

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:18-cv-7198
)	
AUX SABLE LIQUID PRODUCTS L.P.,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff, the United States of America, by and through the Attorney General of the United States and through his undersigned attorneys, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action brought by the United States against Aux Sable Liquid Products, L.P. (“Aux Sable”) pursuant to Section 113(b) of the Clean Air Act (the “CAA”), 42 U.S.C. § 7413(b), for alleged environmental violations at Aux Sable’s natural gas processing plant located in Aux Sable Township, Grundy County, Illinois (“Facility”). The United States is seeking injunctive relief and the assessment of civil penalties for the alleged violations.

2. The United States alleges that Aux Sable violated and/or continues to violate the following federal and state statutory and regulatory requirements that are applicable to the Facility:

a. The Nonattainment New Source Review (“NNSR”) provisions of Part D of Title I of the CAA, 42 U.S.C. §§ 7501–7515 and the Implementing Regulations of 35 Ill. Adm. Code 203 under the Illinois State Implementation Plan (“SIP”);

b. The New Source Performance Standards (“NSPS”) for Volatile Organic Compounds (“VOC”) emissions from Synthetic Organic Chemical Manufacturing Industry (“SOCMI”) Distillation Operations, 40 C.F.R. Part 60, Subpart NNN; for VOC emissions from SOCMI Reactor Processes, 40 C.F.R. Part 60, Subpart RRR; and for monitoring and operating a flare pilot flame pursuant to 40 C.F.R. § 60.18 (General Control Device and Work Practice Requirements), and Part 60, Subparts Kb (Standards of Performance for Volatile Organic Liquid Storage Vessels), KKK (Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants), NNN, and RRR;

c. Leak Detection and Repair (“LDAR”) requirements, including those found at 40 C.F.R. Part 60, Subpart KKK, and, by reference, certain provisions of 40 C.F.R. Part 60, Subpart VV, and 40 C.F.R. Part 60, Appendix A-7, Method 21;

d. The requirements of the Illinois Emissions Reduction Market System as codified under the Illinois SIP at 35 Ill. Adm. Code 205; and

e. The requirements of the Illinois Annual Emissions Reporting Program as codified under the Illinois SIP at 35 Ill. Adm. Code 254.

3. The United States alleges that Aux Sable violated and/or continues to violate the following permit conditions applicable to the Facility:

a. Construction permit (No. 98080090) conditions regarding Volatile Organic Material (“VOM”) fugitive emissions established according to 35 Ill. Adm. Code § 201.156 of the Illinois SIP;

b. CAA Title V/Illinois Clean Air Act Permit Program (“CAAPP”) permit (No. 01120007) conditions for VOM fugitive emissions, requirements to monitor a flare pilot flame, and applicable LDAR requirements; and

c. Fractionation expansion project construction permit (No. 14120019) conditions for oxides of nitrogen (“NOx”) emissions and fuel usage operational limits established according to 35 Ill. Adm. Code § 201.156 of the Illinois SIP.

4. While the CAA and federal regulations use the term Volatile Organic Compounds (“VOC”) and the Illinois SIP and state regulations use the term VOM, the two terms are synonymous for the purposes of this Complaint.

5. As a result of Aux Sable’s operation of the Facility in the absence of appropriate controls and while repeatedly exceeding VOM and NOx limitations as set forth in its construction permits and in federally enforceable provisions of the Illinois SIP, significant amounts of VOM and NOx pollution each year have been, and continue to be, released into the atmosphere.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)–(c), 1395(a), and under Section 113(b) of the CAA, 42 U.S.C. § 7413(b), because Defendant resides within this District and because the violations that constitute the basis of the Complaint occurred and are occurring at a facility located in this District.

NOTICE

8. The United States has provided notice of the commencement of this action to the State of Illinois as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

9. EPA issued Aux Sable a Finding of Violation on September 4, 2014, a Notice and Finding of Violation on April 14, 2015, and a Notice of Violation on August 23, 2016. EPA provided copies of each of the three Notices and Findings to the State of Illinois, as required by Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). Each of the three Notices and Findings are included as Attachment 1.

10. More than thirty days have elapsed since EPA provided notice to Aux Sable pursuant to Section 113(a) of the CAA, 42 U.S.C. § 7413(a), of all violations of federally-enforceable aspects of the Illinois SIP alleged herein.

AUTHORITY

11. The United States Department of Justice has authority to bring this action on behalf of the Administrator of EPA under 28 U.S.C. §§ 516 and 519 and Section 305(a) of the CAA, 42 U.S.C. § 7605(a).

DEFENDANT

12. Aux Sable is a Delaware limited partnership that is registered to do business in the State of Illinois. Aux Sable owns and operates an onshore natural gas processing plant at 6155 East U.S. Route 6, Morris, Illinois. At the Facility, Aux Sable processes field gas from production wells to extract and produce methane, natural gas liquids (“NGLs”), and chemicals derived from NGLs for sale. Aux Sable fractionates the NGLs to ethane, propane, and butanes.

13. Aux Sable 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 applicable federal and state regulations promulgated pursuant to the CAA.

STATUTORY BACKGROUND

14. The Clean Air Act establishes a regulatory scheme designed to protect and enhance the quality of the nation’s air resources so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

I. National Ambient Air Quality Standards

A. General Provisions

15. Section 108(a) of the CAA, 42 U.S.C. § 7408(a), requires EPA to list, and issue air quality criteria for, each air pollutant, the emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources.

16. Section 109(a) of the CAA, 42 U.S.C. § 7409(a), requires EPA to promulgate regulations establishing primary and secondary national ambient air quality standards (“NAAQS”) for those air pollutants for which air quality criteria have been issued pursuant to Section 108 of the CAA. Under Section 109(b) of the CAA, 42 U.S.C. § 7409(b), the primary NAAQS are to be adequate to protect the public health with an adequate margin of safety, and the secondary NAAQS are to be adequate to protect the public welfare from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

17. Pursuant to Section 108 and 109 of the CAA, 42 U.S.C. §§ 7408 and 7409, EPA has listed and issued air quality criteria and NAAQS for ozone. The NAAQS for ozone are set forth in 40 C.F.R. Part 50.

18. Section 107(d) of the CAA, 42 U.S.C. § 7407(d), requires each state to designate those areas within its boundaries that do not meet the NAAQS (known as “nonattainment” areas), areas that meet the NAAQS (known as “attainment” areas), and areas that cannot be classified as meeting or not meeting the NAAQS (known as “unclassifiable” areas). Air quality designations can be found at 40 C.F.R. Part 81.

19. In 2000, at the time of its construction and initial startup, the Facility, located in Aux Sable Township, Grundy County, Illinois, was within an ozone nonattainment area designated as in “severe” nonattainment under the 1979 1-hour ozone standard. This area is currently designated as in “moderate” nonattainment under the 2008 8-hour ozone standard.

State Implementation Plans

20. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a plan that provides for the attainment and maintenance of the NAAQS in each air quality control region within each state. This plan is known as a State Implementation Plan (“SIP”).

21. Once EPA approves a SIP, the SIP is also independently enforceable by the federal government under Section 113 of the CAA, 42 U.S.C. § 7413.

22. Of relevance to this Complaint, Section 110(a)(2)(C) of the CAA, 42 U.S.C. § 7410(a)(2)(C), requires each SIP to include “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, including a permit program.”

23. Any limitation or condition contained within a permit issued by a federally approved program that is incorporated in a SIP is a requirement of the SIP and is federally enforceable under Section 113. 40 C.F.R. § 52.23.

II. Non-Attainment New Source Review

A. General Provisions

24. Part D of Title I (Sections 171 through 193 of the CAA, 42 U.S.C. §§ 7501-7515), sets forth SIP requirements for those areas designated as nonattainment for purposes of meeting the NAAQS.

25. Part D directs states to include in their SIPs requirements providing for reasonable progress towards attainment of the NAAQS in nonattainment areas. 42 U.S.C. § 7502(c)(2).

26. Part D includes provisions for implementation of a NNSR Program, which is intended to reduce emissions of air pollutants in areas that have not met the NAAQS so that the areas make progress towards meeting the NAAQS. Section 172(c)(5) of the CAA, 42 U.S.C. § 7502(c)(5), describes the core of the NNSR Program. Under Section 172(c)(5), all state SIPs must require permits for the construction and operation of new or modified major stationary sources anywhere in a nonattainment area within the state. These NNSR permits must be issued in accordance with Section 173 of the CAA, 42 U.S.C. § 7503.

27. Section 173 of the CAA, 42 U.S.C. § 7503, sets forth a series of requirements for the issuance of permits for new major sources or major modifications to major stationary sources within nonattainment areas. These requirements include: (1) securing sufficient emission offsets from existing sources in the nonattainment area; (2) complying with the Lowest Achievable Emission Rate (“LAER”); (3) demonstrating that all major stationary sources in the state under common ownership or control by the new or modified source’s owner or operator are in compliance with all applicable requirements of the CAA; (4) ensuring that the Administrator of EPA has not determined that the applicable SIP for the nonattainment area is not being adequately implemented; and (5) analyzing the alternatives to the particular project, to determine

whether the benefits of the project outweigh the environmental and social cost. Section 173(a)(1)–(5) of the CAA, 42 U.S.C. § 7503(a)(1)–(5).

28. The CAA was amended in 1990 to add provisions under Section 182(c)(6), (7), and (8), 42 U.S.C. § 7511a(c)(6), (7), and (8), revising certain NNSR requirements for major stationary sources or major modifications of existing sources in ozone nonattainment areas classified as serious, severe, or extreme. Of relevance to this Complaint, these amendments also tightened thresholds for determining what constitutes a major source or major stationary source and established specific emission offset ratios that must be met depending upon the nonattainment area designation. For severe ozone nonattainment areas, Section 182(d) of the CAA, 42 U.S.C. § 7511a(d), was added to provide that the terms “major source” and “major stationary source” as applied under the CAA include any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of VOCs. Section 182(d)(2) of the CAA, 42 U.S.C. § 7511a(d)(2), was added to provide that, for the purpose of satisfying the offset requirements for NNSR in severe nonattainment areas, the ratio of total emission reductions of VOC in the nonattainment area to total increased emission of VOC by the new source or major modification shall be at least 1.3 to 1.

B. Illinois SIP Provisions

i. General

29. Illinois’s NNSR program was first promulgated in 1988, 12 Ill. Reg. 6118 (March 22, 1998), and is codified at 35 Ill. Adm. Code 203. In 1995, EPA approved a revision to the Illinois SIP amendments that provides the Illinois NNSR rules, including the adoption of the 25

tons-per-year of VOC threshold for determining major sources and the 1.3-to-1 offset ratio applicable to severe ozone nonattainment areas. 60 Fed. Reg. 49,780 (Sept. 27, 1995).

30. The Illinois SIP provides that:

In any nonattainment area, no person shall cause or allow the construction of a new major stationary source or major modification that is major for the pollutant for which the area is designated a nonattainment area, except as in compliance with this Part for that pollutant. In areas designated nonattainment for ozone, this prohibition shall apply to new major stationary sources or major modifications of sources that emit VOM or nitrogen oxides (“NO_x”).

35 Ill. Adm. Code 203.201.

31. The Illinois SIP defines a “major stationary source” within an area designated as nonattainment for ozone as “a stationary source which emits or has the potential to emit [VOM] in an amount equal to or greater than ... 25 tons per year in an area classified as severe nonattainment for ozone.” 35 Ill. Adm. Code 203.206(b). In addition, “in areas that are classified as serious, severe, or extreme nonattainment, the fugitive emissions of a stationary source shall be included in determining whether it is a major stationary source.” 35 Ill. Adm. Code 203.206(d).

32. The Illinois SIP 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 only if the limitation or the effect it would have on emissions is federally enforceable.

35 Ill Adm. Code 203.128.

33. The Illinois SIP provides that “[n]o person shall cause or allow the operation of a new major stationary source or major modification subject to the requirements of Subpart C (Requirements for Major Stationary Sources in Nonattainment Areas), except as in compliance

with applicable LAER provisions established pursuant to Section 203.301 for such source or modification.” 35 Ill. Adm. Code 203.601. LAER is defined as:

the more stringent rate of emissions based on the following: (1) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless it is demonstrated that such limitation is not achievable; or (2) The most stringent emission limitation which is achieved in practice by such a class or category of stationary source.

35 Ill. Adm. Code 203.301(a); *see* 42 U.S.C. § 7501(3).

34. The Illinois SIP also requires that:

The owner or operator of a new major source or major modification shall provide emission offsets equal to or greater than the allowable emissions from the source ... sufficient to allow the Agency to determine that the source or modification will not interfere with reasonable further progress as set forth in Section 173 of the [CAA].

35 Ill. Adm. Code 203.302. In areas classified as in severe nonattainment for ozone, emission offsets for VOM and NO_x must be acquired at a ratio of 1.3 to 1. 35 Ill. Adm. Code 203.302(a)(1)(D).

35. Emission offsets must be obtained before submitting a permit application, and the emission offsets must be effective before the new source begins to operate. 35 Ill. Adm. Code 203.303(a). Further requirements for what constitutes an emission offset and how emissions reductions are measured are provided for in the Illinois SIP at 35 Ill. Adm. Code 203.303.

36. The Illinois SIP provides that:

No person shall cause or allow the operation of a new major stationary source or major modification where the owner or operator has demonstrated that it would not interfere with reasonable further progress by providing emission offsets pursuant to Section 203.302 without maintaining those emission offsets or other equivalent offsets.

35 Ill. Adm. Code 203.602. In addition, for sources that provide emission offsets to a nonattainment area, 35 Ill. Adm. Code 203.701 specifies that “[n]o person shall cease to maintain emission offsets which were provided for a source or modification which is subject to this Part.”

ii. **Synthetic Minor Emission Limitation/Illinois SIP Construction Permit Program**

37. EPA approved 35 Ill. Adm. Code 201, “Permits and General Provisions,” as part of the federally enforceable SIP for the State of Illinois. 37 Fed. Reg. 10,862 (May 31, 1972).

38. The Illinois SIP at 35 Ill. Adm. Code 201.156 provides that the Illinois Environmental Protection Agency (“Illinois EPA”) may impose such conditions in a construction permit as may be necessary to accomplish the purposes of, among other things, the provisions of Title 35 of the Illinois Administrative Code.

39. When determining if a new facility qualifies as a major new source, potential to emit emission levels can be lowered through federally enforceable restrictions, such as permit conditions. 35 Ill. Adm. Code 203.128. By accepting and satisfying such permit conditions, facilities otherwise subject to NNSR requirements can avoid them. EPA refers to permits with limits intentionally established to avoid NNSR requirements as “synthetic minor” permits.

40. The Illinois SIP provides that:

- (a) No person shall cause or allow the operation of a source so as to exceed any enforceable limitation which affects or defines the applicability of the requirements of this Part to a stationary source or modification by specifying the permissible emission rate, operating hours, the type or amount of material processed, stored or combusted, or other aspects of source operation.
- (b) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in, or expiration of, any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this Part shall apply as though construction had not yet commenced on the source or modification.

35 Ill. Adm. Code 203.210.

iii. Illinois Emissions Reduction Market System

41. In 2001, EPA approved as a revision to the Illinois SIP, 35 Ill. Adm. Code 205, which consists of the regulations establishing the Illinois Emissions Reduction Market System (“ERMS”) program, a cap-and-trade market system designed to reduce VOM emissions in the Chicago area. 66 Fed. Reg. 52,343 (Oct. 15, 2001). The ERMS program was revised in 2008, in response to the reclassification of the Chicago nonattainment area from severe to moderate, in order to maintain major source status of regional VOM sources. 73 Fed. Reg. 38,328 (July 7, 2008).

42. For CAA nonattainment purposes, the “Chicago area” means the area composed of Cook, DuPage, Kane, Lake, McHenry, and Will Counties and Aux Sable Township and Goose Lake Township in Grundy County and Oswego Township in Kendall County. 35 Ill. Adm. Code 205.130.

43. The ERMS program defines “New Participating Sources” as including any source not operating prior to May 1, 1999, located in the Chicago area, that: (1) emits or has the potential to emit 25 tons per year or more of VOM or is required to obtain a CAAPP permit; and (2) has or will have emissions during the May–September ozone season of at least 10 tons of VOM. 35 Ill. Adm. Code 205.210.

44. Each New Participating Source must hold “Allotment Trading Units” (“ATUs”), as specified in Section 205.150(d). 35 Ill. Adm. Code 205.210(b). 35 Ill. Adm. Code 205.150(d) provides that:

At the end of each reconciliation period, beginning with the reconciliation period immediately following the seasonal allotment period in which the source first becomes a new participating source ... each new participating source shall: (1) ... hold ATUs in an amount not less than 1.3 times its VOM emissions during the preceding seasonal allotment period; or (2) If the new participating source is not a new major source

pursuant to 35 Ill. Adm. Code 203, hold ATUs in an amount not less than its VOM emissions during the preceding seasonal allotment period

35 Ill. Adm. Code 205.150(d).

45. The owner or operator of a facility that will be a New Participating Source when it commences construction, and that is also a major new source under 35 Ill. Adm. Code 203 based on VOM emissions, shall submit to the Illinois EPA an ERMS application at the time a construction permit application is submitted or due for the source, whichever occurs first. 35 Ill. Adm. Code 205.310(a).

46. 35 Ill. Adm. Code 205.310(g) sets out the requirements for an ERMS application from a new participating source:

- (1) A description of methods and practices that will be used to determine seasonal emissions for purposes of demonstrating compliance with this Part, in accordance with Sections 205.330 and 205.335 of this Subpart;
- (2) A certification by the owner or operator recognizing that the source will be required to hold ATUs by the end of each reconciliation period in accordance with Section 205.150(d) of this Part for each seasonal allotment period in which it is operational; and
- (3) If the source is a new major source subject to 35 Ill. Adm. Code 203, a plan explaining means by which it will obtain such ATUs for the first three seasonal allotment periods in which it is operational.

35 Ill. Adm. Code 205.310(g).

47. The ERMS program has reporting requirements that supplement sources' obligations under Illinois's Annual Emissions Reporting program. The additional ERMS reporting requirements, codified at 35 Ill. Adm. Code 205.300(b), include reporting of actual seasonal emissions of VOM from the source and a description of the methods and practices used to determine VOM emissions, including any supporting documentation and calculations.

48. In the event of non-compliance, the ERMS program has provisions for emission excursion compensation. 35 Ill. Adm. Code 205.720 provides that Illinois EPA shall obtain emissions excursion compensation from any participating source or new participating source that does not hold ATUs in accordance with Section 205.150(c) or (d) by the conclusion of the reconciliation period. To achieve this, the Illinois EPA shall issue an Excursion Compensation Notice to any such source when an apparent emissions excursion is identified by Illinois EPA. 35 Ill. Adm. Code 205.720(a). The notice shall require the source to provide compensation in the following manner: (1) for the first seasonal allotment period in which an emissions excursion occurred, the new participating source shall purchase ATUs from the Alternative Compliance Market Account (“ACMA”) in an amount equivalent to 1.2 times the emissions excursion; and (2) for the second consecutive seasonal allotment period in which an emissions excursion occurred, the source shall purchase ATUs from the ACMA in an amount equivalent to 1.5 times the emissions excursion; or (3) if the ACMA balance is not sufficient to cover the required amount, the Agency shall deduct the equivalent amount of ATUs from the source’s next allotment. 35 Ill. Adm. Code 205.720(b).

49. Nothing in 35 Ill. Admin. Code 205 limits the State’s authority to seek penalties and injunctive relief for any violation of any applicable State law or regulation or any permit condition. 35 Ill. Adm. Code 205.740. Further, Section 205.740 provides that nothing in Part 205 limits the right of the federal government or any person to directly enforce against actions or omissions that constitute violations of permits required by the CAA or applicable federal environmental laws and regulations.

iv. Illinois Emissions Reporting Requirements

50. Section 182(a)(3)(B) of the CAA, 42 U.S.C. § 7511a(a)(3)(B), requires states to adopt emissions reporting requirements for owners or operators of each stationary source of NO_x and VOCs, to be submitted at least every year (hereinafter, an “Annual Emission Report” or “AER”). The Illinois emission reporting requirements implementing this statutory provision are codified at 35 Ill. Adm. Code 254, and were approved by EPA as a revision to the Illinois SIP. 67 Fed. Reg. 34,614 (May 15, 2002).

51. Subpart B of 35 Ill. Adm. Code 254, applies to:

(1) Owners or operators of any source required to have an operating permit in accordance with 35 Ill. Adm. Code 201 that is permitted to emit 25 tons per year or more of any combination of regulated air pollutants, excluding greenhouse gases; (2) Owners or operators of any source required to have an operating permit in accordance with Section 39.5 of the [Illinois] Environmental Protection Act; and (3) Owners or operators of sources in ozone nonattainment areas that have a potential to emit 25 tons per year or more of either VOM or NO_x from all emission units.

35 Ill. Adm. Code 254.102.

52. The required contents of an AER for a large source are delineated at 35 Ill. Adm. Code 254.203, and include an obligation to submit information regarding actual VOM emissions from the source.

53. As set forth in 35 Ill. Adm. Code 254.132(a), the failure to file a complete AER by the applicable deadlines shall be a violation of 35 Ill. Adm. Code 254 and 35 Ill. Adm. Code 201.302(a). 35 Ill. Adm. Code 254.132(a). And, as set forth in 35 Ill. Adm. Code 254.132(b), the failure to file a complete Seasonal Emissions Report by the applicable deadlines shall be a violation of 35 Ill. Adm. Code 254 and 35 Ill. Adm. Code 205.300 (ERMS reporting requirements). 35 Ill. Adm. Code 254.132(b). Further, the failure to receive the Source

Inventory Report from the Agency does not relieve an owner or operator from the obligation to file a complete AER. 35 Ill. Adm. Code 254.132(c).

III. New Source Performance Standards

A. General Provisions

54. 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 that may reasonably be anticipated to endanger public health or welfare.

55. Once a source category is included on the list, Section 111(b)(1)(B) of the CAA, 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").

56. 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 an NSPS after the effective date of the NSPS applicable to such source.

57. "Standard of performance" is defined as a standard for emissions of air pollutants that 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 any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. 42 U.S.C. § 7411(a)(1).

58. "New source" is defined as any stationary source, the construction or modification of which is commenced after the publication of the NSPS regulations or proposed NSPS regulations applicable to such sources. 42 U.S.C. § 7411(a)(2).

59. “Stationary source” is defined as a building, structure, facility, or installation which emits or may emit any air pollutant. 42 U.S.C. § 7411(a)(3).

60. “Modification” means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air pollutant emitted by such source or which results in the emissions of any air pollutant not previously emitted. 42 U.S.C. § 7411(a)(4).

61. “Owner or operator” is defined as any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7411(a)(5).

62. The NSPS are located in Part 60 of Title 40 of the Code of Federal Regulations.

B. NSPS Part 60, Subpart A

63. Pursuant to Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), EPA promulgated regulations that contain general provisions applicable to all NSPS sources. 40 C.F.R. Part 60, Subpart A, §§ 60.1–60.19 (“Subpart A”).

64. Under Subpart A, the provisions of 40 C.F.R. Part 60 apply to “the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the publication [in Part 60] of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.” 40 C.F.R. § 60.1.

65. “Affected facility” is defined as “any apparatus to which a standard is applicable.” 40 C.F.R. § 60.2.

i. NSPS Part 60, Subpart A: 40 C.F.R. § 60.7 (Notification and record keeping)

66. Within Subpart A, EPA promulgated specific regulations that require an owner or operator subject to Part A to “furnish the Administrator written notification ... [including] a

notification of the actual date of initial startup of an affected facility postmarked within 15 days after such date.” 40 C.F.R. § 60.7(a)(3).

ii. NSPS Part 60, Subpart A: 40 C.F.R. § 60.8 (Performance Tests)

67. Within Subpart A, EPA promulgated specific regulations that require, and provide procedure for, the use of performance tests for affected facilities.

68. 40 C.F.R. § 60.8(a) provides that no “later than 180 days after initial startup of such facility ... the owner or operator of such facility shall conduct performance test(s) and furnish the Administrator a written report of the results of such performance test(s).”

69. While 40 C.F.R. § 60.8 provides general requirements for the proper execution of performance tests, this section also requires adherence to the more specific provisions found in later subparts. 40 C.F.R. § 60.8(b).

iii. NSPS Part 60, Subpart A: 40 C.F.R. § 60.18 (Requirements related to Flares Used as Control Devices)

70. Within Subpart A, EPA promulgated specific regulations that apply whenever flares are used as control devices. 40 C.F.R. §§ 60.18(b)–(f).

71. Of relevance to this Complaint are the following provisions: flares shall be operated with a flame present at all times, as determined by the methods specific under 40 C.F.R. § 60.18(f), *see* 40 C.F.R. § 60.18(c)(2); and that the presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame, *see* 40 C.F.R. § 60.18(f)(2).

C. NSPS Part 60, Subpart KKK

72. On June 24, 1985, EPA promulgated NSPS Subpart KKK (“Subpart KKK”).
50 Fed. Reg. 26,124.

73. Subpart KKK, at 40 C.F.R. § 60.630(a)(1), states that the provisions of this subpart apply to affected facilities in onshore natural gas processing plants.

74. The affected facilities subject to standards under Subpart KKK include compressors in VOC service or in wet gas service and the group of all equipment except compressors within a process unit. 40 C.F.R. § 60.630(a).

75. Subpart KKK, at 40 C.F.R. § 60.630(b), states that any affected facility under paragraph (a) of this section that commences construction, reconstruction, or modification after January 20, 1984, and on or before August 23, 2011, is subject to the requirements of this subpart.

76. Subpart KKK, at 40 C.F.R. § 60.631, defines “equipment” as “each pump, pressure relief device, open-ended valve or line, valve, compressor, and flange or other connector that is in VOC service, and any device or system required by this subpart.”

77. Subpart KKK, at 40 C.F.R. § 60.631, defines “field gas” as “feedstock gas entering the natural gas processing plant.”

78. Subpart KKK, at 40 C.F.R. § 60.631, defines “in light liquid service” to mean “the piece of equipment [that] contains a liquid that meets the conditions specified in § 60.485(e) or § 60.633(h)(2).”

79. Subpart KKK, at 40 C.F.R. § 60.631, defines “natural gas liquids” as “the hydrocarbons, such as ethane, propane, butane, and pentane, that are extracted from field gas.”

80. Subpart KKK, at 40 C.F.R. § 60.631, defines “natural gas processing plant (gas plant)” as “any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both.”

81. Subpart KKK, at 40 C.F.R. § 60.631, defines “onshore” as “all facilities except those that are located in the territorial seas or on the outer continental shelf.”

82. Subpart KKK, at 40 C.F.R. § 60.631, defines “process unit” as “equipment assembled for the extraction of natural gas liquids from field gas, the fractionation of the liquids into natural gas products, or other operations associated with the processing of natural gas products.”

83. Subpart KKK, at 40 C.F.R. § 60.632, states that each owner or operator subject to the provisions of this subpart shall comply with the requirements of §§ 60.482-1(a), (b), and (d) and 60.482-2 through 60.482-10, except as provided in § 60.633, as soon as practicable, but no later than 180 days after initial startup.

84. Subpart KKK, at 40 C.F.R. § 60.632(d), further provides that each owner or operator subject to the provisions of Subpart KKK shall comply with the test methods and procedures of § 60.485 under Subpart VV, including Method 21, and 40 C.F.R. § 60.485(c).

85. Subpart KKK, at 40 C.F.R. § 60.633(g), provides that “[f]lares used [as a control device] shall comply with the requirements of § 60.18.”

D. NSPS Part 60, Subpart VV

86. On October 18, 1983, EPA promulgated NSPS Subpart VV (“Subpart VV”). 48 Fed. Reg. 48,334.

87. Subpart VV applies to affected facilities in the synthetic organic chemicals manufacturing industry (“SOCMI”). 40 C.F.R. § 60.480(a)(1).

88. Subpart VV at 40.C.F.R. § 60.482-1(a), (b) and (d), §§ 60.482-2 through 60.482-10, and §§ 60.485, 60.486 and 60.487, with limited exceptions, apply to affected facilities in onshore natural gas processing plants. 40 C.F.R. §§ 60.630(a), 60.632(a), (d), and (e).

89. Subpart VV, at 40 C.F.R. § 60.482-1, sets forth general standards for owners and operators subject to Subpart VV and, among other things, specifies at 40 C.F.R. § 60.482-1(b) that methods of compliance determination include review of records and reports, review of performance test results, and inspection using the methods and procedures specified in 40 C.F.R. § 60.485.

90. Subpart VV, at 40 C.F.R. § 60.482-6, sets forth standards for open-ended valves or lines, including the requirement at § 60.482-6(a)(2) that a cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line.

91. Subpart VV, at 40 C.F.R. § 60.482-7, sets forth standards for valves in gas/vapor and in light liquid service, including the requirement at 40 C.F.R. § 60.482-7(a)(1) that each valve be monitored monthly to detect leaks by the methods specified in 40 C.F.R. § 60.485(b) and that each valve shall comply with 40 C.F.R. § 60.482-7(b)–(e). 40 C.F.R. § 60.482-7(a)(1).

92. Subpart VV, at 40 C.F.R. § 60.482-7(f), provides that:

Any valve that is designated, as described in § 60.486(e)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraph (a) if the valve: (1) Has no external actuating mechanism in contact with the process fluid, (2) Is operated with emissions less than 500 ppm above background as determined by the method specified in § 60.485(c), and (3) Is tested for compliance with paragraph (f)(2) of this section initially upon designation, annually, and at other times requested by the Administrator.

40 C.F.R. § 60.482-7(f).

93. Subpart VV, at 40 C.F.R. § 60.485(c), requires, among other things, that owners and operators determine compliance with the no detectable emission standards in § 60.482-7(f) using Method 21. The NSPS Appendix A, at 40 C.F.R. Part 60, Method 21 §§ 8.3.1 and 8.3.1.1, sets forth the technique which must be used to determine if there is a leak from a valve. The

NSPS Appendix A, at 40 C.F.R. Part 60, Method 21, §§ 8.1.1.1, 8.2, and 10.1, specify the calibration procedures for the instrument used to detect leaks.

94. Subpart VV, at 40 C.F.R. § 60.482-7(c)(2), specifies that any valve that is required to be monitored quarterly that is found to be leaking must be monitored monthly until a leak is not detected for two successive months.

95. Subpart VV, at 40 C.F.R. § 60.485(b), requires owners and operators to determine compliance with applicable standards using Method 21.

96. Subpart VV, at 40 C.F.R. § 60.482-4(c), provides that monitoring requirements for pressure relief devices must be performed unless that pressure relief device “is routed to a process or fuel gas system or equipped with a closed vent system capable of capturing and transporting leakage through the pressure relief device to a control device as described in § 60.482-10.”

97. Subpart VV, at 40 C.F.R. § 60.482-10(d), provides for the use of flares as control devices and requires compliance with 40 C.F.R. § 60.18.

98. Subpart VV, at 40 C.F.R. § 60.482-10(m), provides that closed vent systems and control devices used to comply with the provisions of this subpart shall be operated at all times when emissions may be vented to them.

E. NSPS Part 60, Subpart NNN

99. On June 29, 1990, EPA promulgated NSPS Subpart NNN (“Subpart NNN”) to address new, modified, or reconstructed SO2MI distillation units. 55 Fed. Reg. 26,942.

100. Subpart NNN, at 40 C.F.R. § 60.660(a), states that this NSPS applies to each affected facility designated in paragraph (b) of this section that is part of a process unit that

produces any of the chemicals listed in 40 C.F.R. § 60.667 as a product, co-product, by-product, or intermediate, except as provided in paragraph (c).

101. Subpart NNN, at 40 C.F.R. § 60.660(b), states the affected facility is any of the following for which construction, modification, or reconstruction commenced after December 30, 1983:

- a. Each distillation unit not discharging its vent stream into a recovery system.
- b. Each combination of a distillation unit and the recovery system into which its vent stream is discharged.
- c. Each combination of two or more distillation units and the common recovery system into which their vent streams are discharged.

102. Subpart NNN, at 40 C.F.R. § 60.661, defines “Distillation operation” as:

an operation separating one or more feed stream(s) into two or more exit stream(s), each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor-phase as they approach equilibrium within the distillation unit.

40 C.F.R. § 60.661.

103. Subpart NNN, at 40 C.F.R. § 60.661, defines “Distillation unit” as “a device or vessel in which distillation operations occur, including all associated internals (such as trays or packing) and accessories (such as reboiler, condenser, vacuum pump, steam jet, etc.), plus any associated recovery system.”

104. Subpart NNN, at 40 C.F.R. § 60.662, requires that

Each owner or operator of any affected facility shall comply with paragraph (a), (b), or (c) of this section for each vent stream on and after the date on which the initial performance test ... is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial start-up, whichever date comes first. Each owner or operator shall either: (a) Reduce emissions of [Total Organic Compounds (“TOC”)] (less methane and ethane) by 98 weight-percent, or to a TOC (less methane and ethane) concentration of 20 ppmv, on a

dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or (b) Combust the emissions in a flare that meets the requirements of § 60.18; or (c) Maintain a [Total Resources Effectiveness (“TRE”)] index value greater than 1.0 without use of VOC emission control devices.

105. Subpart NNN, at 40 C.F.R. § 60.663, sets forth the monitoring of emissions and operations for control devices including flares, boilers or process heaters, and condensers used as a final recovery device in a recovery system. One requirement is the use of a flow indicator “that provides a record of vent stream flow to the flare at least once every hour.” 40 C.F.R. § 60.663(b)(2).

106. Subpart NNN, at 40 C.F.R. § 63.663(b)(1), requires subject owners or operators that rely upon a flare for compliance with Subpart NNN to install, calibrate, maintain, and operate according to manufacturer’s specifications a heat sensing device, such as an ultra-violet beam sensor or thermocouple, at the pilot light to indicate the continuous presence of a flame.

107. Subpart NNN, at 40 C.F.R. § 60.664, sets forth requirements for conducting an initial performance test to demonstrate compliance.

108. Subpart NNN, at 40 C.F.R. § 60.665(a), states that each owner or operator subject to § 60.662 shall notify the Administrator of the specific provisions of 40 C.F.R. § 60.662 with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial start-up required by 40 C.F.R. § 60.7(a)(3).

109. Subpart NNN, at 40 C.F.R. § 60.665(b), requires that each owner or operator subject to the provisions of this subpart shall keep an up-to-date, readily accessible record of the certain data measured during each performance test, and also include the data in the report of the initial performance test required under 40 C.F.R. § 60.8.

F. NSPS Part 60, Subpart RRR

110. On August 31, 1993, EPA promulgated NSPS Subpart RRR (“Subpart RRR”) to address new, modified, or reconstructed SOCMR reactor processes. 58 Fed. Reg. 45,962.

111. Subpart RRR, at 40 C.F.R. § 60.700(a), provides that this NSPS applies to each affected facility designated in 40 C.F.R. § 60.700(b) that is part of a process unit that produces any of the chemicals listed in 40 C.F.R. § 60.707 as a product, co-product, by-product, or intermediate, except as provided in 40 C.F.R. § 60.700(c).

112. Subpart RRR, at 40 C.F.R. § 60.700(b), provides that

The affected facility is any of the following for which construction, modification, or reconstruction commenced after June 29, 1990: (1) Each reactor process not discharging its vent stream into a recovery system. (2) Each combination of a reactor process and the recovery system into which its vent stream is discharged. (3) Each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged.

40 C.F.R. § 60.700(b).

113. Subpart RRR, at 40 C.F.R. § 60.701, defines “Reactor processes” as “unit operations in which one or more chemicals, or reactants other than air, are combined or decomposed in such a way that their molecular structures are altered and one or more new organic compounds are formed.”

114. Subpart RRR, at 40 C.F.R. § 60.702, requires that

Each owner or operator of any affected facility shall comply with paragraph (a), (b), or (c) of this section for each vent stream on and after the date on which the initial performance test ... is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial start-up, whichever date comes first. Each owner or operator shall either: (a) Reduce emissions of TOC (less methane and ethane) by 98 weight-percent, or to a TOC (less methane and ethane) concentration of 20 ppmv, on a dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or (b) Combust the emissions in a flare that meets the requirements of

§ 60.18; or (c) Maintain a TRE index value greater than 1.0 without use of VOC emission control device.

40 C.F.R. § 60.702.

115. Subpart RRR, at 40 C.F.R. § 60.703, sets forth the monitoring of emissions and operations for control devices including flares, incinerators, boilers or process heaters, and condensers used as a final recovery device in a recovery system. Under 40 C.F.R. § 60.703(a), a subject owner or operator that is using an incinerator to comply with Subpart RRR is required to install, calibrate, maintain, and operate, according to manufacturer's specifications, a temperature monitoring device equipped with a continuous recorder that meets certain accuracy specifications and a flow indicator that provides a record of vent stream flow diverted from being routed to the incinerator that meets certain specifications.

116. Subpart RRR, at 40 C.F.R. § 60.703(b)(1), provides that a subject owner or operator that uses a flare to seek to comply with § 60.702(b) shall install, calibrate, maintain, and operate according to manufacturer's specifications a heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate the continuous presence of a flame.

117. Subpart RRR, at 40 C.F.R. § 60.704, sets forth requirements for conducting an initial performance test to demonstrate compliance.

118. Subpart RRR, at 40 C.F.R. § 60.705(a), states that each owner or operator subject to § 60.702 shall notify the Administrator of the specific provisions of 40 C.F.R. § 60.702 with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial start-up required by 40 C.F.R. § 60.7(a)(3).

119. Subpart RRR, at 40 C.F.R. § 60.705(b), states that each owner or operator subject to the provisions of this subpart shall keep an up-to-date, readily accessible record of the following data measured during each performance test, and also include certain data in the report

of the initial performance test required under 40 C.F.R. § 60.8. When demonstrating compliance with 40 C.F.R. § 702(a) through the use of either a thermal or catalytic incinerator, the owner or operator must keep a record of: (i) The average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed for a catalytic incinerator), measured at least every 15 minutes and averaged over the same time period of the performance testing; and (ii) The percent reduction of TOC determined as specified in § 60.704(b) achieved by the incinerator, or the concentration of TOC (ppmv, by compound) determined as specified in § 60.704(b) at the outlet of the control device on a dry basis corrected to 3 percent oxygen. 40 C.F.R. § 60.705(b)(1).

120. Subpart RRR, at 40 C.F.R. § 60.705(c), provides that each subject owner or operator shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 60.703(a) and (c) as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. Where a thermal incinerator is used to comply with § 60.702(a), periods of operation during which parameter boundaries established during the most recent performance test are exceeded are defined as all 3-hour periods of operation during which the average combustion temperature was more than 28° C (50° F) below the average combustion temperature during the most recent performance test at which compliance with § 60.702(a) was determined.

121. Subpart RRR, at 40 C.F.R. § 60.705(d), provides that each subject owner or operator shall keep records of the flow indication specified under § 60.703, as well as up-to-date, readily accessible records of all periods and the duration when the vent stream is diverted from the control devices.

122. Subpart RRR, at 40 C.F.R. § 705(e), provides that each subject owner or operator shall keep up-to-date, readily accessible continuous records of the flare pilot flame monitoring specified under § 60.703(b), as well as up-to-date, readily accessible records of all periods of operations in which the pilot flame is absent.

G. NSPS Part 60, Subpart Kb

123. On April 8, 1987, EPA promulgated NSPS Subpart Kb (“Subpart Kb”) to address Volatile Organic Liquid (“VOL”) storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984. 52 Fed. Reg. 11,429.

124. Subpart Kb, at 40 C.F.R. § 60.110b(a), applies to each storage vessel with a capacity greater than or equal to 75 cubic meters that is used to store VOL for which construction, reconstruction, or modification is commenced after July 23, 1984. 40 C.F.R. § 60.110b(a).

125. Subpart Kb, at 40 C.F.R. § 60.112b(a), provides certain control requirement options to comply with the NSPS that are applicable to a storage vessel either with a design capacity great than or equal to 151 cubic meters (m^3) containing a VOL that, as stored, has a maximum true vapor pressure equal to or great than 5.2 kilopascals (kPa) but less than 76.6 kPa or with a design capacity greater than or equal to 75 m^3 but less 151 m^3 containing a VOL that, as stored, has a maximum true vapor pressure equal to or great than 27.6 kPa but less than 76.6 kPa.

126. Subpart Kb, at 40 C.F.R. § 60.112b(a)(3), provides that one option to satisfy the control requirement is the use of a “closed vent system and control device” meeting the following specifications:

The closed vent system shall be designed to collect all VOC vapors and gases discharged from the storage vessel and operated with no detectable emissions as indicated by an

instrument reading of less than 500 ppm above background and visual inspections, as determined in Part 60, Subpart VV, 40 C.F.R. § 60.485(b). (ii) The control device shall be designed and operated to reduce inlet VOC emissions by 95 percent or greater. If a flare is used as the control device, it shall meet the specifications described in the general control device requirements (40 C.F.R. § 60.18) of the General Provisions.

IV. Title V

127. Title V of the Clean Air Act, 42 U.S.C. §§ 7661–7661f, establishes an operating permit program for certain sources, including major sources, sources subject to the NSPS program at Section 111 of the CAA, or any source required to have a NNSR Permit. 42 U.S.C. § 7661a(a). The purpose of Title V is to ensure that all “applicable requirements” that a source is subject to under the CAA, including SIP requirements, are collected in one permit. 42 U.S.C. § 7661c(a).

128. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a Title V permit program to be administered by any state or local air pollution control agency. 57 Fed. Reg. 32,250 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

129. EPA granted final full approval to the Illinois Title V operating permit program on December 4, 2001. 66 Fed. Reg. 62946. The program became effective on November 30, 2001. 40 C.F.R. Part 70, Appendix A. The Title V permits that Illinois EPA issues under its program are also known as CAAPP permits.

130. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), the implementing regulations at 40 C.F.R. § 70.7(b), and the CAAPP program and regulations of Illinois provide that, after the effective date of the state Title V permit program, no person may violate any requirement of a Title V permit or operate a source subject to a Title V permit except in compliance with a Title V permit.

131. Under the federal Title V program and regulations, and CAAPP, any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application must, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. 40 C.F.R. § 70.5(b); 35 Ill. Adm. Code 201.208.

132. All terms and conditions of a Title V permit are federally enforceable. 42 U.S.C. § 7413(b); 40 C.F.R. § 70.6(b).

V. Enforcement of the CAA

133. Sections 113(a)(1) and (a)(3) of the CAA, 42 U.S.C. §§ 7413(a)(1) and (a)(3), authorize EPA to bring a civil action under Section 113(b) if EPA finds that any person is in violation of any requirement or prohibition of a SIP, NNSR permit programs, an NNSR permit, the NSPS program, the Title V permit program, or a Title V permit.

134. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the Court to enjoin a violation, to require compliance, to assess and recover a civil penalty, and to award any other appropriate relief for each violation.

135. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes civil penalties of up to \$25,000 per day for each violation of the CAA. The Civil Penalties Inflation Act of 1990, 28 U.S.C. § 2461 *et seq.*, as amended by the Debt Collection Improvements Act of 1996, 31 U.S.C. § 3701 *et seq.*, requires EPA to periodically adjust its civil penalties for inflation. On December 31, 1996, February 13, 2004, December 11, 2008, January 12, 2017, and January 10, 2018, EPA adopted and revised regulations entitled “Adjustment of Civil Monetary Penalties for Inflation,” 40 C.F.R. Part 19, to upwardly adjust the maximum civil penalty under the CAA. For each violation that occurs between January 31, 1997, and March 15, 2004, inclusive, penalties of up to

\$27,500 per day may be assessed; for each violation that occurs between March 16, 2004, and January 12, 2009, inclusive, penalties of up to \$32,500 per day may be assessed; for each violation that occurs between January 13, 2009 and November 2, 2015, penalties of up to \$37,500 per day may be assessed; and for each violation that occurs after November 2, 2015, where penalties are assessed on or after January 15, 2018, penalties of up to \$97,229 per day per each violation may be assessed. 61 Fed. Reg. 69,360 (Dec. 31, 1996); 69 Fed. Reg. 7,121 (Feb. 13, 2004); 73 Fed. Reg. 75,340 (Dec. 11, 2008); 82 Fed. Reg. 3,633 (Jan. 12, 2017); 83 Fed. Reg. 1,190 (Jan. 10, 2018).

GENERAL ALLEGATIONS

136. Aux Sable is the “owner or operator” of the Facility within the meaning of the CAA and applicable Illinois regulations.

137. At the Facility, Aux Sable processes field gas from production wells to extract and produce methane, natural gas liquids (“NGLs”), and chemicals derived from NGLs for sale. Aux Sable fractionates the NGLs to ethane, propane, and butanes.

138. The Facility is the largest natural gas processing plant in terms of production capacity in the United States.

139. The Facility operates two processing trains in parallel with a rated capacity of 1 billion cubic feet per day for each train. Each train consists of a 5-bed dehydration system. The exiting stream from the dehydration system goes through the following in series: de-methanizer; de-ethanizer; de-propanizer; and a debutanizer, also known as the isomerization unit.

140. Aux Sable operates both a High Pressure Flare and a Low Pressure Flare as emissions control devices at the Facility.

141. The Facility is a “major emitting facility,” a “source,” a “stationary source,” a “major stationary source,” a “major source,” and a “new participating source” within the meaning of the CAA, applicable New Source Review permit programs and regulations (including the NNSR, ERMS, and AER programs), the NSPS program and regulations, the Title V program and regulations, and the Illinois SIP that adopts, incorporates, and/or implements these programs and regulations.

142. On June 1, 1999, Illinois EPA issued Construction Permit No. 98080090 to Aux Sable for the Facility (the “1999 Permit”). The 1999 Permit provides, at Condition 21, that no more than 10.2 tons per year of VOM fugitive emissions shall be emitted from the Facility applicable to “Fugitive VOM Emissions from Individual Fittings.” The 10.2 tons-per-year limitation was established pursuant to 35 Ill. Adm. Code 203 to create a federally enforceable limitation to the Facility’s potential to emit to avoid NNSR requirements. Operations at the Facility began in December 2000.

143. Illinois EPA issued a Title V/CAAPP permit to Aux Sable on August 28, 2002 (Permit No. 0112007) (the “2002 CAAPP Permit”). The 2002 CAAPP Permit was revised and reissued on May 16, 2006. The CAAPP Permit includes the following conditions relevant to this Complaint:

- Condition 7.11.6: incorporating the fugitive emission limit from individual fittings at 10.2 tons of VOM per year as established in the 1999 Permit;
- Conditions 7.5.7 and 7.12.5: incorporating applicable NSPS flare requirements within 40 C.F.R. § 60.18 to both High and Low Pressure Flares;
- Condition 7.11.5.q: requiring the use of valves that are designated for and operated with “no detectable emissions” as provided for in 40 C.F.R. § 60.482-7(f);
- Condition 7.11.5.1: incorporating the standards for open-ended valves or lines under 40 C.F.R. § 60.482-6; and
- Condition 7.11.7: incorporating the Method 21 monitoring provisions under 40 C.F.R. § 60.485(c).

144. In 2016, Illinois EPA issued to Aux Sable a renewed and revised Title V/CAAPP Permit (No. 0112007, issued Dec. 27, 2016, and revised on Nov. 20, 2017) (the “2016 CAAPP Permit”). The 2016 CAAPP Permit states, as Condition 4.9.2.a.i.G., that pursuant to the 1999 Permit, VOM emissions from individual fittings associated with the project permitted by the 1999 Permit shall not exceed 60 pounds per day and 10.2 tons per year.

145. On September 9 through 11, 2013, EPA conducted a Method 21 leak detection monitoring inspection at the Facility that revealed violations of Subpart KKK (and, by reference, certain provisions of Subpart VV), and provisions of Aux Sable’s CAAPP Permit. Present during the inspection was EMS, Inc., the consulting company that Aux Sable employed to run the LDAR program at the Facility, and Aux Sable staff, who could confirm any leaks found by EPA during the inspection. EPA identified a number of violations during the inspection and from a subsequent review of records provided by Aux Sable during the inspection. These violations were cited in a September 4, 2014, Finding of Violation that EPA issued to Aux Sable. *See* Attachment 1.

146. Ongoing investigative activities since issuance of EPA’s 2014 Finding of Violation uncovered additional CAA violations detailed in two subsequent violation notices issued by EPA in 2015 and 2016. *See* Attachment 1. Those EPA notices identify violations of NNSR, SIP, 1999 Permit, 2002 CAAPP Permit, and NSPS requirements.

FIRST CLAIM FOR RELIEF

(Violation of the NNSR Provisions of Part D of the CAA
and 35 Ill. Adm. Code 203 under the Illinois SIP)

147. Plaintiff realleges and incorporates by reference Paragraphs 1 through 146 as if fully set forth herein.

148. Aux Sable's synthetic minor limitation within its 1999 Permit established a limit of 10.2 tons per year of VOM fugitive emissions. The Facility's 1999 Permit also imposed a synthetic minor limit on non-fugitive VOM emissions at 12 tons per year, making the total allowable emissions from the Facility less than the NNSR applicability threshold of 25 tons per year of VOM.

149. The calculations submitted by Aux Sable to qualify for a synthetic minor limitation were based on significant errors, leading to a substantial underestimation of VOM emissions at the Facility. These errors include undercounting the number of valves and leak-prone components to be used at the Facility, and using an incorrect control-efficiency factor for the valves and components. Aux Sable's revised calculations show the Facility's VOM fugitive emissions to be approximately 40.5 tons per year, nearly four times the limit found in Condition 21 of the Facility's 1999 Permit. Based on the revised calculation, the Facility could not have qualified for synthetic minor status when it was constructed in 2000.

150. Based on the revised VOM fugitive emission estimate, the Facility—as originally constructed—emitted, or had the potential to emit, VOM in an amount equal to or greater than 25 tons per year. Thus, as of the date of its construction, the Facility was a new major stationary source subject to applicable LAER and emission offset requirements under 35 Ill. Adm. Code 203.

151. Aux Sable, at its Facility, has not complied with LAER requirements, has not secured offsets, and has never applied for a NNSR permit as required by 35 Ill. Adm. Code 203.

152. Aux Sable has violated and/or continues to violate the NNSR Provisions of Part D of Title I of the CAA, 42 U.S.C. §§ 7501–7515, and the Implementing Regulations of 35 Ill.

Adm. Code 203 under the Illinois SIP, including the requirements to comply with LAER and securing emission offsets under 35 Ill. Adm. Code 203.

SECOND CLAIM FOR RELIEF

(Violation of the Permit Limit for VOC fugitive emissions under 35 Ill. Adm. Code 203.210)

153. Plaintiff realleges and incorporates by reference Paragraphs 1 through 146 as if fully set forth herein.

154. Based on Aux Sable's revised fugitive VOM emissions estimate, Aux Sable has also violated, since startup of the natural gas processing plant in the year 2000, Condition 21 of its 1999 Permit limiting its VOM fugitive emissions to 10.2 tons per year.

155. By violating the VOM fugitive emissions limit within Condition 21 of the 1999 Permit, Aux Sable has violated and continues to violate the Illinois SIP at 35 Ill. Adm. Code 203.210(a).

THIRD CLAIM FOR RELIEF

(Violation of Title V/CAAPP Permit Conditions for VOC Fugitive Emissions)

156. Plaintiff realleges and incorporates by reference Paragraphs 1 through 146 as if fully set forth herein.

157. Both the Facility's original CAAPP Permit (issued in 2002) and its revised CAAPP Permit (reissued in 2006) incorporate the fugitive VOM emissions limit established in the 1999 Permit as 10.2 tons per year at Condition 7.11.6. The 2002 CAAPP Permit states that this limitation was established in the 1999 Permit pursuant to 35 Ill. Adm. Code 203 and this limit ensures that the construction addressed in the aforementioned permit does not constitute a new major source pursuant to Title I of the CAA and the Illinois SIP, specifically 35 Ill. Adm. Code 203.

158. In the 2016 CAAPP Permit, (issued Dec. 27, 2016, and revised on Nov. 20, 2017), Condition 4.9.2.a.i.G., requires that pursuant to the 1999 Permit, VOM emissions from individual fittings associated with the project permitted by the 1999 Permit shall not exceed 60 pounds per day and 10.2 tons per year.

159. Based on the revised fugitive VOM emissions calculations, Aux Sable has been emitting approximately 40.5 tons of VOM from the Facility on an annual basis since the startup of the natural gas processing plant in the year 2000—thus violating Condition 7.11.6 of its CAAPP Permit since the permit's issuance in August 2002 and Condition 4.9.2.a.i.G. of its reissued and revised 2016 CAAPP Permit since the permit's issuance in December 2016.

160. By violating Condition 7.11.6 of the Facility's 2002 CAAPP Permit and Condition 4.9.2.a.i.G. of its current, 2016 CAAPP Permit, Aux Sable has violated and continues to violate Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

FOURTH CLAIM FOR RELIEF

(Violation of NSPS for VOC Emissions from SOCFI Distillation Operations,
40 C.F.R. Part 60, Subpart NNN)

161. Plaintiff realleges and incorporates by reference Paragraphs 1 through 146 as if fully set forth herein.

162. At the Facility, Aux Sable produces chemicals that make it subject to 40 C.F.R. Part 60, Subpart NNN. Since start-up in 2000, Aux Sable has produced propane and n-butane, each listed in 40 C.F.R. § 60.667 as a product, co-product, by-product, and intermediate in Unit 03, the Gas Treatment Units process. Since April 2007, Aux Sable has produced n-butane, butanes, mixed and/or isobutene, all listed in 40 C.F.R. § 60.667 as a product, co-product, by-product, or intermediate in Unit 12, the Butamer process unit.

163. Aux Sable has affected facilities that were subject to Subpart NNN when the Facility started up in 2000, then added additional affected facilities in 2007 with the instillation of Unit 12, the Butamer process unit. In total, Aux Sable operates six distillation units subject to Subpart NNN at the Facility: (1) deethanizer distillation unit and recovery system (construction May 1999, startup December 2000); (2) depropanizer distillation unit and recovery system (construction May 1999, startup December 2000); (3) debutanizer distillation unit and recovery system (construction May 1999, startup December 2000); (4) butane splitter distillation unit and recovery system (construction May 1999, startup December 2000); (5) V645 stabilizer distillation unit (construction July 2005, startup April 2007); and (6) the V650 deisobutanizer distillation unit and recovery system (construction July 2005, startup April 2007). These six affected facilities are collectively referred to hereinafter as the “Subpart NNN Units.”

164. Aux Sable did not timely submit notification of compliance status and election of control option under Subpart NNN, as required by 40 C.F.R. §§ 60.7 and 60.665(a), until June 2015.

165. Aux Sable submitted an initial notification to EPA and Illinois EPA in June 2015, which identified the use of a flare as the compliance option election, pursuant to 40 C.F.R. § 60.662(b), for the Subpart NNN Units.

166. While using a flare as a control device, Aux Sable failed to timely conduct a performance test for each flare relied upon to control emissions from the Subpart NNN Units as required by 40 C.F.R. §§ 60.8, 60.662, and 60.664(d) and (e).

167. Aux Sable also failed to timely comply with Subpart NNN’s flow indicator flare monitoring requirements at 40 C.F.R. § 60.663(b)(2) for both of the Facility’s flares until 2016.

168. By violating the provisions of Subpart NNN related to performance testing, flare monitoring, and reporting, Aux Sable has violated and/or continues to violate Section 111(e) of the CAA, 42 U.S.C. § 7411(e),

FIFTH CLAIM FOR RELIEF

(Violation of NSPS for VOC Emissions from SOCFI Reactor Processes,
40 C.F.R. Part 60, Subpart RRR)

169. Plaintiff realleges and incorporates by reference Paragraphs 1 through 146 as if fully set forth herein.

170. At the Facility, Aux Sable produces chemicals that make it subject to 40 C.F.R. Part 60, Subpart RRR. Since August 1999, Aux Sable produces propane and n-butane, each listed in 40 C.F.R. § 60.707, as a product, co-product, by-product, and intermediate in Unit 03, the Gas Treatment Units process. Since April 2007, Aux Sable produces n-butane and butanes (mixed and/or isobutene), all listed in 40 C.F.R. § 60.707, as a product, co-product, by-product, or intermediate in Unit 12, the Butamer process unit.

171. Aux Sable has affected facilities that were subject to Subpart RRR when the Facility started up in 2000, then added additional affected facilities in 2007 with the instillation of Unit 12, the Butamer process Unit. Aux Sable operates three reactor processes subject to Subpart RRR at the Facility: (1) the COS reactor (construction May 1999, startup December 2000); (2) the V643/V644 catalytic reactors (construction July 2005, startup April 2007); and (3) the Propane extractor and Merox system, mixed butanes extractor and Merox system, pentane extractor and Merox system and common recovery system (construction May 1999, startup December 2000).

172. Aux Sable did not timely submit notification of compliance status and election of control options under Subpart RRR, as required by 40 C.F.R. §§ 60.7 and 60.665(a), until June 2015.

173. Aux Sable submitted an initial notification to EPA and Illinois EPA in June 2015, which identifies the use of a flare as the compliance option election, pursuant to 40 C.F.R. § 60.702(b), for the COS reactor and the V643.V644 catalytic reactors. The 2015 notification also identifies Aux Sable's election to use an off-gas incinerator to meet the 98 weight-percent emissions reduction requirement, as provided at 40 C.F.R. § 60.702(a), for the Propane extractor and Merox system, mixed butanes extractor and Merox system, pentane extractor and Merox system and common recovery system.

174. While using flares as a control device, Aux Sable failed to timely conduct a performance test of such flares, as required by 40 C.F.R. §§ 60.8 and 60.704. Through this violation, and by not notifying Illinois EPA of its intention to use both flare and incinerator as control devices for the affected facilities at their initial startup, Aux Sable failed to comply with reporting and recordkeeping requirements under 40 C.F.R. § 60.705.

175. As noted above, the Merox reactor system uses an off-gas incinerator to meet the emission reduction requirement under 40 C.F.R. § 60.702(a). As such, Aux Sable should have conducted an incinerator performance test no later than 180 days after triggering applicability of Subpart RRR under 40 C.F.R. § 60.8. Aux Sable failed to timely conduct a performance test on the Merox off-gas incinerator until 2017, in violation of 40 C.F.R. §§ 60.8 and 60.704.

176. By not timely conducting a performance test, Aux Sable failed to timely set and maintain a minimum operating temperature boundary for its incinerator as required by 40 C.F.R.

§ 60.705(b)(1), and failed to timely comply with incinerator operating and inlet flow monitoring recordkeeping requirements of 40 C.F.R. §§ 60.705(c) and (d).

177. By violating the provisions of Subpart RRR related to performance testing, monitoring recordkeeping, and reporting, Aux Sable has violated and/or continues to violate Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

SIXTH CLAIM FOR RELIEF

(Violation of Requirements to Monitor the Presence of a Flare Pilot Flame
under the Title V/CAAPP Permit and NSPS, 40 C.F.R. Part 60,
Subparts Kb, KKK, NNN, and RRR)

178. Plaintiff realleges and incorporates by reference Paragraphs 1 through 146 as if fully set forth herein.

179. Aux Sable relies on both the High Pressure Flare and Low Pressure Flare to control emissions from the affected facilities subject to Subpart NNN and Subpart RRR, as described in Paragraphs 165 and 173, above.

180. The High Pressure Flare at the Facility is relied on to control emissions from pressure relief devices associated with the Butamer process to meet the control requirements of Subpart KKK. The Low Pressure Flare is used to meet control requirements under Subpart Kb, applicable to Unit 05 (the V-704 Condensate (C5+) Liquid Storage Tank) at the Facility.

181. The NSPS flare requirements of 40 C.F.R. § 60.18 are incorporated into Aux Sable's 2002 CAAPP Permit at Conditions 7.12.5 (for the High Pressure Flare) and 7.5.7 (for the Low Pressure Flare).

182. In its 2015 CAAPP Annual Compliance Certification, Aux Sable indicated that it had malfunctioning thermocouples in both the High Pressure Flare and Low Pressure Flare for the entirety of 2014. Thus, Aux Sable has failed to meet the requirement to monitor the presence of a flare pilot flame through a thermocouple or equivalent device as required under 40 C.F.R.

§ 60.18 and Aux Sable's CAAPP Permit. By reference, this is also a violation of NSPS Subparts Kb (40 C.F.R. § 60.112b), KKK (40 C.F.R. § 60.633(g)), VV (40 C.F.R. § 60.482-10(d)), NNN (40 C.F.R. § 60.663), and RRR (40 C.F.R. § 60.703).

183. By violating the provisions of NSPS Subparts A, Kb, KKK, VV, NNN, and RRR related to flare pilot flame monitoring, Aux Sable has violated Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

184. By violating the conditions of its 2002 CAAPP Permit related to flare pilot flame monitoring, Aux Sable has violated Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

SEVENTH CLAIM FOR RELIEF

(Violation of the Emissions Reduction Market System Requirements
under the Illinois SIP at 35 Ill. Adm. Code 205)

185. Plaintiff realleges and incorporates by reference Paragraphs 1 through 146 as if fully set forth herein.

186. The Facility operates in the "Chicago area" as defined under 35 Ill. Adm. Code 205.

187. Since startup, the Facility has had the potential to emit 25 tons or more of VOM per year and has emitted more than 10 tons of seasonal VOM emissions. Thus, the Facility is a "new participating source" subject to ATU requirements under 35 Ill. Adm. Code 205.

188. Under 35 Ill. Adm. Code 205, Aux Sable was required to obtain ATUs beginning in 2001.

189. Aux Sable did not purchase any ATUs or otherwise comply with the requirements of the ERMS program until 2013, when it began to purchase ATUs. The ATUs acquired in 2013 and 2014 were insufficient to cover the actual fugitive emissions potential for the original plant configuration.

190. Aux Sable is subject to the emission excursion compensation requirements of the ERMS program for the period of deficiency and non-compliance between 2001 and 2014.

191. By failing to participate in the ERMS program until 2013, and then failing to obtain sufficient ATUs in 2013 and 2014, Aux Sable has violated the ERMS program requirements under 35 Ill. Adm. Code 205 of the Illinois SIP.

EIGHTH CLAIM FOR RELIEF

(Violation of the Illinois Annual Emissions Reporting Program
under the Illinois SIP at 35 Ill. Adm. Code 254)

192. Plaintiff realleges and incorporates by reference Paragraphs 1 through 146 as if fully set forth herein.

193. While Aux Sable has submitted AER reports to Illinois EPA, these reports were based on the incorrect VOM fugitive emissions assumptions contained in the 1999 Permit. The reports submitted by Aux Sable to Illinois EPA therefore were incomplete and did not reflect the actual emissions from the Facility, thus violating 35 Ill. Adm. Code 254.132 and 254.203 of the Illinois SIP.

194. Under the reporting requirements of 35 Ill. Adm. Code 254.132, Aux Sable's failure to file a complete Seasonal Emissions Report, as required by the ERMS program, is a violation of 35 Ill. Adm. Code 205.300 of the Illinois SIP.

NINTH CLAIM FOR RELIEF

(Violation of LDAR Requirements Established Under CAA Sections 111 and 502(a),
42 U.S.C. §§ 7411 and 7661a; 40 C.F.R. Part 60, Subpart KKK; by reference, certain provisions
of 40 C.F.R. Part 60, Subpart VV, and 40 C.F.R. Part 60, Appendix A-7,
Method 21; and Title V/CAAPP Permit Conditions)

195. Plaintiff realleges and incorporates by reference Paragraphs 1 through 146 as if fully set forth herein.

196. For regulatory purposes, 40 C.F.R. Part 60, Subpart KKK applies to the following units (within the Facility) with the estimated light liquid and/or gas vapor valve counts (as of September 2013): (1) 200 unit: train 1 and 2 (1,100 valves); (2) 300 unit: de-ethanizer (1,099 valves); (3) 600 unit: fractionation (4,364 valves); and (4) 700 unit: product storage (3,139 valves).

197. The valves identified by EPA as having leaks over 500 ppm above background during the September 2013 inspection, and the valves reported by Aux Sable with leaks over 500 above background, as identified in the Table 1, below, are violations of the no detectable emission standard under 40 C.F.R. § 60.632(a) (and by reference 40 C.F.R. § 60.482-7(f)(2)) and Aux Sable's CAAPP Permit at Condition 7.11.5.q.ii.

Table 1. No Detectable Emission Leaks	Unit 200	Unit 300	Unit 600	Unit 700
November 19, 2010 Semi Annual Report (May 2010—Oct. 2010)	72 leaks	16 leaks	100 leaks	59 leaks
May 19, 2011 Semi Annual Report (Nov. 2010—Apr. 2011)	76 leaks	38 leaks	176 leaks	102 leaks
November 30, 2011 Semi Annual Report (May 2011—Oct. 2011)	44 leaks	56 leaks	97 leaks	123 leaks
May 30, 2012 Semi Annual Report (Nov. 2011—Apr. 2012)	36 leaks	40 leaks	82 leaks	63 leaks
November 30, 2012 Semi Annual Report (May 2012—Oct. 2012)	47 leaks	101 leaks	94 leaks	26 leaks
May 10, 2013 Semi Annual Report (Nov. 2012—Apr. 2013)	8 leaks	19 leaks	20 leaks	17 leaks

198. Aux Sable failed to seal an open-ended valve, as demonstrated by a reading of at least 10,000 ppm VOC at component 6572 during the September 2013 inspection. The component, if sealed, would have a monitor reading of zero. This constitutes a violation of Subpart KKK, at 40 C.F.R. § 60.632(a) (and by reference § 60.482-6(a)(2)) and Aux Sable's 2002 CAAPP Permit at Condition 7.11.5.1.

199. During two years of quarterly monitoring (2011–2013), Aux Sable reported an average leak rate of 0.84 percent. Specifically, the following quarterly leak rates were reported by Aux Sable in the 600 process unit: 3rd Quarter 2011—1.51% (61 leaks); 4th Quarter 2011—0.91% (37 leaks); 1st Quarter 2012—1.01% (41 leaks); 2nd Quarter 2012—2.10% (85 leaks); 3rd Quarter 2012—0.35% (14 leaks); 4th Quarter 2012—0.25% (10 leaks); 1st Quarter 2013—0.25% (10 leaks); 2nd Quarter 2013—0.34% (12 leaks).

200. On September 9–11, 2013, EPA found 27 valve leaks out of 898 valves monitored in the 600 process unit, resulting in a leak rate of 3.01%. The discrepancy in leak rates identified by EPA and Aux Sable reflects a failure by Aux Sable to use Method 21 properly on valves in the 600 process unit.

201. Between 2011 and 2013, Aux Sable failed to perform Method 21 properly, in violation of 40 C.F.R. § 60.632(d) (by reference, 40 C.F.R. 60.485(c) and 40 C.F.R. Part 60, Appendix A-7, Method 21) and Aux Sable’s 2002 CAAPP Permit at Condition 7.11.7.

202. The September 2013 inspection found that insulated valves observed by the EPA inspectors at the Facility did not have direct access points for LDAR monitoring, meaning that Aux Sable failed to perform Method 21 properly, in violation of 40 C.F.R. § 60.632(d) (by reference, 40 C.F.R. 60.485(c) and 40 C.F.R. Part 60, Appendix A-7, Method 21 §§ 8.3.1 and 8.3.1.1) and Aux Sable’s 2002 CAAPP permit at Condition 7.11.7.

203. By violating the provisions of NSPS Subparts KKK and VV related to no detectable emission requirements and the other LDAR requirements described above, Aux Sable has violated Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

204. By violating the conditions of its 2002 CAAPP Permit related to no detectable emission requirements and the other LDAR requirements described above, Aux Sable has violated Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

TENTH CLAIM FOR RELIEF

(Violation of the Fractionation Expansion Project Construction Permit
for NO_x Emissions and Fuel Usage Operational Limits under the Illinois SIP)

205. Plaintiff realleges and incorporates by reference Paragraphs 1 through 146 as if fully set forth herein.

206. Aux Sable was issued a construction permit pursuant to 35 Ill. Adm. Code 201 of the Illinois SIP from the Illinois EPA for a fractionation expansion project at the Facility in February 2015 (Construction Permit No. 14120019) (the “2015 Permit”). The 2015 Permit established synthetic minor permit conditions for NO_x pursuant to 35 Ill. Adm. Code §§ 201.156 and 203.128 of the Illinois SIP, including permit conditions 6-2(b) and 6-2(c).

207. Condition 6-2(b) of the 2015 Permit set operational and emissions limits that included a fuel usage limit and NO_x emissions limit for several units combined: the gas turbine (1C201/1C202), HTF heaters (H-501A/H-501B), inlet regen gas heaters (1H-101/2H-101), regen gas heaters (H-601/H-602), and the ethane regen heater (H-309). The combined fuel usage operational limit for these units was 4,250 million standard cubic feet per year (mmscf/year), determined from a running total of twelve months of data, and the combined NO_x emission limit for these units was 144.0 tons/year, determined in the same fashion. The 2015 Permit also contained permit condition 6-2(c), which required that “emissions of NO_x from each HTF Heater (H-501A & H-501B) shall not exceed 0.030 lb/mmBtu heat input on a twelve month rolling average basis. Compliance with this emission limits [sic] shall be determined by continuous emission monitoring, as addressed by Condition 2(b)(iii), with daily records for fuel usage.”

208. In June, 2016, Illinois EPA issued to Aux Sable a revised construction permit under 35 Ill. Adm. Code. §§ 201.156 and 203.128 for the Facility's fractionation expansion project ("2016 Permit"). The operational and emission limits provided with permit condition 6-2(b) of the 2015 Permit were revised in the 2016 Permit according to the dual submission, by Aux Sable, of a deviation report and application for a revised construction permit in June, 2016. The deviation report stated that from March 2015 to May 2016, the rolling average for fuel usage ranged from 4,408 mmscf/year to 4,424 mmscf/year, and for NOx emissions ranged from 166.8 tons/year to 173.2 tons/year. The revised limits provided in the 2016 Permit are 6,000 mmscf/year for fuel usage and 203.4 tons/year for NOx emissions. Condition 6-2(c) remained unchanged.

209. As shown by the deviation report submitted by Aux Sable, Aux Sable violated both the fuel usage and NOx emissions limits contained at permit condition 6-2(b) of the 2015 Permit up until the revised construction permit was issued in June 2016.

210. Continuous emission monitoring data, provided by Aux Sable in response to an EPA request, shows that in the rolling 12-month period from April 2015 through March 2016, HTF heater H-501A experienced NOx emissions of 0.039 lb/mmBtu heat input. This is a violation of permit condition 6-2(c), as provided in both the 2015 Permit and the 2016 Permit.

211. By violating the NOx emission and fuel usage limits in the 2015 Permit and the 2016 Permit, Aux Sable has violated the Illinois SIP at 35 Ill. Adm. Code 203.210(a).

CLEAN AIR ACT: REQUEST FOR RELIEF

212. For the violations asserted in Claims 1 through 10, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Civil Penalties Inflation Act of 1990, Aux Sable is subject to injunctive relief, including mitigation of the effects of excess emissions, and civil penalties of up to \$27,500 per day for each violation between January 31, 1997, and March 15, 2004; up to \$32,500 per day for each violation between March 16, 2004, and January 12, 2009; up to \$37,500 per day for each violation between January 12, 2009 and November 2, 2015; and up to \$97,229 per day for each violation that occurs after November 2, 2015.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in Paragraphs 1 through 212 above, the United States of America requests that this Court:

1. Permanently enjoin Aux Sable from operating its Facility except in accordance with the CAA and all applicable federal regulations and applicable federally enforceable state regulations;
2. Order Aux Sable to operate its Facility in compliance with the CAA statutory and regulatory requirements set forth herein, the applicable SIP requirements, and the Title V and construction permits applicable to the Facility;
3. Order Aux Sable to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the CAA alleged herein;
4. Assess a civil penalty against Aux Sable of up to \$27,500 per day for each violation of the CAA occurring between January 31, 1997, and March 15, 2004; up to \$32,500 for each violation occurring between March 16, 2004, and January 12, 2009; up to \$37,500 per

day for each violation occurring between January 13, 2009 and November 2, 2015; and up to \$97,229 per day for each violation after November 2, 2015;

5. Award Plaintiff its costs of this action; and
6. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

Date: 10/23/18


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CERTIFICATE OF SERVICE

I hereby certify that, on this day, I caused copies of this Complaint to be served on the following persons, by first-class mail postage prepaid, pursuant to Paragraphs 152 and 164 of the proposed Consent Decree lodged in this case:

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Dated: October 29, 2018

s/ Ashleigh G. Morris
U.S. Dept. of Justice