UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Limetree Bay Terminals LLC d/b/a
Ocean Point Terminals
Christiansted, Virgin Islands

Respondent

In a proceeding under Section 113(a)(1)
of the Clean Air Act, 42 U.S.C. § 7413(a)(1)

NOTICE OF VIOLATION
CAA-02-2024-1311

SUMMARY

The United Stated Environmental Protection Agency ("EPA") Region 2 Director of the Enforcement and Compliance Assurance Divison ("ECAD Director") issues this Notice of Violation ("NOV"), under Section 113(a)(1) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7413(a)(1), to Limetree Bay Terminals, LLC d.b.a. Ocean Point Terminals ("OPT" or "Respondent"), for alleged violations of the Act and its implementing rules and regulations at its bulk gasoline terminal facility ("Facility") located at #1 Estate Hope, St. Croix, U.S. Virgin Islands. Specifically, EPA alleges that Respondent violated the U.S. Virgin Islands Air Pollution Control Act ("VI APCA") and Virgin Islands Rules and Regulations ("VIRR") that are approved by EPA into the U.S. Virgin Islands State Implementation Plan ("VI SIP") pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, and conditions in its Air Pollution Control Program Permit to Construct and Operate issued pursuant to the VI APCA and VIRR. This NOV also identifies violations of applicable requirements in the "Standards of Performance for Stationary Spark Ignition Internal Combustion Engines," 40 C.F.R. Part 60, Subpart JJJJ, § 60.4230 *et seq*., and the "National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal

Combustion Engines," 40 C.F.R. Part 63, Subpart ZZZZ, § 63.6580 *et seq*., although the EPA is not required by law to issue an NOV for such violations.

STATUTORY, REGULATORY AND PERMITTING BACKGROUND

1. Section 302(e) of the Act, 42 U.S.C. § 7602(e), provides that the term "person" includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

2. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides, in relevant part, that whenever the EPA Administrator finds, on the basis of any information available to the Administrator, that any person has violated or is in violation of any requirement or prohibition of a SIP, the Administrator shall notify the person and the state in which the SIP applies of such finding. Section 113(a)(1) of the Act further provides that 30 days after providing such notice, the Administrator may issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit; issue an administrative penalty order in accordance with Section 113(d) of the Act, 42 U.S.C. § 7413(d); or bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b).

3. The ECAD Director is duly authorized by the EPA Administrator, through the EPA Region 2 Regional Administrator, to make findings of violations, issue notices thereof, and gather information, pursuant to Sections 113 and 114 of the Act.

Virgin Islands State Implementation Plan

4. Section 109 of the CAA, 42 U.S.C. § 7409, directs the EPA Administrator to promulgate regulations establishing national ambient air quality standards ("NAAQS") for each air pollutant for which air quality criteria have been issued pursuant to Section 108 of the Act, 42 U.S.C. § 7408.

5. Section 110(a)(1) of the CAA, 42 U.S.C. § 7410(a)(1), requires each state to adopt and submit to EPA for approval a plan that provides for the implementation, maintenance, and enforcement of each of the NAAQS. Such plans, once approved by EPA, are called State Implementation Plans, or SIPs, and are federally enforceable by the EPA under the CAA.

6. Section 110(a)(2) of the CAA, 42 U.S.C. § 7410(a)(2), provides that each implementation plan submitted by a State shall include the enumerated elements in this section, including but not limited to regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, among other requirements.

7. Pursuant to Section 110 of the CAA, on March 20, 1987, the Virgin Islands Department of Planning and Natural Resources ("DPNR") submitted to EPA for approval into the VI SIP, comprehensive revisions to the VI APCA and VIRR. *See* 40 C.F.R. § 52.2770(c)(17). These submitted revisions included sections 20 through 31 of subchapter 206, chapter 9, title 12 of the Virgin Islands Code, which were effective beginning on January 15, 1987. *Id*.

8. On April 18, 1994, EPA approved into the VI SIP the submitted revisions to sections 20 through 31 of subchapter 206, chapter 9, title 12 of the Virgin Islands Code ("VI Air Permits Rule") (among other revisions that were also approved), making such provisions federally enforceable under the CAA. 59 Fed. Reg. 18309. Specifically, EPA approved section 206-20 of subchapter 206, titled "Permits Required," section 206-26 of subchapter 206, titled "Permits to Construct," section 206-27 of subchapter 206, titled "Permits to Operate," and section 206-30 of subchapter 206, titled "Review of New Sources and Modifications."[1] *Id*.

9. Section 206-20 of the SIP-approved VI Air Permits Rule establishes permitting requirements for sources of air contaminants.[2] Section 206-20(a) of the SIP-approved VI Air Permits Rule, "Permit to Construct," provides that any person building, erecting, altering or replacing any article, machine, equipment or other contrivance, the use of which may cause the issuance of air contaminants, shall first obtain a written permit to construct from the Commissioner or his designated representative.

10. Section 206-20(b) of the SIP-approved VI Air Permits Rule, "Permit to Operate," provides that before any article, machine, equipment or other contrivance described in subsection 206-20(a) of the SIP-approved VI Air Permits Rule may be operated or used, a

[1] EPA approved the original version of the VI SIP, titled "Air Quality Implementation Plan for the U.S. Virgin Islands," on May 31, 1972. 37 Fed. Reg. 10905. Section 206-30 of subchapter 206, titled "Review of New Sources and Modifications," became effective on October 11, 1973, and was approved by EPA into the VI SIP on August 10, 1975. 40 Fed. Reg. 42013. Section 206-30 of the VI APCA has since been redesignated as Section 206-31 of subchapter 206, however, this NOV cites to the SIP-approved version of section 206-30. Although Respondent's Air Pollution Control Program Permit to Construct and Operate refers to the new version of the rule at section 206-31, for purposes of this NOV, the substantive requirements of the SIP-approved subchapter 206 and new version of the VI APCA subchapter 206 are the same.

[2] This NOV refers to the SIP-approved version of Section 206-20 of the VI APCA.

written permit to operate shall be obtained from the Commissioner or his designated representative. No permit to operate or use shall be granted until the information required is presented and such article, machine, equipment or contrivance is altered, if necessary, and made to conform to the relevant standards set forth in the SIP-approved VI Air Permits Rule and elsewhere in the VI APCA.

11. Section 206-26(a) of the VI Air Permits Rule provides standards for granting a permit to construct. A permit to construct or modify a source shall be granted only if the applicant demonstrates the following to the satisfaction of the DPNR Commissioner: (1) The source shall be able to comply with all applicable federal or territorial laws, rules and regulations; (2) The construction and operation of the source will not prevent the attainment or maintenance of any ambient air quality standard and will not result in a violation of any provision of this chapter or the Virgin Islands State Implementation Plan; (3) Air contaminant emissions from the source will be limited in accordance with applicable rules and regulations; and (4) Any agreement or certification intended to restrict the maximum capacity, the maximum annual hours of operation, and emission rate, or a percentage of sulfur content in fuels is enforceable prior to the issuance of the authority to construct and is included as an enforceable condition therein. *Id*.

12. Section 206-26(b) of VI Air Permits Rule contains provisions for an application for a permit to construct. Each application for a permit to construct or modify a source shall include the following, in relevant part:

> (A) Detailed calculations, plans and specifications of the emissions and of any air pollution control equipment or measures proposed to be installed and

constructed to achieve compliance with applicable rules and regulations;

(B) A location map of the source or facility (projected and existing), indicating neighboring vacant lands and prominent points or structures and any inhabited areas;

(C) A layout plan of the source or facility (projected and existing), indicating all air pollutant discharge, ventilation, exhaust and release points;

(D) Information about any air sampling or monitoring equipment used, intended to be used, or owned by the applicant, including type, trademark, and operation schedule;

(E) An air quality impact analysis whenever:

(i) The new construction is either a major source or major modification; or

(ii) Such an analysis is requested by the Commissioner for a complete and adequate evaluation of the application;

(F) A copy of all approvals, endorsements or denials granted by Federal and local government agencies for said construction;

(G) Detailed plans and specifications of the source including: location, height of the emissions points, fuel used, process details, concentration and duration of emissions;

(H) In case of a major source or major modification a certification by an engineer licensed to practice the profession in the U.S. Virgin Islands shall be included, attesting to the fact that the technical information contained therein is true and

complete to the best of the engineer's knowledge. In case the application contains results of chemical analysis, the results must be obtained by a laboratory certified or approved by the Department.

Application for an Authority to Construct or modify a source shall be made by the owner or operator of such source on forms furnished by the Commissioner. *Id*.

13. Section 206-26(d) of VI Air Permits Rule contains provisions relating to conditions upon granting a permit to construct:

> (1) The DPNR Commissioner may impose any reasonable conditions upon the issuance of a permit to construct. The Commissioner may impose such conditions as are necessary to insure compliance with applicable National Emissions Standards for Hazardous Air Pollutants (Title 40 of the Code of Federal Regulations Part 61) and Federal Standards of Performance for New Stationary Sources (Title 40 of the Code of Federal Regulations Part 60); and
>
> (2) Any person granted a permit to construct a source shall construct, modify, test and operate such source in accordance with all the conditions of the permit. A violation of any condition imposed pursuant to Chapter 9 of the VI APCA shall constitute a violation of such chapter. *Id*.

14. Section 206-27(a) of the VI Air Permits Rule provides standards for granting a permit to operate. No permit to operate shall be granted unless:

> (A) The applicant demonstrates to the satisfaction of the DPNR Commissioner that the source is in compliance with applicable federal or territorial laws and regulations and, in the case of a new or modified source, that it is also in

compliance with the terms and conditions imposed under a permit to construct;

(B) The applicant demonstrates to the satisfaction of the DPNR Commissioner that the operation of the source will not prevent the attainment or maintenance of any ambient air quality standard and will not result in a violation of any provision of this chapter or the Virgin Islands SIP;

(C) The results of any required performance tests must demonstrate that actual emission rates comply with any applicable emission limitations that are specified in applicable federal or territorial laws and regulations;

(D) In the case of renewal of a permit to operate the applicant demonstrates to the satisfaction of the Commissioner that the characteristics, and nature of air contaminants emitted by the source are the same as those under which the previous permit was issued; and

(E) Air Monitoring. The DPNR Commissioner may require, as a condition of the permit to operate, operators of permitted sources to install, operate and maintain air monitoring instrumentation for determining whether emissions from the source may cause or contribute to violations of ambient air quality standards. Such air monitoring shall be conducted according to the Commissioner's specifications regarding number, type and operating mode of such equipment. *Id.*

15. Section 206-27(c) of the VI Air Permits Rule contains provisions relating to conditions upon granting a permit to operate:

(1) The DPNR Commissioner may impose any reasonable conditions upon the issuance

of a permit to operate to ensure compliance with Chapter 9 of the VI APCA; and

(2) Any person granted a permit to operate a source shall test and operate such source in accordance with all the conditions of the permit. A violation of any condition imposed pursuant to Chapter 9 of the VI APCA shall constitute a violation of such chapter.

16. Section 206-30(a) of the VI Air Permits Rule, as approved into the VI SIP, provides that this requirement is applicable to any stationary source subject to review under section 206-20, chapter 9, title 12 of the VI APCA, the construction or modification of which is commenced after October 11, 1973.

17. Section 206-30(b) of the VI Air Permits Rule, as approved into the VI SIP, provides that no owner or operator shall commence construction or modification of any stationary source after October 11, 1973, without first obtaining approval from the DPNR Commissioner of the location of such source.

(1) Application for approval to construct or modify shall be made on forms furnished by the DPNR Commissioner, or by other means prescribed by the Commissioner;

(2) A separate application is required for each source;

(3) Each application shall be signed by the applicant;

(4) Each application shall be accompanied by site information, stack data and the nature and amount of emissions. Such information shall be sufficient to enable the Commissioner to make any determination pursuant to section 206-30(c); and

(5) Any additional information, plans, specifications, evidence, or documentation that the Commissioner may require shall be furnished upon request. *Id*.

18. Section 206-30(c) of the VI Permits Rule, as approved into the VI SIP, provides that no approval to construct or modify will be granted unless the applicant shows to the satisfaction of the DPNR Commissioner that the source will not prevent or interfere with attainment or maintenance of any national standard.

19. Section 206-30(g) of the VI Permits Rule, as approved into the VI SIP, provides that approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with all local, State, and Federal regulations which are part of the applicable plan.

Air Pollution Control Permit to Construct and Operate

20. On June 15, 2023, pursuant to sections 206-26, 206-27, and 206-30, chapter 9, title 12, of the SIP-approved VI APCA, the Virgin Islands DPNR issued Respondent an Air Pollution Control Program Permit to Construct and Operate, Permit Number STX-1-014-AC-23 (Permanent Power Project), with an effective date of June 19, 2023, and an expiration date of June 18, 2026 (the "Permit").[3] The Permit authorized Respondent to construct and operate ten (10) Engine Generators and one (1) Blackstart Generator at the Facility.

[3] The Permit was issued based on OPT's application for a synthetic minor operating permit for purposes of avoiding otherwise applicable prevention of significant deterioration (PSD) of air quality requirements with respect to the permanent power project. Accordingly, the Permit includes federally enforceable conditions to assure the annual NOx emission rate (among other pollutants) for the permanent power project remains below the PSD "major source" applicability threshold. Specifically, the Permit only authorizes operation of SCR-equipped generators for controlling NOx. 40 C.F.R. § 52.21(b)(4) of the PSD regulations defines "Potential to emit" as "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source." Failure to operate the required SCR controls in accordance with the Permit results in the permanent power project emitting NOx at an annual emission rate that would trigger PSD applicability.

21. Table 1 of the Permit, "Permitted Emission Units," designates the 10 Engine Generators EG-1, EG-2, EG-3, EG-4, EG-5, EG-6, EG-7, EG-8, EG-9, and EG-10, all within Permit ID Group 26. Each of these Engine Generators is a 2,152 hp (1,189 kWe) lean burn engine firing liquified petroleum gas with natural gas as a backup fuel. Table 1 further specifies the emission controls for each of the 10 Engine Generators as "Selective Catalytic Reduction, NMHC Oxicat, and combustion controls." Table 1 designates the Blackstart Generator as BG-1, also within Permit ID Group 26. This Blackstart Generator is a 1,328 KwM (1,780 HP) turbocharged diesel-fired compression ignition engine equipped to combust Ultra Low Sulfur Diesel fuel.

22. Section III.A.1.3 of the Permit contains applicable emission limitations for "Group 26 – Engine Generators (EG-1 through EG-10)." For these engine generators, the Permittee shall limit emissions as follows: NOx equal to or less than 1.0 gram/HP-hour, CO equal to or less than 2.0 grams/HP-hour, and VOC equal to or less than 0.7 gram/HP-hour. [40 CFR 60.4233(e)]. *Id.*

23. Section III.C.1.2 of the Permit provides that the Permittee shall monitor catalyst pressure drop [at the SCR] monthly and maintain the pressure drop within the operating range established by the most-recent performance test. [40 CFR 63, Subpart ZZZZ].

24. Section III.C.1.3 of the Permit provides that the Permittee shall monitor catalyst inlet temperature continuously and maintain the 4-hour average temperature within the operating range established by the most-recent performance test. [40 CFR 63, Subpart ZZZZ].

25. Section III.C.1.4 of the Permit provides that the Permittee shall maintain the temperature of the engine exhaust so that the oxidation catalyst inlet temperature is between 450°F – 1350°F. [40 CFR Part 63, Subpart ZZZZ].

26. Section III.C.1.9 of the Permit provides that the Permittee shall operate and maintain each engine and the associated controls in accordance with the manufacturer's written emissions-related instructions and keep records of conducted maintenance. [Federally enforceable, PSD-avoidance].

CAA Section 111—Standards of performance for new stationary sources

27. Section 111 of the Act, 42 U.S.C. § 7411, provides for "standards of performance" for new and existing stationary sources of air pollution. Under Section 111(b) of the Act, EPA is required to promulgate standards of performance for new stationary sources, commonly known as New Source Performance Standards ("NSPS").

28. Section 111(a) of the Act, 42 U.S.C. § 7411(a), contains the following relevant definitions:

a. Section 111(a)(1) of the Act defines "standard of performance" as a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which, taking into account the cost of achieving such reduction and other specified factors, the Administrator determines has been adequately demonstrated.

b. Section 111(a)(2) of the Act defines "new source" as any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under CAA

Section 111 which will be applicable to the source.

c. Section 111(a)(3) of the Act defines "stationary source" as any building, structure, facility, or installation which emits or may emit any air pollutant. Nothing in Title II of the CAA relating to nonroad engines shall be construed to apply to stationary internal combustion engines.

d. Section 111(a)(5) of the Act defines "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source.

29. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits any owner or operator from operating a source in violation of a Section 111 standard of performance that is applicable to the source.

NSPS Subpart JJJJ – Standards of Performance for Stationary Spark Ignition Internal Combustion Engines

30. Pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated "Standards of Performance for Stationary Spark Ignition Internal Combustion Engines," 40 C.F.R. Part 60, Subpart JJJJ, § 60.4230 *et seq*. ("NSPS Subpart JJJJ"). 73 Fed. Reg. 3591 (January 18, 2008) (as amended).

31. 40 C.F.R. § 60.4230 provides that NSPS Subpart JJJJ applies to manufacturers, owners, and operators of stationary spark ignition ("SI") internal combustion engines ("ICE") as specified in 40 C.F.R. § 60.4230(a)(1) through (6). For the purposes of NSPS Subpart JJJJ, the date that construction commences is the date the engine is ordered by the owner or operator. Specifically, 40 C.F.R. § 60.4230(a)(4)(i) provides that NSPS Subpart JJJJ applies to owners and operators of stationary SI ICE that commence construction after June 12, 2006, where the stationary SI ICE are manufactured on or after July 1, 2007, for

engines with a maximum engine power greater than or equal to 500 HP (except lean burn engines with a maximum engine power greater than or equal to 500 HP and less than 1,350 HP), among other stationary SI ICE.

32. Pursuant to 40 C.F.R. § 60.4248, "Spark ignition" means relating to either: a gasoline-fueled engine; or any other type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark ignition engines usually use a throttle to regulate intake air flow to control power during normal operation. Dual-fuel engines in which a liquid fuel (typically diesel fuel) is used for compression ignition and gaseous fuel (typically natural gas) is used as the primary fuel at an annual average ratio of less than 2 parts diesel fuel to 100 parts total fuel on an energy equivalent basis are spark ignition engines.

33. Pursuant to 40 C.F.R. § 60.4248, "Stationary internal combustion engine" means any internal combustion engine, except combustion turbines, that converts heat energy into mechanical work and is not mobile. Stationary ICE differ from mobile ICE in that a stationary internal combustion engine is not a nonroad engine as defined at 40 C.F.R. § 1068.30 (excluding paragraph (2)(ii) of that definition), and is not used to propel a motor vehicle, aircraft, or a vehicle used solely for competition. Stationary ICE include reciprocating ICE, rotary ICE, and other ICE, except combustion turbines.

34. 40 C.F.R. § 60.4233(e) provides in relevant part that owners and operators of stationary SI ICE with a maximum engine power greater than or equal to 75 KW (100 HP) (except gasoline and rich burn engines that use LPG) must comply with the emission standards in Table 1 to NSPS Subpart JJJJ for their stationary SI ICE.

35. Table 1 of the NSPS Subpart JJJJ regulation provides that for non-emergency lean burn LPG SI ICE with HP equal to or greater than 1,350 HP, which are manufactured on or after July 1, 2010, must meet the following emission standards: NOx equal to or less than 1.0 gram/HP-hour (or 82 ppmvd at 15% oxygen), CO equal to or less than 2.0 grams/HP-hour (or 270 ppmvd at 15% oxygen), and VOC equal to or less than 0.7 gram/HP-hour (or 60 ppmvd at 15% oxygen).

CAA Section 112 – Hazardous air pollutants

36. Section 112(a) of the Act, 42 U.S.C. § 7412(a), contains the following relevant definitions:

a. "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

b. "area source" means any stationary source of hazardous air pollutants that is not a major source.

c. "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

d. "new source" means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source.

e. "hazardous air pollutant" means any air pollutant listed pursuant to Section

112(b) of the Act, 42 U.S.C. § 7412(b).

f. "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

g. "existing source" means any stationary source other than a new source.

37. Section 112(b) of the Act, 42 U.S.C. § 7412(b), contains a list of hazardous air pollutants ("HAPs") subject to regulation under the Act.

38. Section 112(c) of the Act, 42 U.S.C. § 7412(c), requires the EPA Administrator to, among other things: (i) publish a list of categories and subcategories of major sources and area sources of the HAPs listed pursuant to Section 112(b) of the Act, and for such categories and subcategories, (ii) establish emission standards under Section 112(d) of the Act, 42 U.S.C. § 7412(d).

39. Section 112(d) of the Act, 42 U.S.C. § 7412(d), requires the EPA Administrator to promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of HAPs listed for regulation pursuant to Section 112(c) of the Act in accordance with the schedules provided in Sections 112(c) and 112(e) of the Act.

40. Emissions standards promulgated pursuant to Section 112 of the Act are commonly known as National Emissions Standards for Hazardous Air Pollutants ("NESHAPs"). NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 C.F.R. Part 63. NESHAPs promulgated in 40 C.F.R. Part 63 include standards requiring maximum achievable control technology ("MACT") pursuant to Section 112(d) of the CAA, as amended.

MACT Subpart ZZZZ – National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

41. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated "National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines," 40 C.F.R. § 63.6580 *et seq*. ("MACT Subpart ZZZZ"). 69 Fed. Reg. 33506 (June 15, 2004) (as amended).

42. MACT Subpart ZZZZ establishes national emission limitations and operating limitations for HAPs emitted from stationary reciprocating internal combustion engines (RICE) located at major and area sources of HAP emissions. 40 C.F.R. § 63.6580. MACT Subpart ZZZZ also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and operating limitations. *Id*.

43. 40 C.F.R. § 63.6585 provides that a person is subject to MACT Subpart ZZZZ if they own or operate a stationary RICE at a major or area source of HAP emissions, except as otherwise provided. A stationary RICE is any internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. *Id*. Stationary RICE differ from mobile RICE in that a stationary RICE is not a non-road engine as defined at 40 C.F.R. § 1068.30 and is not used to propel a motor vehicle or a vehicle used solely for competition. *Id*.

44. 40 C.F.R. § 63.6675 defines "Stationary reciprocating internal combustion engine (RICE)" as any reciprocating internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. Stationary RICE differ from mobile RICE in that a stationary RICE is not a non-road engine as defined at 40 C.F.R. § 1068.30 and is not used to propel a motor vehicle or a vehicle used solely for

competition. *Id*.

45. 40 C.F.R. § 63.6590(a)(2) provides that a stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions is new if you commenced construction of the stationary RICE on or after December 19, 2002.

46. 40 C.F.R. § 63.6595(a)(3) provides that if you start up your new or reconstructed stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions after August 16, 2004, you must comply with the applicable emission limitations and operating limitations in MACT Subpart ZZZZ upon startup of your affected source.

47. 40 C.F.R. § 63.6600(b) provides that if you own or operate a new or reconstructed 2SLB stationary RICE with a site rating of more than 500 brake HP located at major source of HAP emissions, a new or reconstructed 4SLB stationary RICE with a site rating of more than 500 brake HP located at major source of HAP emissions, or a new or reconstructed CI stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you must comply with the applicable emission limitations in Table 2a to MACT Subpart ZZZZ and the applicable operating limitations in Table 2b to MACT Subpart ZZZZ.

48. 40 C.F.R. § 63.6625(b)(2) provides that if you are required to install a continuous parameter monitoring system (CPMS) as specified in Table 5 of MACT Subpart ZZZZ, you must install, operate, and maintain each CPMS in continuous operation according to the procedures in your site-specific monitoring plan.

49. 40 C.F.R. § 63.6630(a) provides that you must demonstrate initial compliance with each applicable emission limitation, operating limitation, and other requirement according to Table 5 of MACT Subpart ZZZZ.

50. 40 C.F.R. § 63.6635(b) provides that except for monitor malfunctions, associated repairs, required performance evaluations, and required quality assurance or control activities, you must monitor continuously at all times that the stationary RICE is operating. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. *Id*. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. *Id*.

51. 40 C.F.R. § 63.6640(a) provides that you must demonstrate continuous compliance with each applicable emission limitation, operating limitation, and other requirements in Tables 1a and 1b, Tables 2a and 2b, Table 2c, and Table 2d to MACT Subpart ZZZZ according to methods specified in Table 6 to MACT Subpart ZZZZ.

52. 40 C.F.R. § 63.6640(d) provides that for new, reconstructed, and rebuilt stationary RICE, deviations from the emission or operating limitations that occur during the first 200 hours of operation from engine startup (engine burn-in period) are not violations.

53. Table 2b of MACT Subpart ZZZZ provides in relevant part that specified new CI stationary RICE >500 HP located at a major source of HAP emissions must maintain the temperature of the engine exhaust so that the catalyst inlet temperature is greater than or equal to 450 °F and less than or equal to 1350 °F, except during periods of startup.

54. Table 5 of MACT Subpart ZZZZ provides in relevant part that each specified new non-emergency stationary RICE >500 HP located at a major source of HAP has demonstrated

initial compliance if you have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in 40 C.F.R. § 63.6625(b).

55. Table 6 of MACT Subpart ZZZZ provides in relevant part that each specified new non-emergency stationary RICE >500 HP located at a major source of HAP must demonstrate continuous compliance by collecting the catalyst inlet temperature data according to 40 C.F.R. § 63.6625(b); and reducing these data to 4-hour rolling averages, among other requirements.

FINDINGS OF FACT

The following findings of fact are based on a review of Facility records, information provided to EPA by OPT, and inspections of the Facility performed by EPA:

56. Respondent owns and/or operates the Facility, a bulk gasoline terminal located at #1 Estate Hope, St. Croix, U.S. Virgin Islands, which includes the ten (10) Engine Generators and one (1) Blackstart Generator authorized by the Permit described above and referred to in the Permit as Permit ID Group 26.

57. Following DPNR's issuance of the Permit to OPT on June 15, 2023, OPT commenced the construction, installation and operation of the 10 Engine Generators and the Blackstart Generator. These permanent generators were to replace 10 temporary compression-ignition diesel internal combustion engines for producing electrical power for the Facility.

58. On July 18, 2023, EPA and OPT entered into an Administrative Compliance Order on Consent, CAA-02-2023-1007 ("ACO on Consent"), which ordered OPT to comply with applicable CAA requirements by discontinuing use of each temporary diesel engine

listed in the ACO on Consent no later than November 15, 2023; physically disconnecting each temporary engine from its fuel supply and from the Facility power grid; and removing each temporary engine from its current location at the Facility.

59. On October 2, 2023, OPT discontinued using the temporary engines for power generation and switched over to PSD-permitted diesel fueled Gas Turbine 8.

60. On October 4, 2023, OPT permanently disconnected the 10 temporary engines from the Facility power grid. OPT then began transferring the power load to the 10 permanent Engine Generators covered by the Permit.

61. As of October 9, 2023, the 10 permanent Engine Generators were placed into operation and the Facility has been receiving electrical power from the Engine Generators since then.

62. As of October 14, 2023, all of the temporary engines were dismantled and relocated to a different area of the Facility. OPT certified that it had complied with the ACO on Consent in a report submitted to EPA on November 30, 2023.

63. On December 8, 2023, OPT submitted a "Voluntary Disclosure of Potential Clean Air Act Violations Involving Gensets" to EPA ("Voluntary Disclosure"), informing EPA of the facts set forth in paragraphs 39-42, above. The Voluntary Disclosure identified potential noncompliance with the Permit, the VI SIP, and NSPS Subpart JJJJ. Specifically, OPT informed EPA that upon startup of the 10 permanent Engine Generators, the contractor who supplied and installed these engines failed to connect components of the SCR pollution controls for controlling nitrogen oxide ("NOx") emissions from each engine.

64. The Voluntary Disclosure indicates OPT did not discover the disconnected SCR pollution control equipment until November 21, 2023, 43 days after the Engine Generators began operation at the Facility.

65. On February 19, 2024, OPT submitted a "Compliance Certification for Potential Clean Air Act Violations Involving Permanent Gensets" to EPA ("Compliance Certification"), along with a "CAA/173 Compliance Report," indicating that the SCR controls for 8 of the 10 permanent Engine Generators were connected and in operation as of December 15, 2023, 67 days after these engines began operation at the Facility. The Compliance Certification indicates that the SCR controls for one additional engine generator were connected as of December 22, 2024, and that as of February 13, 2024, the SCR controls for all 10 permanent Engine Generators were connected.

66. The Compliance Certification indicates that starting on December 15, 2023, OPT only operated those Engine Generators that had been connected to the SCR emission controls.

67. On or around October 9, 2023, through December 15, 2023, OPT operated the permanent Engine Generators without connecting and operating the SCR pollution controls for reducing NOx emissions to levels below the annual PSD emission rate threshold for a major source under the CAA and the NSPS Subpart JJJJ NOx emission standards. Each Engine Generator operated with uncontrolled NOx emissions during this time period.

68. On July 30, 2024, OPT submitted to EPA a report referenced as "40 CFR Part 63, Subpart ZZZZ (RICE MACT) National Emission Standards for Hazardous Air Pollutants: Stationary

Reciprocating Internal Combustion Engines Semiannual Compliance Report – Reporting Period January 1, 2024 to June 30, 2024" ("MACT Subpart ZZZZ Semiannual Report").

69. The MACT Subpart ZZZZ Semiannual Report states that Engine Generators 1 - 10 (EG-1 through EG-10) are new stationary RICEs, each with a site rating of more than 500 brake HP located at a major source of HAP emissions.

70. The MACT Subpart ZZZZ Semiannual Report states that "none of the [Engine Generators (EG-1 through EG-10)] were equipped with a temperature sensor at the catalyst inlet at the time of each performance test. Therefore, OPT did not meet the continuous catalyst inlet temperature monitoring requirements of §63.6625(b) on any of the affected engines."

71. The MACT Subpart ZZZZ Semiannual Report indicates that as of the date of the Report, OPT is working to install temperature sensors at the inlet of each catalyst bed as expeditiously as possible.

CONCLUSIONS OF LAW

Based on the Findings of Facts set forth above, EPA reaches the following conclusions of law:

72. Respondent is a "person" within the meaning of Section 302(e) of the Act.

73. Respondent is the "owner or operator" of the Facility within the meaning of 40 C.F.R. § 60.2, and is the Permittee under the Permit issued by DPNR in accordance with the SIP-approved provisions in sections 206-26, 206-27, and 206-30, chapter 9, title 12 of the VI APCA.

74. Respondent is subject to the applicable and federally enforceable requirements in the Permit.

75. Respondent is subject to the applicable requirements in NSPS Subpart JJJJ.

76. Respondent is subject to the applicable requirements in MACT Subpart ZZZZ.

77. From October 9, 2023, through December 15, 2023, Respondent failed to operate the required SCR pollution controls for controlling NOx emissions from the 10 permanent Engine Generators at the Facility, in violation of Section II, Table 1 and Section III.C.1.9 of the Permit, and sections 206-27(c) and 206-30, chapter 9, title 12 of the VI APCA and VIRR as approved into the VI SIP.

78. From October 9, 2023, through December 15, 2023, Respondent failed control NOx emissions from the 10 permanent Engine Generators at the Facility to equal to or less than 1.0 gram/HP-hour as required by NSPS Subpart JJJJ, in violation of Section III.A.1.3 of the Permit and 40 C.F.R. § 60.4233(e) and Table 1 of NSPS Subpart JJJJ.

79. From October 9, 2023, through at least July 30, 2024, Respondent failed to install, operate, and maintain a CPMS to continuously monitor catalyst inlet temperature according to the requirements in 40 C.F.R. § 63.6625(b) at each of the 10 permanent Engine Generators at the Facility, in violation of Section III.C.1.3 of the Permit and 40 C.F.R. §§ 63.6600(b), 63.6625(b), 63.6630(a), 63.6635(b), 63.6640(a), and Tables 2b, 5, and 6 of MACT Subpart ZZZZ.

ENFORCEMENT

Section 113(a)(1) and (3) of the CAA, provide that the Administrator may bring a civil action whenever, on the basis of any information available to the Administrator, the

Administrator finds that any person has violated or is in violation of any requirement rule or permit issued under the provisions of Section 113 of the CAA. Administrator shall notify the person and the State in which the plan applies of such a finding. At any time after the expiration of thirty (30) days following the date this Notice of Violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28):

a. issue an order requiring such person to comply with the requirements or prohibitions of a SIP or permit;
b. issue and administrative penalty order in accordance with CAA Section 113(d); or
c. bring a civil action in accordance with CAA Section 113(b) for civil penalties and/or injunctive relief.

The amount of civil penalties that may be recovered for violations such as those discussed above of the CAA and its implementing regulations is set by statute at not more than $25,000 per day for each violation, but has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L.114-74, Section 701). For civil penalties for violations that occurred after November 2, 2015, and are assessed on or after January 6, 2023, this daily penalty maximum is adjusted to $121,275 for judicial actions, and $57,617 for administrative actions. *See* 40 C.F.R. Part 19, Table 1.

In addition, for any person who knowingly violates any requirements or prohibition of an applicable SIP and permit for more than 30 days after the date of the issuance of an NOV,

Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. Under Section 306 of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11,738, facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject facility or other facilities owned or operated by Respondent, being declared ineligible for participation in any federal contract, grant, or loan program.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act provides that if a penalty is assessed pursuant to Section 113 of the Act, EPA or the court, as appropriate, shall, in determining the amount of the penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of non-compliance, the seriousness of the violation, and other factors as justice may require.

Section 113(e)(2) of the Act allows EPA or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, EPA will consider a violation to continue for the date the violation began until the date Respondent establishes that has achieved continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, EPA will reduce the penalty accordingly.

OPPORTUNITY FOR A CONFERENCE

Respondent may request a conference with EPA concerning the violations alleged in this NOV. This conference will enable Respondent with an opportunity to advise the Agency of any further information the EPA should consider with respect to the alleged violations and to present evidence bearing on the finding of violations, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. Respondent has the right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this NOV. A request for a conference or other inquiries concerning the NOV should be made via electronic mail or in writing to:

Robert Buettner, Manager
Air Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2
290 Broadway – Floor 21
New York, New York 10007
Attn: Alex Rivera, Enforcement Officer
rivera.alex@epa.gov

If you are represented by counsel, your counsel may contact:

Erick Ihlenburg
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway, Floor 16
New York, New York 10007
ihlenburg.erick@epa.gov

By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to any remedy available under the CAA. Also, notwithstanding this NOV and the opportunity for conference, Respondent must comply with all applicable requirements of the CAA.

For the United States Environmental Protection Agency, Region 2:

KATHLEEN ANDERSON Digitally signed by KATHLEEN ANDERSON Date: 2024.08.13 10:48:40 -04'00'

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2

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