)(ii) requires that "[m]easurements of gaps between the tank wall and the secondary seal shall be performed within 60 days of the initial fill with VOL and at least once per year thereafter."

11. 40 C.F.R. § 60.113b(b)(2)(i) requires that “gap widths and areas in the primary and secondary seals must be determined by measuring seal gaps at one or more floating roof levels when the roof is floating off the roof leg supports.”
12. 40 C.F.R. § 60.113b(b)(2)(ii) requires “measurement of seal gaps around the entire circumference of the tank in each place where a 0.32-cm diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the storage vessel and measurement of circumferential distance of each such location.”
13. 40 C.F.R. § 60.113b(b)(2)(iii) requires that “the total surface of each gap described in paragraph (b)(2)(ii) of this section shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such widths by its respective circumferential distance.”
14. 40 C.F.R. § 60.113b(b)(6) requires that the owner or operator shall “[v]isually inspect the external floating roof, the primary seal, secondary seal, and fittings each time the vessel is emptied and degassed.”

B. Texas State Implementation Plan (“SIP”)

15. Section 109(a) of the CAA, 42 U.S.C. § 7409(a) requires EPA to publish national ambient air quality standards (“NAAQS”) for certain “criteria” pollutants. The NAAQS establish primary air quality standards to protect the public health. EPA has identified ozone, among others, as a criteria pollutant, and has promulgated NAAQS for ozone. Certain precursors to ozone formation, such as volatile organic compounds (“VOCs”) and oxides of nitrogen (“NOx”), are regulated as part of the air quality standards for ozone itself. See 40 C.F.R. §§ 50.6 and 50.11.
16. To achieve the objectives of the NAAQS and the CAA, Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each state to adopt and submit to the Administrator a plan that provides for implementation, maintenance, and enforcement of the NAAQS in each air quality control region (or portion thereof). This plan is known as an applicable implementation plan or state implementation plan (“SIP”).
17. Section 110(a)(2)(C) of the CAA, 42 U.S.C. § 7410(a)(2)(C), requires each SIP to include, *inter alia*, “regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved....”
18. In addition to permitting requirements, a state’s SIP may include emission control programs to assist in maintaining or attaining the NAAQS.

19. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, the state of Texas adopted regulations that comprise the SIP for Texas (the “Texas SIP”). The Texas SIP regulations as approved by EPA are set forth in 40 C.F.R. § 52.2270(c).
20. Pursuant to Section 113(a) and (b) of the CAA, 42 U.S.C. § 7413(a) and (b), upon EPA approval, SIP requirements are federally enforceable under CAA Section 113.
 - a. **Chapter 115 of Title 30 of the Tex. Admin. Code establishes the requirements for control of air pollution from VOCs**
21. 30 Tex. Admin. Code § 115.112(a) of the Texas SIP establishes VOC control requirements for the Beaumont-Port Arthur area, including Jefferson County (approved at 88 Fed. Reg. 55,379, Aug. 15, 2023).
22. 30 Tex. Admin. Code § 115.112(a)(2)(E) requires that for an external floating roof storage tank “there must be no visible holes, tears, or other openings in any seal or seal fabric.” *See id.*
23. 30 Tex. Admin. Code § 115.114(a)(4) requires that “for an external floating roof storage tank, the secondary seal must be visually inspected at least once every six months to ensure compliance with § 115.112(a)(2)(E)” (approved at 84 Fed. Reg. 18,145, April 30, 2019).

II. Findings of Fact

24. Motiva owns and/or operates the Facility, the Port Neches Terminal, located in Port Neches, Jefferson County, Texas. The Facility consists of multiple storage vessels, marine loading operations, and associated piping.
25. EPA conducted an on-site inspection on February 12, 2024 (the “Inspection”), pursuant to Section 114 of the CAA, 42 U.S.C § 7414.
26. During and subsequent to the Inspection, EPA received records from Motiva regarding the Terminal on or about March 11, 2024, June 18, 2024, and October 10, 2024.
27. All storage vessels relevant to this NOV are subject to Chapter 115, Subchapter B, Division 1 of the Tex. Admin. Code, and the following storage vessels are also affected facilities under NSPS, Subpart Kb: 340-1, 340-2, 600-1, 1834, 1835, and 34030.
28. Motiva provided detailed records identifying occurrences of confined space entries, which must be performed in order to conduct seal gap measurements, at the Facility’s storage vessels in 2022. The records indicate that a confined space entry was not conducted for Tanks 600-1 and 1834.

29. After Tank 278 was taken out of service, Motiva conducted an internal API 653 inspection dated December 21, 2023. The report noted that the primary and secondary seals were removed prior to the inspection; therefore, the primary and secondary seals were not inspected. The report noted that “all miscellaneous seals are damaged and worn” including the seal on the gauge pole.
30. After Tank 340-1 was taken out of service, Motiva conducted an internal API 653 inspection dated August 5, 2021. The report noted that the secondary seal was removed prior to the inspection; therefore, the secondary seal was not inspected.
31. During the Inspection, EPA noted odors and observed torn gasket material at the gauge hatch of Tank 34030.
32. Following EPA’s Inspection, Motiva conducted an inspection of the secondary seal on Tank 275 on February 28, 2024. The report confirmed holes, tears, or other openings in the seal or seal fabric and noted the following: “The secondary vapor barrier fabric and wiper tip along with the grounding hardware is deteriorated and is recommended to be placed [*sic*].”
33. In an e-mail responding to an EPA request for additional information, Motiva stated that all semiannual visual inspections are “performed from the tank platform” to ensure there are no visible holes, tears, or other openings in any seal or seal fabric; however, a visual inspection from a tank platform does not allow for complete visual access to the entirety of the secondary seal.
34. Based on data obtained through an Information Collection Request (“ICR Data”), industries estimated an average of two hours to measure secondary seal gaps and five hours to measure primary seal gaps on a single storage vessel.¹ EPA acknowledges that these times would be “a little less than average for small storage vessels and a little more than average for large storage vessels.” The ICR Data further indicated that for secondary seal inspections, a complete and accurate inspection should take between 1.5 hours and 2.5 hours and for primary seal inspections, a complete and accurate inspection should take between 4.5 hours and 6 hours.

Tank Size	Tank Capacity (gallons)	Secondary Seal Inspection Estimate (hours)	Primary Seal Inspection Estimate (hours)
Small	30,000	1.5	4.5
Medium	450,000	2.0	5.0
Large	3,300,000	2.5	5.5
Very Large	22,000,000	2.5	6.0

¹ See EPA Docket No. EPA-HQ-OAR-2010-0871: Survey of Control Technologies for Storage Vessels and Analysis for Impacts for Storage Vessel Control Options.

35. On September 22, 2022, Motiva's confined space entry records indicated that a single individual conducted the following secondary and primary seal gap measurements:

Tank Number	Tank Capacity (gallons)	Secondary Seal Gaps and Measurements	Primary Seal Gaps and Measurements	Inspector
275	12,986,494	"No gaps were found."	"No gaps found."	Louis Samaniego
278	10,461,651	"No gaps were found."	"No gaps were found."	Louis Samaniego
279	10,239,124	"No gaps were found."	"No gaps were found."	Louis Samaniego
340-1	14,578,939	"No gaps were found."	"No gaps were found."	Louis Samaniego
340-2	14,555,341	"No gaps were found."	"No gaps were found."	Louis Samaniego
600-1	25,430,908	"No gaps were found."	"No gaps were found."	Louis Samaniego
1834	26,505,934	"No gaps were found."	"No gaps were found."	Louis Samaniego
1835	26,651,344	"No gaps were found."	"No gaps were found."	Louis Samaniego

36. On September 27, 2023, Motiva's confined space entry records indicated that a single individual conducted the following secondary seal gap measurements:

Tank Number	Tank Capacity (gallons)	Secondary Seal Gaps and Measurements	Inspector
275	12,986,494	"No gaps found."	Louis Samaniego
278	10,461,651	"No gaps found."	Louis Samaniego
279	10,239,124	"No gaps found."	Louis Samaniego
340-1	14,578,939	"No gaps found."	Louis Samaniego
340-2	14,555,341	"No gaps found."	Louis Samaniego
600-1	25,430,908	"No gaps found."	Louis Samaniego
1834	26,505,934	"No gaps found."	Louis Samaniego
1835	26,651,344	"No gaps found."	Louis Samaniego
34030	11,279,574	"No gaps found."	Louis Samaniego

III. Conclusions of Law

Based on the findings set forth above, EPA has reached the following Conclusions of Law:

37. Based on no entry into a confined space (Paragraph 28), Motiva failed to determine the gap areas and maximum gap widths between the secondary seals and the walls of Tanks 600-1 and 1834 at least once per year, in violation of 40 C.F.R. § 60.113b(b)(1)(ii).
38. Based on the removal of seals from Tanks 278 and 340-1 prior to the visual inspections of those tanks (Paragraphs 29 and 30), Motiva failed to visually inspect the external floating roofs, the primary seals, secondary seals, and fittings each time those vessels were emptied and degassed, in violation of 40 C.F.R. § 60.113b(b)(6).

39. Based on the odors and visible gap created by the torn gasket material described in Paragraph 31, Motiva failed to maintain the gauge hatch at Tank 34030 with a gasketed cover, seal, or lid in a closed position, in violation of 40 C.F.R. § 60.112b(a)(2)(ii).
40. Based on the damage and deterioration of the seals detailed in Paragraphs 29 and 32, Motiva failed to comply with external floating roof storage tank control requirements at Tanks 275 and 278, in violation of 30 Tex. Admin. Code § 115.112(a)(2)(E).
41. Based on the visual inspections occurring from the tank platform (Paragraph 33), Motiva failed to visually inspect the external floating roof on all tanks at least once every six months to ensure there are no visible holes, tears, or other openings in any seal or seal fabric to ensure compliance with secondary seal requirements, in violation of 30 Tex. Admin. Code § 115.114(a)(4).
42. Based on the discrepancy between the amount of time necessary to complete seal gap measurements and the amount of time Motiva expended on those measurements (Paragraphs 34 through 36), Motiva failed to perform seal gap measurements in accordance with required procedures in 40 C.F.R. § 60.113b(b)(2)(i) through (iii), in violation of 40 C.F.R. § 60.113b(b)(2).

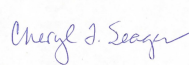
IV. Opportunity to Confer

Based on information currently available, the EPA finds that Motiva has violated applicable requirements of the CAA, the NSPS, and the Texas SIP. By this letter, the EPA is extending to you an opportunity to advise the Agency via a conference call or in writing, of any further information the EPA should consider with respect to the violations. The conference will enable Motiva to present evidence bearing on the proposed finding of violations, on the nature of the violations, and on any efforts, it may have taken or proposes to take to achieve compliance. Motiva has a right to be represented by counsel.

A request for a conference must be made within ten (10) days of receipt of this NOV. Please contact Feven Ezra, Assistant Regional Counsel, at ezra.feven@epa.gov or (214) 665-2731, to request a conference. Any technical questions may be directed to James Haynes, Enforcement Officer, at haynes.james@epa.gov or (214) 665-8546.

V. Effective Date

This Notice shall become effective immediately upon issuance.


Digitally signed by Seager, Cheryl
Date: 2025.05.28 15:56:33 -05'00'
Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division